

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC HEARING

+ + + + +

WEDNESDAY

NOVEMBER 14, 2018

+ + + + +

The Regular Public Hearing convened in the Jerrily R. Kress Memorial Hearing Room, Room 220 South, 441 4th Street, N.W., Washington, D.C., 20001, pursuant to notice at 9:30 a.m., Frederick Hill, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

- FREDERICK L. HILL, Chairperson
- LESYLLEE M. WHITE, Board Member
- LORNA JOHN, Board Member
- CARLTON HART, Vice Chairperson (NCPC)

ZONING COMMISSION MEMBER PRESENT:

ROBERT MILLER

OFFICE OF ZONING STAFF PRESENT:

- ALLISON MYERS, Secretary
- CLIFFORD MOY, Secretary
- STEPHEN VARGA, Zoning Specialist

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

JACOB RITTING, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

JOEL LAWSON
JONATHAN KIRSCHENBAUM
KAREN THOMAS
MAXINE BROWN-ROBERTS
CRYSTAL MEYERS

The transcript constitutes the minutes from
the Public Hearing held on November 14, 2018.

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

(9:41 a.m.)

CHAIRPERSON HILL: Good morning everyone. This is the November 14 Public Hearing of the Board of Zoning Adjustment of the District of Columbia.

My name is Fred Hill, Chairperson. Joining me today will be Carlton Hart, Vice Chair. We have currently with us Lesyllee White and Lorna John, Board Members, and representing the Zoning Commission today is Rob Miller.

Copies of today's hearing agenda are available here and located in the wall bin near the door. Please be advised that this proceeding is being recorded by a Court Reporter and also webcast live.

Accordingly, we must ask you to refrain from any disruptive noises or actions in the hearing room. When presenting information to the Board, please turn on and speak into the microphone first stating your name and home address. When you finish speaking, please turn the microphone off so that your microphone is no longer picking up sound and background noise.

All persons planning to testify either in favor or in opposition must have raised their hand and been sworn in by the Secretary. Also, each witness must fill out two witness cards. These cards are located on the table near the door and on the witness table.

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1 Upon coming forward to speak to the Board please
2 give both cards to the reporter sitting to the table at my
3 right. If you wish to file any testimony or additional
4 supporting documents today, please submit one original and
5 twelve copies to the Secretary for distribution.

6 If you do not have the requisite number of copies,
7 you can reproduce copies on an office printer in the Office
8 of Zoning located across the hall. Please remember to
9 collate your sets of copies.

10 The order of procedures for special exceptions,
11 variances, as well as appeals is also on the table as you
12 come walking in to the hearing here. The record shall close
13 at the conclusion of each case except for any material
14 specifically requested by the Board.

15 The Board and the staff will specify at the end
16 of the hearing exactly what is expected and the date when the
17 persons must submit the evidence to the Office of Zoning.
18 After the record is closed, no other information shall be
19 accepted by the Board.

20 The Board's agenda, including cases set for
21 decision after the Board adjourns, the Office of Zoning in
22 consultation with myself, will determine whether a full or
23 summary order may be issued.

24 A full order is required when the decision it
25 contains is adverse to a party, including any affecting ANC.

1 A full order may also be needed if the Board's decision
2 differs from the Office of Planning's recommendation.
3 Although the Board favors the use of summary orders whenever
4 possible, an applicant may not request the Board to issue
5 such an Order.

6 The District of Columbia Administrative Procedures
7 Act requires that the public hearing on each case be held in
8 the open before the public, pursuant to Section 405(b) and
9 406 of that Act. The Board may, consistent with its rules
10 of procedures and the Act, enter into a closed meeting on a
11 case for purposes of seeking legal counsel on a case,
12 pursuant to D.C. Official Code Section 2-575(b)(4), and/or
13 deliberating on a case pursuant to D.C. Official Code Section
14 2-5-75(b)(13), but only after providing the necessary public
15 notice and in the case an emergency closed meeting after
16 taking a roll call vote.

17 The decision of the Board in cases must be based
18 exclusively on the public record. To avoid any appearance
19 to the contrary, the Board requests that persons present not
20 engage the members of the Board in conversation. Please turn
21 off all beepers and cell phones at this time so as to not
22 disrupt the proceeding.

23 Preliminary matters are those which relate to
24 whether a case will or should be heard today, such as a
25 request for a postponement, continuance, or withdrawal, or

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1 whether proper and adequate notice of the hearing has been
2 given.

3 If you are not prepared to go forward with the
4 case today, or if you believe that the Board should not
5 proceed, now's the time to raise such a matter.

6 Ms. Secretary, do we have any preliminary matters?

7 MS. MYERS: Good morning, Mr. Chairman and members
8 of the Board. We have two cases which were previously
9 scheduled for this hearing date which have been postponed,
10 and those are Application No. 19862 of Heights Holding, LLC,
11 which has been postponed to December 5, 2018, and Application
12 No. 19851 of RUPSHA 2011, LLC, which was postponed to
13 December 19, 2018.

14 As far as the other preliminary matters, I would
15 recommend taking them up as we call the case.

16 CHAIRPERSON HILL: Okay. Great. Thank you. If
17 anyone is here wishing to testify before the Board, if you
18 could please stand and take the oath administered by the
19 Secretary to my left.

20 MS. MYERS: If you could, stand and raise your
21 right hand. Do you swear or affirm that the testimony you
22 will be giving today will be the truth, the whole truth, and
23 nothing but the truth?

24 (Witnesses sworn)

25 MS. MYERS: Okay. You may consider yourself under

1 oath.

2 CHAIRPERSON HILL: Okay. Well good morning
3 everyone. We are waiting for another Board Member, so we are
4 going to kind of move things around just a little bit so I
5 just want to let everybody know.

6 In terms of the decision cases, normally for those
7 not here with us on Wednesdays, we do the decision cases
8 first; however, we're going to do those later because we are,
9 again, waiting for one other Board Member to arrive.

10 And also, there's a couple of cases here that I
11 think have more witnesses than others, so in order to get the
12 most Board Members present, we're going to wait for also the
13 Vice-Chair to arrive, for two cases that we were going to try
14 to do earlier. We'll see if people are here for some of
15 these cases that we thought were going to be later in the
16 day.

17 We're going to start with Application 19863, and
18 the Secretary will call that forward, and then after that,
19 we're going to basically follow the back page of the agenda,
20 which is Application No. 19864 and 19831.

21 I think probably the Vice-Chair will get here by
22 the time we get through one of those, so we'll see where we
23 are when he arrives and so then after that, we will either
24 be doing Application No. 19751 first, or Application No.
25 19823. Those are the two we are going to try to get through

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1 before lunch.

2 Then probably we're going to take lunch, and then
3 we're just going to see where we are after lunch, I suppose.
4 Oh, actually, that's not true. There's an appeal that we're
5 going to try to hear. The first case is the appeal that
6 we're hearing after lunch. So, Appeal No. 19777 will be the
7 first case that we hear after lunch.

8 I just thought I'd let everybody know because we
9 have a pretty full group today. So, with that, we can go
10 ahead and call our first case.

11 MS. MYERS: Okay. Parties to the table for
12 Application No. 19863 of KSAR LLC. Pursuant to 11 DCMR
13 Subtitle X, Chapter 9 for a special exception under Subtitle
14 X, Section 1109.1(b), and subject to the conditions of
15 Subtitle H, Section 1107.1, to permit a fast food restaurant
16 use in the existing mixed use building in the NC8 Zone of
17 premises 850 Quincy Street NW, Square 2900, Lot 824.

18 CHAIRPERSON HILL: All right. If you could
19 please introduce yourselves for the record.

20 MS. WILSON: Hi. I'm Alex Wilson from the law
21 firm of Sullivan and Barros, on behalf of the Applicant.

22 CHAIRPERSON HILL: Okay. Ms. Wilson, I don't
23 know if you were here for all of the discussion for the order
24 and why we're changing everything, but you're up first
25 because you're the easiest one of the day.

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1 So, you can go ahead and tell us a little bit
2 about what your client is trying to do, and the standards in
3 which the review that we're supposed take a look at, and how
4 you're meeting those standards, and I'm going to go ahead and
5 put 15 minutes on the clock just so I know where I am, and
6 you can begin whenever you like.

7 MS. WILSON: Great. Thank you. The applicant is
8 asking for relief in order to operate a fast food restaurant
9 called Burgerim, in an existing retail space at 850 Quincy
10 Place NW. Fast food establishments are permitted in the zone
11 subject to certain conditions. OP is recommending approval,
12 and ANC 4C voted unanimously to support the project.

13 Just a little bit about the restaurant, Burgerim
14 translates to mini-burgers in Hebrew. Their first store was
15 opened in 2011 and since then has expanded tremendously. The
16 menu is made up different types of 2.8 ounce patties, and the
17 core idea is variety.

18 While the building itself has a Quincy Street
19 address, the space fronts on the corner of New Hampshire
20 Avenue and Rock Creek Church Road. As you can see, there are
21 a number of other restaurants and retail spaces located on
22 the ground floor of this building.

23 This is an aerial view showing where the
24 restaurant will be located and some additional photos. These
25 are the adjacent restaurants and retail spaces. This is a

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1 view across from the suite. The space is only 1,214 square
2 feet with room for 19 seats.

3 Regarding the special exception criteria, the
4 subject property is not in an NC4 Zone. It is separated by
5 residences, from that by an alley and by Georgia Avenue and
6 New Hampshire Avenue. The ground floor of the building has
7 a continuous brick facade along the length of the rear.

8 There are existing dumpsters onsite which will be
9 used for refuse, and the dumpsters are shared by other
10 commercial establishments on the ground floor. The use shall
11 not include a drive-thru, and there is only one customer
12 entrance which is at the front of the building.

13 The retail space is designed in such a way that
14 the use will not impair the use and enjoyment of neighboring
15 properties. Trash will be stored in the interior in its own
16 storage space, so it is unlikely that the odor will escape
17 or impact the properties.

18 There is existing exterior lighting and no
19 additional lighting will be used. The building is equipped
20 with a ventilation system that should adequately address any
21 issues of odor. There are several other restaurants in the
22 building, and the applicant has not noticed any issues with
23 odor.

24 Deliveries will be made at the rear of the
25 property. The hours of operation are consistent with other

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1 fast food businesses, and the limited seating for only 19
2 people should not create any significant or disruptive noise.

3 Burgerim will be a great alternative to a Subway
4 or Dunkin Donuts for those who work in the area, and the
5 applicant is providing additional employment opportunities
6 for residents in the area.

7 Overall, the space is set up in such a way to
8 avoid any negative impacts on residential properties, and
9 there are a variety of restaurants and prepared food shops
10 in the existing spaces. None of those have created issues
11 that the applicant is aware of with adjacent property owners.
12 Thank you.

13 CHAIRPERSON HILL: Okay. Great. Does the Board
14 have any questions for the applicant? All right. I'm going
15 to turn to the Office of Planning.

16 MS. MEYERS: Good morning. For the record,
17 Crystal Meyers for the Office of Planning. The Office of
18 Planning is recommending approval of this case and stands by
19 the record of the staff support.

20 CHAIRPERSON HILL: Okay. Does the Board have any
21 questions for the Office of Planning? Does the applicant
22 have any questions for the Office of Planning?

23 MS. WILSON: No. Thank you.

24 CHAIRPERSON HILL: Okay. Does anyone here wish
25 to speak in support of the application?

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1 (No audible response)

2 Is there anyone here who wishes to speak in
3 opposition of the application?

4 (No audible response)

5 All right. Ms. Wilson do you have anything you
6 would like to add?

7 MS. WILSON: No. Thank you.

8 CHAIRPERSON HILL: Okay. I'm going to go ahead
9 and close the hearing. Is the Board ready to deliberate?
10 Okay.

11 Well, again, as I mentioned to Ms. Wilson, this
12 is one of the easier ones of the day, so I think after
13 looking all the material and the record as well as the report
14 from the Office of Planning and the ANC 4C, I would also be
15 in agreement the analysis the Office of Planning has
16 provided, and in addition to that, it's nice to see that the
17 ANC 4C is also in support, and the DDOT has no objection, so
18 I'll be voting in favor of this application. Would anyone
19 like to add anything?

20 MEMBER WHITE: Yes, Mr. Chair, I'm in support of
21 the application as well. I think it's clear that they've met
22 the special exception criteria under Subtitle H, 1107.1.

23 It's also good to see that they have some
24 vegetarian options on the menu as well, for us vegetarians.
25 Beyond that, I think the record's full, and it's good to see

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1 the ANC 4C has weighed in and is comfortable and has provided
2 positive community feedback.

3 CHAIRPERSON HILL: Okay. Great. Anyone else?
4 I'm going to go ahead and make a Motion to approve
5 Application No. 19863 as captioned and read by the Secretary
6 and ask for a second.

7 MEMBER WHITE: Second.

8 CHAIRPERSON HILL: Motion made and seconded. All
9 those in favor say "Aye".

10 (Chorus of Ayes)

11 All those opposed?

12 (No Audible Response)

13 The Motion passes.

14 MS. MYERS: Staff will record the vote as 4-0-1
15 on the Motion of Chairman Hill to approve the Application as
16 captioned, seconded by Ms. White. Also in support, Mr.
17 Miller and Ms. John.

18 CHAIRPERSON HILL: Thank you. Thank you all very
19 much.

20 MS. WILSON: Thank you.

21 MS. MYERS: The next application is Application
22 No. 19864 of MDP 526 8th Street LLC, and that is pursuant to
23 11 DCMR subtitle X, Chapter 9 for a special exception under
24 Subtitle C, Section 703.2, from the minimum parking
25 requirements of Subtitle C, Section 701.5., and pursuant to

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1 Subtitle X, Chapter 10 for a variance from the loading berth
2 requirements of Subtitle C, Section 901, to construct a new
3 three story commercial building in the MU25 Zone at premises
4 256, oh sorry, 526 to 528 8th Street SE, Square 926, Lots 809
5 and 810.

6 CHAIRPERSON HILL: Okay. Great. Welcome. If you
7 could please introduce yourselves for the record going from
8 my right to left.

9 MR. LINAM: Yes, my name is John Linam. I'm the
10 architect for the project.

11 MR. UTZ: I'm Jeff Utz with Goulston and Storrs,
12 land use counsel for the applicant.

13 MR. MARTIN: I'm Chris Martin. I'm the owner of
14 the property.

15 MS. MILANOVICH: Good morning. Jami Milanovich
16 with Wells and Associates, traffic consultant for the
17 project.

18 CHAIRPERSON HILL: Okay, great. Thank you. Mr.
19 Utz, are you going to be presenting to us?

20 MR. UTZ: We will be.

21 CHAIRPERSON HILL: Okay. You guys are the
22 luckiest people I've seen. I had you scheduled easily for
23 5 o'clock. You would have been here eight hours. Easily.

24 MR. UTZ: We cancelled our night meetings.

25 CHAIRPERSON HILL: This is just shocking. Okay.

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1 All right. I'm going to go ahead and put 15 minutes on the
2 clock for you.

3 MR. UTZ: Okay.

4 CHAIRPERSON HILL: You can walk us through. I
5 don't have any particular questions. Actually, that's not
6 true. There are a couple of things that we did have a
7 question about concerning, really, some of the comments from
8 DDOT.

9 I guess I'd like to talk about where the long-term
10 bicycle parking is and the short-term parking in the public
11 space. But Mr. Utz, you can go ahead and start again
12 whenever you'd like, telling us again about how you're
13 meeting the standard of review.

14 MR. UTZ: Sure.

15 CHAIRPERSON HILL: You can start whenever you're
16 ready.

17 MR. UTZ: Great. Thanks so much. And thank you
18 for fitting us in this morning. We had cancelled our night
19 meetings so we'll reestablish those.

20 We already went through the introductions, so I'll
21 just jump right into it. We are here requesting both special
22 exception variance relief for 526 through 528 8th Street SE.

23 The special exception relief relates to Section
24 C 703 for the parking requirements where four parking spaces
25 are required, there will be two provided by the project.

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1 The variance relief relates to the loading
2 requirements of Section C 901.1. One loading berth and
3 loading platform would be required. However, we are not able
4 to provide that on this particular site.

5 So the project will redevelop an existing parking
6 lot that is currently kind of a missing tooth in the
7 streetscape of Barracks Row with a three story commercial
8 building with approximately 9,250 square feet of GFA.

9 It's located in the MU25 Zone District, and it is
10 located on 8th Street, obviously characterized primarily by
11 two and three story commercial buildings of restaurant,
12 retail, and office uses.

13 I think I'll just quickly move past most of what
14 we were going to say and dive right into, can you speak to
15 the DDOT related issues that the Chairman just talked about?
16 I think there were really just two, about where the bike
17 parking was located, and then the management plans.

18 MS. MILANOVICH: So, the diagram that's on the
19 screen before you shows the basement level, which shows the
20 long-term bicycle parking.

21 CHAIRPERSON HILL: I'm sorry. Can you show that
22 to me again? Are these in the --

23 MR. UTZ: these are in the basement.

24 CHAIRPERSON HILL: -- in the exhibits?

25 MR. UTZ: Yes. Well, I'm sorry.

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1 CHAIRPERSON HILL: In the records?

2 MR. UTZ: They are now. They are in the
3 presentation that was uploaded last night into the record.
4 We saw the DDOT comment in their report, and then did make
5 it clear, where the little cursor is on the plan right now,
6 is the long-term parking spaces in the cellar of the
7 building.

8 Then if you go to the ground floor plan of that
9 same little plan set --

10 CHAIRPERSON HILL: I'm just trying to find out
11 where it is in the record.

12 MR. UTZ: Yes. So it's going to be the latest
13 exhibit in the record itself. The presentation, it's Page
14 807 that shows the long-term spaces.

15 Then if you go to the ground floor site plan, 802,
16 803 pans out and that shows the short-term spaces where those
17 public space bike parking spaces have been added subject to
18 DDOT approval.

19 Both of those pages were updated in response to
20 the DDOT report.

21 CHAIRPERSON HILL: Okay.

22 MS. MILANOVICH: In terms of the DDOT report, I
23 would also note they've requested the transportation demand
24 management plan as well as the loading management plan, and
25 we have agreed to all of those elements.

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1 MR. UTZ: The other thing I would note is this
2 particular project spent a lot of time in the community.
3 It's already received HPRB approval for this design.

4 There were many community meetings, there were
5 five meetings altogether, so it received ANC 3V support,
6 Capitol Hill Restoration Society support, and then many
7 support letters are in the record from a wide variety of
8 neighbors as well.

9 It's been positively received, and I think the
10 community is excited to see that gap in the streetscape be
11 filled.

12 CHAIRPERSON HILL: Okay. Just so I'm clear, the
13 DDOT report submitted as Exhibit 41, so you're in agreement
14 with all of those conditions.

15 MR. UTZ: Yes.

16 CHAIRPERSON HILL: Okay. Does the Board have any
17 questions for the applicant?

18 MEMBER WHITE: Yes, one question. You've got a
19 lot of community support here, but I just want to make sure
20 I didn't ignore, there were some comments that were made in
21 Exhibit 52 from Dana LaPere, who was in opposition to it.

22 So, to the extent that some of her comments relate
23 to the relief that you're seeking, I wondered if you could
24 address them, and if you've reviewed the letter, but it's
25 Exhibit 52. Perhaps she's here, but just in case, I didn't

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1 want to --

2 CHAIRPERSON HILL: But doesn't -- that's okay.

3 We'll --

4 MEMBER WHITE: We'll get to you later, yes.

5 MR. UTZ: It's a different case.

6 MEMBER WHITE: Okay.

7 CHAIRPERSON HILL: Oh, you're saying there's an
8 error with this being in the --

9 MR. UTZ: It might have been misfiled.

10 CHAIRPERSON HILL: -- in this file. Okay. All
11 right. Okay. So you don't have anything to respond to. All
12 right. I'm going to turn to the Office of Planning.

13 MS. THOMAS: Good morning Mr. Chairman and members
14 of the Board. Karen Thomas from the Office of Planning.

15 We believe the applicant has met the burden of
16 proof for the requested relief, and I'll sign on the record
17 of my report. Thank you.

18 CHAIRPERSON HILL: Okay. Does the Board have any
19 questions for the Office of Planning?

20 Does the applicant have any questions for the
21 Office of Planning?

22 MR. UTZ: We do not.

23 CHAIRPERSON HILL: Okay. Is there anyone here who
24 wishes to speak in support?

25 Is there anyone here wishing to speak in

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1 opposition?

2 Mr. Utz, do you have anything you'd like to add
3 at the end?

4 MR. UTZ: Thank you for letting us present.

5 CHAIRPERSON HILL: Okay. Great. All right I'm
6 going to close the hearing. Is the Board ready to
7 deliberate? Okay.

8 (Off the record comments)

9 The main concerns I had or questions really were
10 concerning the DDOT report and then also the parking, I'm
11 sorry, the long-term spaces and short-term spaces that were
12 in public space.

13 I think the applicant has addressed that as well
14 as meeting all of the burden of proof for the standards,
15 reviewing the standards that we need to look at in order to
16 grant or not grant the application.

17 I believe the Office of Planning's report is
18 actually quite thorough, and in addition to that, there are,
19 as the applicant stated, they have the support of the ANC 6B,
20 there are a variety of letters in support, as well as CHRS,
21 and I will be voting in favor of the application.

22 Would anyone like to add anything else?

23 MEMBER JOHN: Just briefly, Mr. Chairman, I also
24 agree that the application is fairly straight forward. Now
25 that the applicant has addressed DDOT's comments, I note that

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1 there is community support, and with that, I will give great
2 weight to the recommendation and the analysis of the Office
3 of Planning, and I can support this application.

4 MEMBER WHITE: Yes, Mr. Chair, I apologize for
5 that error earlier. It was a different one, it's from
6 Ramone Baruka. But I think just looking at the comments in
7 that letter, and looking at the criteria for this particular
8 relief that you're looking at, I'm now comfortable that
9 you've met the criteria for the relief for this particular
10 application.

11 Obviously I have to pay attention to community
12 feedback, but looking strictly at the criteria that you're
13 asking for, I think you've met the criteria in this
14 particular application.

15 MEMBER MILLER: Mr. Chairman, I concur with my
16 colleagues that the criteria for the loading and parking
17 relief have been met in this case.

18 CHAIRPERSON HILL: Okay. Thanks. I'm going to
19 make a motion to approve application No. 19864 as captioned
20 and read by the Secretary and ask for a second.

21 MEMBER WHITE: Second.

22 CHAIRPERSON HILL: Motion made and seconded. All
23 those in favor say AYE.

24 (Chorus of ayes)

25 All those opposed?

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1 (No audible response)

2 The Motion passes.

3 MS. ROSE: Mr. Chair, if I could interject
4 quickly, the three conditions suggested by DDOT, were those
5 intended to be included?

6 CHAIRPERSON HILL: Yes, sorry. Thank you so much.
7 So, to clarify the motion, I'm making motion to approve
8 Application No. 19864, as captioned and read by the
9 Secretary, including the conditions that are set forward by
10 DDOT in Exhibit 41, and also outlined with the location of
11 the bike storage as well as the bike parking in public space
12 as outlined in the applicant's presentation, and ask for a
13 second.

14 MEMBER WHITE: Second.

15 CHAIRPERSON HILL: Motion made and seconded. All
16 those in favor say Aye.

17 (Chorus of ayes)

18 Motion passes once again.

19 MS. MYERS: Thank you. The staff will record the
20 vote as 4-0-1, on the Motion of Chairman Hill to approve the
21 application with the conditions as described. Seconding the
22 Motion was Ms. White, also in favor of the Motion was Mr.
23 Miller and Ms. John.

24 CHAIRPERSON HILL: Okay. Thank you. Thank you.

25 MS. MYERS: The next application to the table is

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1 Application No. 19831 of RUPSHA 2011 LLC. This application,
2 as amended, is pursuant to 11 DCMR Subtitle X, Chapter 10 for
3 area variances, from the lot dimension requirements of
4 Subtitle D, Section 302.1, the side yard requirements of
5 Subtitle D, Section 307.1, and the common division law
6 requirement of Subtitle D, Section 307.4, to construct a new
7 semi-detached principal dwelling unit in the R2 Zone at
8 premises 4813 Jay Street NE, Square 5149, Lot 87.

9 CHAIRPERSON HILL: Okay. We're going to go ahead
10 and ask for the next one, perhaps, because they probably
11 thought they were going to be here at 5:00.

12 MS. MYERS: Okay. We can call that case later.
13 The next application, I believe is the same applicant, so
14 they may not be here as well, but is the applicant here for
15 Application No. 19832 of Yasmine Sikder?

16 MS. SECK: Yes.

17 CHAIRPERSON HILL: Okay, there you go. So, again,
18 go ahead and call the whole case, please.

19 MS. MYERS: Are you the representative from 19831
20 as well?

21 MR. SECK: Yes.

22 CHAIRPERSON HILL: All right, let's call 19831
23 first again.

24 MS. MYERS: Sure.

25 CHAIRPERSON HILL: Thank you.

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1 MS. MYERS: So again, this is Application No.
2 19831 of RUPSHA 2011 LLC. As amended, this application is
3 pursuant to 11 DCMR Subtitle X, Chapter 10 for area variances
4 from the lot dimension requirements of Subtitle D, Section
5 302.1, the side yard requirements of Subtitle D, Section
6 307.1, and the common division law requirement of Subtitle
7 D, Section 307.4, to construct a new semi-detached principal
8 dwelling unit in the R2 Zone at premises 4813 Jay Street NE,
9 Square 5149, Lot 87.

10 I think I did it better the second time, so I
11 appreciate the opportunity here.

12 CHAIRPERSON HILL: Okay. Great. Will you please
13 introduce yourself for the record?

14 MR. SECK: Yes, good morning Mr. Chairman. I
15 apologize for being late. My name is Oumar Seck. O-U-M-A-R.
16 S-E-C-K. Representing District Properties RUPSHA 2011 and
17 Yasmine Sikder.

18 CHAIRPERSON HILL: Mr. Seck we're going to call
19 the other one as well, after we get through this. I'm going
20 to go ahead and let you kind of walk us through what you're
21 trying to do and again, how you're meeting the standard for
22 us to approve this request.

23 The one item I will note, and I guess the Office
24 of Planning can maybe help with that, as well, but it seems
25 like you don't need 302.1? So, I think that's what the

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1 Office of Planning, I thought, had spoken about earlier.

2 We can go ahead and get to that when we get to
3 that. I'm going to put 15 minutes on the clock for you
4 there, Mr. Seck, and you can go ahead and begin whenever you
5 like.

6 MR. SECK: Yes, Chairman Hill, I would use just
7 a couple of minutes. Basically, we proposing to build a two-
8 story semi-detached here on 4813 Jay Street. The lot width
9 is 20 feet 8 inches, and we proposing to do a zero lot line.

10 Basically have zero side yard based on the
11 recommendation of the ANC, whom I met several times at their
12 executive meetings and DCA meeting, and ANC meeting. They
13 recommended to have a two story instead of a three story
14 which we introduced last time.

15 On our meeting on the 24th, they were present to
16 request a postponement so we can come to an agreement, which
17 we did, and they should have a letter of approval in the
18 system.

19 The property lot area is 2,380 square feet versus
20 their requirement of 3,000. We are meeting the building
21 height, proposing 2610 versus 40, and with a yard, we have
22 52 versus 20 feet required.

23 There's a parking that will be served from the
24 rear alley, and I can go through the architecture. Three
25 bedroom, basically two and a half bath.

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1 CHAIRPERSON HILL: That's okay, Mr. Seck. I'm
2 more interested in you kind of walking us through how you're
3 meeting the variance standard.

4 MR. SECK: Okay. Basically the R2 Zone, reading
5 off the board here, the lot requirement being 3,000, we
6 proposed 2,380.

7 I'm going to say, Chairman Hill, the question, I'd
8 be answering improperly. I apologize. The requirement --

9 CHAIRPERSON HILL: It's okay, Mr. Seck. I'm going
10 to do this. We have everything in the record here that we
11 have looked at in terms of your application. I'm going to
12 turn to the Office of Planning real quick.

13 Does anyone have any questions for the applicant?
14 Okay. Let me turn to the Office of Planning.

15 MR. KIRSCHENBAUM: Good morning Board Members.
16 Jonathan Kirschenbaum from the Office of Planning.

17 I'm going to start with just the easy one. The
18 applicant does not need relief under Subtitle D, 302.1, which
19 is lot area and lot width, because the lot is an existing
20 record lot that existed before the passage of the 2016 zoning
21 regulations, so it's considered conforming.

22 CHAIRPERSON HILL: Mr. Seck, do you understand
23 that?

24 MR. SECK: Yes.

25 CHAIRPERSON HILL: Okay. So you're in agreement

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1 to remove that from the application?

2 MR. SECK: Yes.

3 CHAIRPERSON HILL: Can you turn off your
4 microphone for a second? I'm sorry, I'm getting feedback.

5 MR. KIRSCHENBAUM: However, the applicant revised
6 her plans over the weekend, and what he discussed is what was
7 revised over the weekend. We do not recommend approval of
8 that.

9 The plans were revised to do a house that goes lot
10 line to lot line, which is more or less an attached building
11 typology. We do not recommend approval of that. We
12 recommend approval of the plans that had been in the record
13 which is for a semi-detached house.

14 The reason for that is that this is an R2, which
15 does not allow attached houses to go lot line to lot line.
16 We feel that a semi-detached house is more within the
17 building typology.

18 Of yard two, and also the predominant character
19 of the neighborhood is attached, I'm sorry, is detached or
20 semi-detached houses. There are not attached houses in this
21 neighborhood.

22 Right now we can't recommend approval based on the
23 most recent plans that were submitted to the record.

24 CHAIRPERSON HILL: All right, Mr. Seck. So, you
25 changed the plans as to what you're proposing to do?

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1 MR. SECK: Yes. Because the AMC opposed totally
2 a three story building there. The lot size to create the --

3 CHAIRPERSON HILL: What did you present to the ANC
4 and when did you present to them?

5 MR. SECK: We had a meeting this past Thursday.
6 Last Thursday, yes. Last Thursday at the ANC meeting, and
7 Chairman Holmes, in the previous meeting, has always opposed
8 to the three story, which I told him, initially, in the first
9 phase we proposed a two story. Office of Planning proposed
10 a three story.

11 They said in that particular block there's no
12 three story houses. Seventeen feet we cannot get anymore
13 than two bedroom house, and two bedroom house would be very
14 limited and hard to sell.

15 CHAIRPERSON HILL: Hold on Mr. Seck. I'm going
16 to interrupt you. Which plans did you present to the ANC?

17 MR. SECK: The last one was a two story building
18 which should be uploaded in the system.

19 CHAIRPERSON HILL: That you uploaded over the
20 weekend.

21 MR. SECK: Yes. Friday, I believe it was. I
22 believe Friday or Monday. My office staff did that, I
23 apologize, it could be on Monday, because we don't work on
24 weekends.

25 That was from the meeting on Thursday with the

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1 ANC.

2 CHAIRPERSON HILL: That's all right, Mr. Seck.
3 Okay. I'm not exactly sure what to do here, because if
4 you've changed the plans, and the Office of Planning, we
5 don't even have a supplemental report on the changed plans.
6 Correct?

7 MR. KIRSCHENBAUM: Yes. That's correct.

8 CHAIRPERSON HILL: So you're giving us testimony
9 right here on the dais.

10 MR. KIRSCHENBAUM: That is correct.

11 CHAIRPERSON HILL: Yes. Okay. All right.

12 MR. KIRSCHENBAUM: I will just say that we
13 recommended a semi-detached building typology. We did not
14 specify how many stories the house should be. It's more
15 about just typology.

16 CHAIRPERSON HILL: Okay, well, Mr. Seck, you're
17 here also for the next application, which is 19832? Did you
18 change the plans to that one as well?

19 MR. SECK: 19832. Yes. That final change is on
20 the record.

21 CHAIRPERSON HILL: Okay. Well, that's, all right.
22 I can't hear you in the microphone. Can you speak into the
23 microphone again?

24 MR. SECK: I apologize.

25 CHAIRPERSON HILL: That's all right.

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1 MR. SECK: Yes, that was also the same thing in
2 that area. They recommended a two story and we changed it
3 and uploaded it. I'm not sure if the Office of Planning
4 received it or not.

5 CHAIRPERSON HILL: Okay. Well, I don't know what
6 the Board thinks. I now think we can postpone this and let
7 the applicant work with the Office of Planning a little bit
8 and/or the Office of Planning can provide us a supplemental
9 report based on the new drawings if that's what the applicant
10 is still continuing to propose after meeting with the Office
11 of Planning.

12 The Office of Planning is in opposition to your
13 application, right? And we also don't have anything from the
14 ANC. Okay? So, we really have nothing in terms of the
15 public outreach as well as now the recommendations from the
16 Office of Planning.

17 So, I would recommend that we, I guess you can
18 work with the Secretary, okay, one second, I'll get to the
19 public as well. Work with the Secretary to see if you can
20 straighten this out. Wait a second.

21 Work with the Office of Planning to see where
22 exactly your application is, and then we can get a
23 supplemental report from the Office of Planning if they are
24 sticking with this current design.

25 I see someone from the ANC here. Okay. Could the

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1 ANC please come forward? That's all right. Well, I don't
2 know what's going to happen now at this point. So, we will
3 get to public testimony, I suppose, since people came down
4 here.

5 Currently, I'm not really sure what's before us.
6 But we have a commissioner here, so at least we'll get some
7 kind of clarification.

8 Madam Commissioner, if you could introduce
9 yourself.

10 MS. GAFFNEY: Good morning. I'm Mary Gaffney, I'm
11 from the ANC 7C.

12 CHAIRPERSON HILL: Commissioner, I'm sorry, could
13 you just pull that microphone a little bit closer to your
14 mouth there. There you go, perfect. Could you say that
15 again?

16 MS. GAFFNEY: Good morning. I'm Mary Gaffney, I'm
17 from the ANC 7C.

18 CHAIRPERSON HILL: Okay. And Commissioner, what
19 would you like to say?

20 MS. GAFFNEY: I'd like to speak on 19832.

21 CHAIRPERSON HILL: Okay. We haven't called that
22 yet. We're currently talking about 19831.

23 MS. GAFFNEY: There were so many things going on
24 with changes and not coming in front of us before the spoken
25 word. I really don't know exactly what the decision was that

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1 night. The chairperson isn't here.

2 CHAIRPERSON HILL: That's all right. I don't
3 think this is going to happen as smoothly as I thought it was
4 going to happen. You might have gotten later in the day had
5 I realized this was going to be as interesting as it is.

6 Let's see. So, Madam Commissioner, please just
7 give me a minute because that's not even the case that we
8 called just yet. That's okay. By the way, Board Members,
9 please speak up. It looks like I'm alone, but I'm not.

10 My plan is to go ahead and let Mr. Seck go back
11 and work with the Office of Planning, figure out what design
12 you're actually submitting to us, and then get a supplemental
13 report from the Office of Planning, go back and, I guess,
14 present to the ANC, because I have nothing from the ANC right
15 now.

16 I'm just going to postpone this until probably,
17 I don't know when, we'll see when that's happens. So, that's
18 my plan of thought. Does any Board Members have anything
19 they'd like to add?

20 MEMBER WHITE: Yes. Mr. Chairman, you're not
21 alone. I'm listening to this as well. I agree with you.
22 Because looking at the record, my analysis doesn't really,
23 is not on point with what's kind of being presented, so I
24 definitely feel as though we need to make sure we have some
25 consistency and feedback from OP in terms of what's being

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1 presented. And also feedback from the ANC, if possible, on
2 this particular application as well as the next one.

3 MEMBER JOHN: Mr. Chairman, I would just, I agree
4 with you that it's best to postpone to give the ANC yet
5 another opportunity to weigh in. We have nothing in the
6 record from the ANC at the moment, so we hope this will be
7 the last extension.

8 I will just note that the drawings that we have
9 in the record are within the height limitation, and the only
10 thing the applicant is seeking is relief from the side yard
11 requirement because of the non-conforming lot.

12 Based on those comments, I guess I am sort of
13 tipping my hand as to where I'm headed, but I agree that we
14 should postpone this application to give the ANC another
15 opportunity, and the applicant should consult again with the
16 Office of Planning on what design he would like to move
17 forward with.

18 MEMBER MILLER: Mr. Chairman, I concur with you
19 and my colleagues. Thank you.

20 CHAIRPERSON HILL: Thank. Mr. Kirschenbaum, are
21 you the person working on the next one as well?

22 MR. KIRSCHENBAUM: No, my colleague.

23 CHAIRPERSON HILL: Okay, great. So, Mr. Seck,
24 you've been here before, haven't you?

25 MR. SECK: Yes. Several times.

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1 CHAIRPERSON HILL: Okay. We are going to go ahead
2 and postpone both of your cases until we get something from
3 the -- if you're submitting new drawings, we'd like to see
4 whatever the Office of Planning has to say about your new
5 drawings, as well as the ANC.

6 That being the case, when can we postpone this to?

7 MS. MYERS: Mr. Miller is back with the board next
8 on January 16th in the new year. If that is too long, we
9 could postpone to a date in December, but I will say that
10 towards the end of the year, in December, the hearing dockets
11 are getting quite full.

12 CHAIRPERSON HILL: Mr. Seck, I'm going to give you
13 a second to say something, but I'm leaning toward January
14 16th because you still have a lot of stuff to do and I don't
15 know what you're here for right now. Go ahead and respond.

16 MR. SECK: Just quickly, the Commissioner who
17 approved the first case 4813, just called me this morning.
18 I have been contacting him to release the approval letter.

19 This is besides the fact of the OP not having
20 received or reviewed the plan. But the Chairman, Antwoine
21 Holmes, has spoken to me today at 7:00 that he was going to
22 upload the approval letter for 4813 Jay Street, which is the
23 first case. So --

24 (Simultaneously speaking)

25 CHAIRPERSON HILL: Okay. What we're going to do

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1 Mr. Seck, because I'm curious to hear from the Office of
2 Planning now in your new plans.

3 Also for the second case, so we're going to go
4 ahead and call the second case as well, I think, just so we
5 can hear from the Office of Planning and we'll go through
6 that little exercise as well.

7 But, the Office of Planning is currently opposed
8 to the plans that you're submitting, so there's a lot of
9 things that we'd have to go through with your new plans, so
10 I'm going to postpone this until January 16th, which is when
11 Mr. Miller will be back here again, because we're just jammed
12 up all the way through the end of the year.

13 This happens every Wednesday, and there's a lot
14 more people here than they're usually is, but still not so
15 much. There's still a lot of people here every Wednesday.
16 So, we'll go ahead on January 16th, when Mr. Miller is back
17 for this case.

18 And then I suppose if you want to call the next
19 case, we can hear from the Office of Planning.

20 MS. MYERS: Okay, I'll call the next case. For
21 the record, Application No. 19831 is postponed or continued
22 to January 16, 2019.

23 CHAIRPERSON HILL: Thank you. I'm closing the
24 hearing on this case right now, but continuing it --

25 MS. MYERS: The record remains open.

1 CHAIRPERSON HILL: The record remains open.
2 Exactly.

3 MS. MYERS: The next application is Application
4 No. 19832 of Yasmine Sikder. As amended, this application
5 is pursuant to 11DCMR Subtitle X, Chapter 10, for area
6 variances from the lot dimension requirements of Subtitle D,
7 Section 302.1, the side yard requirements of Subtitle D,
8 Section 307.1, and the common division wall requirement of
9 Subtitle D, Section 307.4, to construct a new semi-detached
10 principal dwelling unit in the R2 Zone at premises 308 62nd
11 Street NE, Square 5267, Lot 44.

12 CHAIRPERSON HILL: Again, you have to introduce
13 yourselves for the record, please.

14 MR. SECK: My name is Oumar Seck. O-U-M-A-R.
15 Representing Yasmine Sikder. And last name S-E-C-K. Sorry.

16 CHAIRPERSON HILL: And Commissioner, you are here
17 on this case, so you can go ahead and introduce yourself
18 again.

19 MS. GAFFNEY: Yes. Mary Gaffney. ANC 7C.

20 CHAIRPERSON HILL: So, Mr. Seck, we did this a
21 little bit already, but I'm going to do it. We already spoke
22 through a lot of this on case number 19831, if people are
23 going to go back and look in the record.

24 I'm going to turn to the Office of Planning and
25 ask whether the Office of Planning has reviewed and seen the

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1 new plans?

2 MS. THOMAS: Good morning, Mr. Chair. Karen
3 Thomas from the Office of Planning again. The latest plans
4 I observed was one with our recommendation of a three-foot
5 side yard.

6 I would like Mr. Oumar to confirm that those are
7 the plans.

8 MR. SECK: Yes.

9 MS. THOMAS: So, your plans are in conformance
10 with OP's report? Where we recommended a three-foot side
11 yard? And those are the plans you are going to present?

12 MR. SECK: No.

13 MS. THOMAS: To the ANC?

14 MR. SECK: The one I presented to the ANC with the
15 three foot side yard. Initially you had the one for five
16 foot side yard, and we uploaded the three foot after my
17 meeting with ANC last Thursday. We did send you an email,
18 as well, with the three foot side yard.

19 MS. THOMAS: Okay. We have the one with the three
20 foot side yard.

21 MR. SECK: So that's the one that I'm here for.

22 MS. THOMAS: And on the other side, no side yard.
23 Is that right?

24 MR. SECK: That's correct?

25 MS. THOMAS: I wasn't aware of any five foot side

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1 yard, because I think you --

2 CHAIRPERSON HILL: Okay, I'm going to interrupt
3 this just one second if that's okay. So, Mr. Seck, I'm back
4 again. It sounds like this is little bit untidy for us. I
5 mean the things we reviewed, I'm no longer clear as to what
6 it is that we did review prior to coming here.

7 We look through the record pretty thoroughly
8 before we get here, so why don't you again go work with the
9 Office of Planning, we're going to put you back on again to
10 be continued to January 16th, again, for this application.

11 Make sure that the Office of Planning is reviewing
12 the same material that matches their report, and then we can
13 go ahead and try to do this again. Okay?

14 Madam Commissioner, did you have anything that
15 you'd like to add or do you want to come back on the 16th
16 also?

17 MS. GAFFNEY: Well, I'll come back on the 16th,
18 but according to our meeting and discussions and whatnot, ANC
19 7C disapproved this particular application.

20 CHAIRPERSON HILL: Okay. Mr. Seck, you're two for
21 to two here today. So, I'm going to go ahead and let you try
22 again, okay? Come on back on the 16th. Try to work with the
23 ANC.

24 Madam Commissioner, if ANC has the same opinion,
25 if you could please submit something into the record, because

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1 I don't think we have anything now from you.

2 MS. GAFFNEY: I spoke with Mr. Hall this morning,
3 and he said he sent it. I told him that you actually need
4 it by the 11th.

5 MS. MYERS: I believe we just received it this
6 morning, and it's been uploaded to the record as Exhibit 43.

7 CHAIRPERSON HILL: Okay. So, we'll come back on
8 the 16th and have a chance to do this again.

9 MS. GAFFNEY: Okay.

10 CHAIRPERSON HILL: Thank you very much.

11 MS. GAFFNEY: Thank you.

12 CHAIRPERSON HILL: Mr. Seck, thank you so much.

13 MR. SECK: Thank you.

14 CHAIRPERSON HILL: I'm closing, I'm sorry, we're
15 continuing the hearing until January 16 for that. Mr.
16 Miller, you get to come back with us for that.

17 MS. MYERS: The next application is Application
18 No. 19850 of Charles Paret, pursuant to 11 DCMR Subtitle X,
19 Chapter 9, for a special exception under Subtitle D, Sections
20 1006.3 and 5201 from the rear yard requirements of Subtitle
21 D, Section 1006.2 to construct a rear addition to an existing
22 attached principal dwelling unit in the R17 Zone. A premises
23 2507 I Street NW, Square 16, Lot 57.

24 CHAIRPERSON HILL: Is the applicant here? Okay.
25 The applicant is not here for Application 19850.

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1 MS. MYERS: We will call 19850 later on in the
2 hearing session.

3 Next I'll call to the table Application No. 19808
4 of Mark Rogers, that's pursuant to 11 DCMR Subtitle X,
5 Chapter 10, for a variance from parking location requirements
6 of Subtitle C, Section 710.2 to permit a parking space in the
7 front yard of an existing principal dwelling unit in the R2
8 Zone at premises 1740 40th Street SE, Square 5523, Lot 32.
9 Excuse me, Lot 31.

10 Okay. We'll call that application later in the
11 hearing session. The next application to call to the table
12 is Application 19809 of Shamori Jennings. That application
13 is pursuant to 11 DCMR Subtitle X, Chapter 10, for a variance
14 from a parking location requirements of Subtitle C, Section
15 710.2 to permit a parking space in the front yard of an
16 existing principal dwelling unit in the R2 Zone of premises
17 1736 40th Street SE, Square 5523, Lot 32.

18 CHAIRPERSON HILL: Okay, I actually didn't
19 necessarily think those two cases were going to show up. So,
20 I'm not surprised with that. Some of the other cases,
21 perhaps they thought they were going to be here after kind
22 of the longer hearings we had before us today.

23 So, we've actually gone through a lot of things
24 I didn't think we were going to get through to this point.
25 What that did was kind of throw our timing off just a little

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1 bit, but we are going to take a quick break, and we will come
2 back right after a short break. Thank you.

3 (Whereupon, the above-entitled matter briefly went
4 off the record.)

5 CHAIRPERSON HILL: Actually, I want to make a
6 couple of announcements.

7 So, what we're going to try to do here now is
8 we're to try to do Application No. 19751, followed by 19823.
9 It would be nice to get those both in before lunch. That may
10 be a little bit ambitious, but we're going to try. But,
11 definitely, at least 19751 will be done before lunch. And
12 so, we'll see how that goes. And then, again, right after
13 lunch, we'll do the appeal.

14 Unfortunately, I will not be with you guys for
15 19751. Vice Chair Hart will be overseeing the hearing.

16 And with that, I will let you get kind of settled
17 in and ask for the secretary to call it.

18 MS. MYERS: Of course.

19 The next application is Application No. 19751, of
20 MED Developers, LLC. This application is pursuant to 11 DCMR
21 Subtitle X, Chapter 9, for special exceptions under the use
22 provisions of Subtitle U, Section 203.1(f), and under
23 Subtitle C, Section 703.2, from the minimum parking
24 requirements of Subtitle C, Section 701.5, to construct a new
25 continuing care retirement community in the R-1-B zone at

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1 premises 2619 to 2623 Wisconsin Avenue, Northwest, Square
2 935, Lots 44 and 812.

3 And, Vice Chair, this case was previously taken
4 up on September 26th, and at that time the Board granted the
5 parties status in opposition of the Massachusetts Avenue
6 Heights Citizens Association. But the Board has not yet
7 heard the merits of the case.

8 MEMBER HART: Thank you.

9 Welcome, everybody. Sorry for my being late this
10 morning, but I'm here now.

11 So, what I would like to do is to, first, go
12 through introductions. And I'm pretty sure that -- is the
13 representative of MAHCA --

14 MS. FERSTER: Yes.

15 MEMBER HART: Since you're a party, you can come
16 to the table as well.

17 And just to make sure, is the ANC here? You're
18 also a party. If we could have one seat just for the ANC?

19 And so, what I would like to do is to have
20 everyone introduce themselves. So, good morning. And if you
21 would just, please, give your name and address and if you are
22 representing someone.

23 MS. MACKWOOD: Good morning. Vice Chair Hart and
24 Members of the Board, I'm Nancy Mackwood. I'm the Chair of
25 ANC 3C. Would you like my address?

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1 MEMBER HART: No, that's fine.

2 MS. MACKWOOD: All right.

3 MR. P. CUNNINGHAM: Good morning. My name is Paul
4 Cunningham. I'm the President of MAHCA. I'm appearing here
5 in that role, but not as a witness. I'm assisting our
6 counsel with the proceeding. Thank you.

7 MEMBER HART: Thank you.

8 MS. FERSTER: Good morning. I'm Andrea Ferster.
9 I'm counsel for MAHCA.

10 MEMBER HART: Good morning.

11 MR. VARGA: Stephen Varga, Director of Planning
12 Services, Cozen O'Connor, on behalf of the Applicant.

13 MR. FINLAND: Nick Finland, Director of
14 Development for MED Developers.

15 MR. GONZALES: John Gonzales, President, Guest
16 Services, Senior Living.

17 MS. MOLDENHAUER: Good morning. Meridith
18 Moldenhauer, Land Use Counsel, Cozen O'Connor, on behalf of
19 the Applicant.

20 MS. DICKEY: Hi. Good morning. My name is Claire
21 Dickey. I'm an architect with Perkins Eastman.

22 MR. ANDRES: Good morning. Erwin Andres,
23 Principal of Gorove/Slade Associates.

24 MEMBER HART: Okay. I appreciate that, everyone.

25 So, Ms. Moldenhauer, I'm assuming you're going to

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1 be giving the presentation?

2 MS. MOLDENHAUER: Yes. So, just one thing. We
3 do have expert witnesses, four expert witnesses, that are
4 included in Exhibit 41A, although two that have already
5 previously been qualified. Mr. Varga has previously been
6 qualified as an expert in zoning and land use, and Mr. Andres
7 has also previously been qualified as an expert in
8 transportation. We, then, have two new witnesses that we
9 would like to get qualified, Ms. Dickey, and her resume is
10 also at Exhibit 41A, and Mr. Gonzales.

11 MEMBER HART: Thank you.

12 Yes, I appreciate that.

13 Does the Board have any questions for either of
14 the expert witnesses, just to understand if you have an
15 issues? No?

16 So, hearing none --

17 MS. FERSTER: We do have a question, Mr. Chair.

18 MEMBER HART: A question of what?

19 MS. FERSTER: Voir dire about the qualification
20 of the one of the witnesses, Mr. Gonzales.

21 MEMBER HART: Okay. I've never had a question
22 before from the opposition party.

23 And I just want to make sure from OAG, how do we
24 deal with --

25 (Pause.)

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1 Okay. So, Ms. Ferster, I think what we will do
2 is to allow a few questions. And I'm not sure what part of
3 Mr. Gonzales' expertise that you are having an issue with.

4 MS. FERSTER: Oh, I guess I just wanted to hear
5 exactly what expertise he was being qualified for. I don't
6 necessarily have any specific questions about his background.
7 I just wanted to see his area of expertise, have it stated
8 on the record.

9 MS. MOLDENHAUER: So, Vice Chair Hart --

10 MEMBER HART: Hold on a second.

11 Outside of what was actually submitted?

12 MS. FERSTER: If you could just restate his area
13 of expertise, that would be fine with me.

14 MS. MOLDENHAUER: So, Vice Chair Hart, we're
15 looking to qualify him as an expert in operations and
16 management of senior housing facilities.

17 MS. FERSTER: And we have no objection to his
18 qualification.

19 MEMBER HART: Okay. And we didn't have any
20 objections, either. At least I didn't hear any. So, we will
21 admit both of the expert witnesses, Mrs. Moldenhauer --
22 excuse me -- Ms. Moldenhauer.

23 MS. MOLDENHAUER: Thank you.

24 MEMBER HART: Yes?

25 MS. MOLDENHAUER: We would ask for a 50 minutes

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1 on the clock.

2 MEMBER HART: How much?

3 MS. MOLDENHAUER: Fifty, 5-zero. There's
4 obviously a lot. We've prepared it. We've rehearsed it.
5 We won't go over that, but we believe that our testimony will
6 take 50 minutes.

7 MEMBER HART: As you can see, there are a lot of
8 people here.

9 MS. MOLDENHAUER: I know.

10 MEMBER HART: Fifty minutes is a lot of time, and
11 we're trying to keep, one, the presentations to somewhat of
12 a minimum, so that we can hear the presentation; also, I'm
13 assuming there are a number of people in the audience that
14 are here to provide testimony as well. Can we start with 25
15 minutes?

16 MS. MOLDENHAUER: There is a lot of evidence in
17 the record in opposition, and we believe that we want to
18 ensure that this is a case where we have sufficient evidence
19 in the record, not only for the Board, but also moving
20 forward. And so, we would ask for 50 minutes.

21 MEMBER HART: I understand the request. I'm still
22 going to push back on that. I would prefer if you would try
23 to keep it to 30 minutes, and we will see where we can get
24 from that. I understand there is a lot of information.

25 And just so that the opposition party is aware

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1 that you also have, Ms. Ferster, you also have an equal
2 amount of time that the Applicant will have. So, I just
3 wanted to make sure. And ANC as well.

4 I know that that is somewhat curtailing, but I
5 really want to kind of distill where we are with all of this.
6 And I know that it is something that you're having to deal
7 with at the moment, but I would appreciate it if we could try
8 to limit it, so we can get through both your testimony,
9 cross-examination, the party in opposition's testimony and
10 cross-examination, and if the ANC has a presentation, theirs.
11 I'm not sure if they do, but that's what I'm trying to deal
12 with.

13 Yes?

14 MS. MOLDENHAUER: No, I was just going to say, I
15 agree with you, Mr. Vice Chair, but I think limiting it to
16 -- you said 20 minutes?

17 MEMBER HART: Thirty.

18 MS. MOLDENHAUER: -- 30 minutes, that would also
19 leave room for questions. So, it's probably going to end up
20 being a little more than 30 anyway, but I concur with your
21 suggestion.

22 MEMBER HART: So, if we could, I would appreciate
23 it greatly.

24 MS. MOLDENHAUER: We will do our best.

25 MEMBER HART: Thank you.

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1 MS. MOLDENHAUER: Okay. So, I will, first, turn
2 it over. We will have a quick presentation from Nick
3 Finland. Then, we'll go through and provide testimony from
4 Mr. Gonzales from Guest Services Senior Living, then Ms.
5 Dickey, then Mr. Andres, and then, Mr. Varga.

6 MR. FINLAND: Good morning, Board Members. I will
7 keep mine brief, briefer than it was supposed to be.

8 A little bit of background on MED Developers. MED
9 Developers supports some of the most vulnerable populations
10 through real estate and housing. In partnerships with
11 organizations that specialize in handling the daily needs of
12 our residents, we've been able to successfully serve the
13 District's growing at-risk populations. We believe housing
14 for memory care residents goes hand-in-hand with our business
15 practice. We look forward to continuing our success in
16 partnership with Guest Services Senior Living.

17 I'll skip over the property and project, as the
18 architect will go through those items, and I'll jump to
19 community outreach.

20 I think it's important to understand that at one
21 time this was the homeless shelter site, as the opposition,
22 I'm sure, will bring up, that we were the developer on. We
23 did not control the community outreach through that process,
24 and that project was ultimately moved to another location.

25 We did control the property through a contract,

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1 and we started meeting with MAHCA in 2016. We initially had
2 meetings at Mr. Cunningham's office as well as some of the
3 residents' homes, and we have continued to meet with them
4 since 2016 to try to work in a collaborative manner.

5 On May 7th, 2018, we had the first Planning and
6 Zoning Subcommittee meeting. At that time, we went back and
7 tried to further answer the questions. We had a community
8 meeting August 29th, 2018, that we put on at the library.
9 And on September 4th, we had another Planning and Zoning
10 Committee meeting. And then, we had our full ANC meeting
11 September 17th. So, we've been working with the community
12 since 2016 -- and now, it's almost 2019 -- trying to be a
13 collaborative neighbor.

14 With that, I'll pass it over to John Gonzales from
15 Guest Services.

16 MR. GONZALES: Vice Chairman Hart, Ladies and
17 Gentlemen of the Board, good morning. I am John Gonzales and
18 President of Guest Services Senior living.

19 Thirty-five years ago, I witnessed my own
20 grandmother's slow progression downward from Alzheimer's
21 disease. I saw the effect on my family and experienced the
22 concern, anxiety, the pain of losing a family member, first,
23 in memory and recognition, and then, in her death. At that
24 time, the only option for our family was to place grandmother
25 in a skilled care facility, an older one. And I'm shamed to

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1 admit that, after we placed my grandmother there, I dreaded
2 the visits.

3 She eventually passed from the disease. Shortly
4 afterwards, I decided to do whatever I could for other
5 families and for those who suffer from these debilitations,
6 to help create environments that I would have loved to have
7 placed own my own family member.

8 Thirty-three years later, I sit here before you
9 as President of Guest Services Senior Living, a division of
10 Guest Services, Incorporated, a 102-year-old hospitality
11 company providing management and operational services in 350
12 locations, 17 states, with over 4100 employees.

13 We operate in a wide variety of settings,
14 including senior living communities, hotels, national parks,
15 restaurants, conference centers, university dining
16 facilities. We have a number of local operations, including
17 the National Mall, Sculpture Garden, Washington Sailing
18 Marina, and Thompson Boat Center. Guest Services,
19 Incorporated, began serving senior living communities in the
20 1970s, offering an array of concierge, culinary, and
21 hospitality services.

22 As I've mentioned, I've worked in the senior
23 living space for the past 33 years. Prior to joining Guest
24 Services, I did have my own consulting company for four
25 years, SDG Senior Living, where we offered design review,

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1 consulting services for assisted living in memory care
2 communities, feasibility studies, architectural plan reviews,
3 operating and consulting services, et cetera.

4 We opened two 35-unit memory care communities.
5 One was, actually, I think, 32; the other was 35. One was
6 in Pensacola, Florida. One was in Sebring, Florida. Both
7 filled rapidly and are still in operation today successfully.

8 Senior Services of America was where I spent 12
9 years as the Chief Operating Officer overseeing all of the
10 communities' assisted living and memory care operations. I
11 was with Alterra, and now Brookdale, overseeing 29 Kansas-
12 based assisted living and memory care communities, many of
13 which are a similar size to the project we are talking about
14 today. I was with the Homestead Companies as VP of Marketing
15 and Operations, where I oversaw 10 buildings in three states,
16 and with Sunridge Assisted Living, a division of Sun
17 Healthcare, a publicly-traded company, where we created and
18 started a new division within that organization.

19 As you know, memory care is a specialized program
20 in a secure setting that provides assisted living and
21 healthcare services to seniors with various forms of
22 dementia, including Alzheimer's disease. We also in these
23 settings provide broader assistance with the activities of
24 daily living, including dressing, bathing, and grooming, in
25 addition to medical and cognitive therapeutic programs,

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1 including music therapy, sensory stimulation, virtual
2 outings, exercise/fitness classes, aroma therapy, and in the
3 case of this specific project, a specialized menu and dietary
4 program based on current research that shows a slow of
5 progression of the disease when coupled with specialized
6 fitness/cognitive programs.

7 Our direct care staff will be scheduled in
8 accordance with D.C. law. We will be employing licensed
9 nurses, certified nursing assistants, and certified
10 medication assistants. Our expectation is a maximum of 18
11 staff members onsite during daytime hours and a reduced staff
12 of approximately four on overnight shifts.

13 We anticipate food deliveries between one and two
14 times per week. Meals will be prepared onsite in a
15 commercial kitchen on the cellar level, and onsite staff will
16 be doing housekeeping and laundry in our commercial laundry.

17 With that, I'd like to turn the mic over to
18 Claire.

19 MS. DICKEY: Thank you.

20 Good morning, Vice Chair Hart and Members of the
21 Board.

22 I would like to begin my portion of the
23 presentation by sharing a little bit of background about
24 Perkins Eastman, if you're not familiar. So, Perkins Eastman
25 is a global architecture firm. It was originally founded in

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1 1981 in New York City by Brad Perkins and Mary-Jean Eastman.

2 Since the firm's inception, Senior Living has been
3 one of the core practice areas in which we work. Over the
4 last 37 years, our Senior Living practice has won numerous
5 design excellence awards for more than 500 clients over the
6 course of more than 600 projects.

7 Perkins Eastman wrote the book on senior living.
8 Besides authoring the seminal textbook on design for senior
9 living environments, Perkins Eastman actively conducts
10 practice-based research to inform our design work.
11 Oftentimes, our architects and interior designers will
12 collaborate with the firm's research group to complete long-
13 term research projects and white papers. Recent white papers
14 have focused on topics such as design guidelines for memory
15 care facilities, incorporating biophilic design strategies
16 into senior living projects, facilitating whole person
17 wellness through design, and improving accessible building
18 components such as door hardware.

19 At Perkins Eastman, we encourage research because
20 we believe that continued learning enables both designers and
21 clients to make better and more informed decisions during the
22 design process. As a result of the research we've conducted,
23 we understand better how the physical environments can impact
24 quality of life, job performance, the healing process, one's
25 ability to learn, and psychological well-being.

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1 To give you a little background on myself, I have
2 been a project architect, project manager, and project
3 designer at Perkins Eastman since 2012, during which time I
4 have focused exclusively on senior living design. In fact,
5 nearly a dozen of the 17 years I've been working in
6 architecture and construction have been spent specializing
7 in senior living environments. Projects in my portfolio
8 range in scale from minor interior updates to entire campus,
9 multi-building repositionings. I've designed projects across
10 the senior living continuum, including independent living,
11 assisted living, memory care, and skilled nursing.

12 Prior to joining Perkins Eastman, I worked at
13 Sunrise Senior Living in the Development and Construction
14 Department as a project manager. I also spent time at the
15 architecture firm that helped to develop the original Sunrise
16 mansion prototype as a soft architect.

17 Over the course of my career, I have been
18 exceedingly lucky to work with some of the most forward-
19 thinking, respected experts in the industry who shared their
20 passion for design with me. And as a result, I, too, am a
21 passionate advocate for well-planned, well-designed senior
22 living environments.

23 I'm also a passionate advocate for learning and
24 research. To that end, I recently coauthored a white paper
25 about centers for healthy living, a new building typology

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1 that helps build and maintain wellness of the mind, body, and
2 spirit. The paper was awarded a Certificate of Research
3 Excellence by the Environmental Design Research Association.
4 A few recent projects I've worked on include Ingleside at
5 Rock Creek, Ingleside at King Farm, Cedar Village In Mason,
6 Ohio, and Copper Ridge in Sykesville, Maryland.

7 When it comes to designing a high-quality memory
8 care facility, there are a handful of principles that are
9 considered best practices. I won't go into these in detail,
10 but you can read through them here.

11 But one thing I did want to touch on was this idea
12 about residential qualities. And so, from an architectural
13 perspective, our goal is to ensure that the building looks
14 like a house or a small inn. Aesthetically, it should fit
15 into the neighborhood, and the exterior design should reflect
16 a level of quality and attention to detail that the community
17 can welcome. Most importantly, the building should not
18 announce itself as a healthcare institution. This will be
19 people's home, not a hospital.

20 All right. So, moving on a little bit, we're
21 moving into this project in particular. When we initially
22 began talking about the look and feel of the project, we
23 first analyzed the immediately surrounding context for
24 inspiration. The adjacent apartments on Wisconsin Avenue do
25 not have a strong, well-defined architectural character to

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1 them, although you can see here in this picture -- that's
2 cool -- you can see some of the architecture.

3 MEMBER HART: I'm glad you're enjoying that.

4 (Laughter.)

5 MS. DICKEY: You know, it's the little things.

6 MEMBER HART: And you can also clear it, too, at
7 the end, yes.

8 MS. DICKEY: So, you can see some of the Art Deco
9 threads here in elements such as corner windows, emphasis on
10 the vertical elements, and rounded corners.

11 The single-family homes in the neighborhood,
12 similarly, do not have a primary cohesive style. Many of the
13 houses are traditional, but there are also Spanish style,
14 bungalows, Tudors, and Victorian.

15 As you can see from this bottom left image, the
16 site lies in a transitional zone between the higher-density
17 buildings that line Wisconsin Avenue to the west, and then,
18 a block to the east, the houses that are primarily detached
19 homes. This building will help bridge the gap between these
20 two scales, but it actually faces Wisconsin Avenue. So,
21 ultimately, we decided to pick up on the Art Deco thread from
22 the apartments, and that helped to inform our exterior design
23 decisions.

24 We also looked at some other Art Deco buildings
25 around the city, to include the Majestic, the Park Van Ness,

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1 and, of course, the classic Kennedy-Warren. So, many of the
2 D.C. residences are much larger in scale than our memory care
3 building will be. We also looked at other Art Deco homes and
4 other apartment buildings that would be more in keeping with
5 the scale we have here.

6 So, this larger picture on the left is a house
7 that we were really inspired by. It's the Evan-Cucich-Hayden
8 House in Buckhead in Atlanta. Built in 1934, this is
9 actually Atlanta's only Art Deco home, but it's truly a gem.
10 And when we came across this photograph, we were all really
11 captivated by it.

12 The other images are comparable in color palette,
13 but are slightly more contemporary, and we felt that these
14 were all good precedents to be analyzing for building scale
15 and massing, but they were not as Art Deco stylistically.
16 So, we kept returning to the first image.

17 So, transitioning into the actual building design,
18 we'll start by looking at the site plan to get oriented.
19 North is the right on these plans, which will be consistent
20 for all of the plan drawings we'll be looking at. You can
21 see the north arrow there in the bottom corner.

22 Edmunds Street is to the right, running up and
23 down, and the north edge of the site, Wisconsin Avenue runs
24 left to right across the top. It's actually the west edge
25 of the site. The public alley bounds the bottom of the site

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1 to the east, and the south is bounded by single-family
2 residential property.

3 The proposed building is a three-story memory care
4 facility with cellar. The main entrance is in the center of
5 the building off of the Wisconsin Avenue side there. Parking
6 is off of the public alley. You can see the nine proposed
7 spaces there along the alley, as well as the short-term
8 bicycle parking and the service loading zone. And over the
9 course of the design evolution, we've worked with DDOT to
10 help establish the parameters for those areas.

11 The loading zone here allows delivery vehicles to
12 park without blocking the alley. There's a secure garden
13 behind the building that is directly accessible from the
14 dining room. And as you can see, we comply with or exceed
15 all zoning required building setbacks.

16 All right. So, looking at the building plans a
17 little more specifically, if we start at the cellar level,
18 we'll work our way up through the building. You can see that
19 at this level there are both common and administrative
20 spaces. For the residents, the dining and activities room
21 open out onto the secure garden. The garden is more than
22 1,000 square feet in size, and you can see the perimeter
23 fence that kind of lines along here.

24 And then, there's also a country kitchen, fitness
25 and physical therapy room, beauty salon. Two single-

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1 occupancy toilet rooms provide residents with easy restroom
2 access while on this level.

3 And then, adjacent to the garden in the back you
4 can see there is a little access ramp that leads to a
5 secondary entrance on this level, where resident dropoffs or
6 other similar functions could occur from the parking or from
7 the alley without having to use Wisconsin Avenue or Edmunds
8 Street.

9 For staff access, there's a commercial kitchen,
10 laundry facility, administrative offices, a long-term bike
11 room, and condition trash room. You'll note that the trash
12 room is large because it will accommodate a compactor as well
13 as both trash and recycling containers. On trash days, the
14 rolling door will open, so trash receptacles can be easily
15 rolled out into the living area for pickup.

16 All right. So, level one is the main entry level
17 where pedestrians from Wisconsin Avenue would enter the
18 building. Once a person comes in through the vestibule, they
19 would be immediately greeted by the concierge at this
20 reception area. The concierge staff is intended to be
21 staffed at all times during business and visiting hours.

22 Wide-open common areas on this level allow easy
23 sight lines across the floor, as well as functional
24 flexibility. At either end of the building, there are
25 single-occupancy studio units ranging in size from 300 to 365

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1 square feet. Corridors are designed to provide ample
2 opportunities for activities, as well as other life skill
3 stations. There is also other administrative offices, a
4 quiet room, marketing office, and other back-of-house support
5 spaces on this level.

6 The second floor is dedicated mostly to resident
7 units. All of the units are single-occupancy except for this
8 one right here which has two sleeping areas and two vanities,
9 but a single toilet and shower room. Resident rooms, again,
10 range in size from 300 to 365 square feet, with the semi-
11 private room coming in at about 540 square feet.

12 There is a common area adjacent to the elevator
13 lobby with a staff nook for charting or other uses, as well
14 as activity spaces at the ends of the corridors here. You
15 may notice this plan looks slightly different than what was
16 previously shown. Over the last few weeks since we were
17 here, we took advantage of the extra time to make minor
18 refinements to the plan, including moving that common area
19 and creating these activity zones at the ends of the wings.

20 Level three is architecturally identical to level
21 two.

22 And here is the roof plan with the non-habitable
23 penthouse indicated. The exact equipment layout is still
24 under development, but the penthouse will house the majority
25 of the mechanical equipment, such as condensing or air-

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1 handling units, the main water room, and the emergency
2 generator. The equipment will be screened visually from
3 view, and the screen also has the added benefit of helping
4 to mitigate equipment noise as well.

5 All right. So, this is a conceptual landscape
6 plan to illustrate the intended character of the landscape
7 design. The intent is that the plantings will be mostly
8 native with year-around interest. And evergreen buffer along
9 the south property line will provide screening from the
10 neighbor, and street trees will be planted in keeping with
11 the neighborhood character.

12 In the resident garden, all plants will be non-
13 toxic and potentially edible, with opportunities for
14 residents to engage in gardening activities, group
15 activities, walking, or just sitting and enjoying the
16 outdoors.

17 Along the public sides of the building the
18 planting plan will be robust and colorful, so that neighbors
19 can enjoy the attractive grounds through all seasons. There
20 is no fence around the property perimeter.

21 So, this is the front elevation facing Wisconsin
22 Avenue. You can see the Art Deco inspiration here and the
23 architectural details that will provide visual interest and
24 beauty. The color palette will be muted creams and beiges
25 with accent colors of bronze and a patinated copper.

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1 You can see here a conceptual rendering of the
2 building from the corner of Wisconsin Avenue and Edmunds
3 Street. Colors here are a little darker than what they are
4 anticipated to be. Please note, like I said, the color
5 palette; it would be more creams and light beiges.

6 So, here is a conceptual rendering of the building
7 from the corner -- oh, sorry, going back. So, here is a view
8 of the building from across the street on Edmunds Street
9 looking west towards the High View Towers apartment building
10 and the Russian Embassy beyond. Sorry. There we go. You
11 can also see some of the proposed parking spaces in the alley
12 and part of the fence around the garden.

13 This is an aerial view from the alley looking at
14 the southeast corner of the building. You can see the
15 delivery area there kind of in the middle foreground and the
16 proposed parking in the alley.

17 And then, here is a conceptual view of the
18 resident garden. This space is intended to be residential
19 in nature. A paved patio provides a smooth pathway for
20 walking, as well as a place for group activities to convene.

21 That concludes my portion of the presentation.
22 So, I'm going to hand the floor over to Mr. Erwin Andes with
23 Gorove/Slade, who will present the parking.

24 MR. ANDRES: Good morning, Vice Chairman, Members
25 of the Board. For the record, Erwin Andes with Gorove/Slade

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1 Associates.

2 Our parking involvement consisted of recording
3 with DDOT, the team, and as part of the community outreach,
4 we've looked at preparing a plan that meets the access
5 parking circulation needs for the site. We scoped the
6 project with DDOT to solidify the access and parking
7 components of the project, as well as the parameters for the
8 study that we had embarked on.

9 With respect to the parking requirements of the
10 project, the parking requirement is 17 spaces, as per Zoning.
11 But this requirement is actually based on dwelling units.
12 As you know, this site is designated to serve a population
13 that, unfortunately, will not drive. So, as a result, the
14 practical parking demand is actually based on the visitors
15 and employees that the site will ultimately attract.

16 Next slide.

17 So, with respect to the parking demand itself,
18 we've used an industry standard of parking generation and,
19 then, applied a non-driving load share consistent with the
20 Census Tract for this site. As a result, the nine parking
21 spaces that we're proposing meets the seven-space parking
22 demand that we believe is associated with this site.

23 Next slide.

24 So, with respect to the study itself, in order to
25 supplement the onsite parking spaces, the nine onsite parking

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1 spaces, we met with DDOT to identify the study area that
2 would be appropriate for a site of this nature. And in doing
3 so, we identified a parking study with an area that is
4 bounded by Fulton Street to the north, Calvert to the south,
5 36th Street to the east, and Wisconsin Avenue to the west.

6 All of those blocks related to the neighborhood
7 were identified as sort of the area that we believed, as
8 patrons or as visitors or potentially employees, that they
9 might park or would be available to park. In doing so, in
10 that area we've identified up to 251 spaces on a Thursday
11 rush hour and 285 spaces during non-rush hour. And the
12 reason for that is there are some rush hour spaces that are
13 available after rush hour. In addition to that, in that
14 studied area we identified approximately 46 spaces that are
15 non-RPP and non-designated.

16 So, in looking at the study area that we did --
17 and this study was done in the spring of this year -- we've
18 identified 105 spaces on that Thursday that are available and
19 103 on a Saturday. So, we believe there is significant on-
20 street parking that's available to supplement the parking
21 that we have onsite. We believe what we have onsite is
22 sufficient to meet the demand. But, in the event that there
23 are additional visitors, for example, there is sufficient on-
24 street parking that's available.

25 Next slide.

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1 Because of the continuance and because of the
2 comments that we received as part of the public outreach
3 process, the concern was that we only looked at two days.
4 So, in October, we actually looked at two additional days.
5 We looked at a Tuesday and a Sunday. And ultimately, what
6 we identified in our study is that, on Sunday for a midday
7 period of approximately three hours, there is more spaces
8 because two streets, Edmunds and Davis, actually allow
9 parking to supplement the neighborhood parking because of the
10 religious uses in the area.

11 And so, what we identified is that, on that
12 Tuesday and Sunday in October, we've identified, again, over
13 100 spaces. So, it's pretty clear, on all four days that we
14 surveyed, that at any point in time there are at least 100
15 spaces available in the study area.

16 Next slide.

17 And then, this is the study area. This
18 identifies, the blue identifies where there are non-RPP
19 spaces and the red identifies where there's no parking
20 allowed at all.

21 Next slide.

22 And then, this just confirms, these slides -- this
23 slide, which is the spring, and then, the next one is in
24 October -- all of these slides essentially confirm that there
25 is at least 100 parking spaces available in the neighborhood.

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1 This is a summary of why we believe the parking
2 is sufficient to meet the needs of the site. There is ample
3 public transportation access. As I mentioned earlier, there
4 is on-street -- excuse me -- there is a TDM plan that we've
5 committed to. There is staffing of staff so that all of the
6 employees don't leave at the same time, but they are
7 staggered.

8 The Applicant is committed to providing community
9 benefits for the employees. In addition to that, there are
10 three parking garages -- next slide -- that are available,
11 in addition to the onsite spaces and in addition to on-street
12 spaces, that are available at both an hourly rate and two of
13 them also have monthly contracts available.

14 Next slide.

15 We've committed to the following TDM plan that is
16 consistent with a TDM plan for other projects that we've
17 worked on in the District.

18 Next slide.

19 And DDOT had issued a review letter on September
20 14th and they have identified the following two conditions,
21 which the Applicant agrees to.

22 So, I am available for questions. Thank you.

23 MEMBER HART: Good morning.

24 MR. VARGA: Oh, I'm sorry.

25 MEMBER HART: Yes, before you start, Ms.

1 Moldenhauer, we're close to the 30. I just wanted to see
2 where we were with the presentation. It seems like most of
3 your folks have gone through it.

4 MS. MOLDENHAUER: Mr. Varga is about a five-minute
5 witness, and then, I can also hold some of our legal
6 arguments for a closing later on during the presentation.

7 MEMBER HART: I would appreciate it if you could
8 do that. I mean, I know that this is --

9 MS. MOLDENHAUER: But that's the last one.

10 MEMBER HART: There's a lot of information on the
11 record now. So, we have read that, and I would appreciate
12 it if you could do that.

13 Sorry for that, Mr. Varga.

14 MR. VARGA: No worries.

15 Good morning. Again, thank you very much for the
16 time, Vice Chair Hart, Members of the Board. Stephen Varga,
17 Director of Planning Services at Cozen O'Connor.

18 I'd like to provide a little context relating to
19 the project's location on Wisconsin Avenue. Wisconsin Avenue
20 is a principal arterial, according to DDOT's Functional
21 Classification Map. The principal arterial designation
22 assigned by the Federal Highway Administration is the most
23 intensive, non-freeway designation. The criteria used to
24 establish the designations include not only the physical
25 attributes of the road, but also efficiency of travel, number

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1 of access points, speed limits, route spacing, actual usage,
2 and continuity.

3 According to DDOT, as of 2015, the average annual
4 daily traffic volume on that portion of Wisconsin Avenue is
5 20,000 cars. It features at least 11 Metrobus and circuit
6 leader lines, including Priority Corridor Network Metrobus
7 Route 31, with a bus stop right out front; numerous Metro
8 stations in the general area, and a couple of Capital
9 Bikeshare locations. So, in front of the property we have
10 a very busy road that informs the character of the immediate
11 neighborhood. From a planning perspective, the property's
12 location along a principal arterial such as Wisconsin Avenue
13 supports the proposed development.

14 Next slide.

15 Also, the use conforms to the character of the
16 neighborhood in terms of bulk and density. While the
17 property is located in the R-1-B zone, the corridor along the
18 western side of Wisconsin Avenue is zoned for higher density,
19 including MU-27 and RA-4.

20 Despite the intensity of use along this portion
21 of Wisconsin Avenue, the property itself is located in a
22 half-mile stretch between Calvert Street and Woodley Road
23 that zoned R-1-B, as noted. I mention this specifically
24 because virtually all other property abutting Wisconsin
25 Avenue from downtown to the District line is zoned for mixed

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1 use with corresponding heights and intensity of use.

2 There are numerous multi-story buildings that line
3 the portion of Wisconsin Avenue near the property. Across
4 Wisconsin Avenue is the Russian Embassy complex. Just north
5 of the Russian Embassy on Wisconsin Avenue are three eight-
6 story residential apartment buildings. To the south, at the
7 corner of Wisconsin and Davis Street, is the seven-story
8 Glover Park Hotel. Further down Wisconsin Avenue is an
9 eight-story apartment complex with a grouping of commercial
10 businesses just beyond.

11 The project proposes only three stories, which
12 aligns with the development pattern of Wisconsin Avenue and
13 the associated bulk limits of the R-1-B zone. Further, the
14 proposed memory care facility is a low-impact residential use
15 in this residential zone, thereby ensuring harmony with
16 abutting neighboring properties.

17 In short, the project is thoughtfully designed
18 within the zoning standards and meets the unique needs of its
19 future senior residents while maintaining the use and
20 enjoyment of neighboring properties. For these reasons,
21 there are no adverse impacts to neighboring property, and the
22 use is harmonious with the intent of the zoning regulations.

23 In addition, the memory care facility fulfills
24 many relevant elements from the Comprehensive Plan. First
25 and most importantly, the Rock Creek West Area element,

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1 Policy RCW-1.1.7, specifically calls out the commercial
2 corridor of Wisconsin Avenue as a location to provide housing
3 for elderly and disabled residents. By providing this much-
4 needed memory care use in this specific location, Ward 3
5 could make use of an opportunity to share in the
6 responsibility of accommodating the infirm and disabled, as
7 recommended in the framework element.

8 The housing element and the recommendations of the
9 age-friendly D.C. Plan echos this point by calling for the
10 siting of special needs housing throughout the city, as well
11 as the District's need to service and provide for these
12 future senior residents. There is a chronic undersupply of
13 such facilities in the District, and the planned facility
14 will help to meet that need.

15 So, in closing, the memory care facility provides
16 for a positive, healthy environment for a vulnerable
17 population, particularly in an area where demand for such
18 care is currently lacking and will only grow in the future.
19 Additionally, the project is designed to operate in a way
20 that does not threaten the residential fabric of the
21 neighborhood and fills in an unimproved site with a low-
22 impact, socially-responsible use.

23 For all these reasons, I urge you to approve the
24 relief requested, so that aging District residents can be
25 provided with local, specialized healthcare option.

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1 Thank you very much for your time.

2 MS. MOLDENHAUER: Thank you very much.

3 And so, we are, as the Board is aware, is asking
4 for two special exception reliefs. I will hold my closing
5 arguments and not go through the specific standards, but I
6 will just simply note that, right at the end here, there was
7 a condition proposed in the Office of Planning report. It
8 was a condition that indicated that, if a different form of
9 a CCRC was proposed, that would, then, require a new
10 application for the Board. We are moving forward, obviously,
11 with the memory care program and would consent to that
12 condition.

13 We will, then, be available to take any questions.
14 And I hold time, obviously, for rebuttal and closing.

15 Thank you.

16 MEMBER HART: Thank you very much.

17 So, Ms. Ferster, you have an opportunity to
18 provide cross-examination of any of the testimony that you've
19 heard. Do you have any questions?

20 MS. FERSTER: I do, and I'm going to be splitting
21 the cross-examination with Mr. Cunningham. So, I'm going to
22 start with some questions for Mr. Varga.

23 Thank you.

24 113203CROSS-EXAMINATION OF STEPHEN VARGA

25 MS. FERSTER: So, my first question has to do with

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1 the Comprehensive Plan. You note that this is an R-1-B zone
2 and that the future land use map designates this as low-
3 density residential. That's correct?

4 MR. VARGA: That's correct.

5 MS. FERSTER: And you indicate that you believe
6 that the structure is compatible with the character of the
7 surrounding neighborhood, and you specifically reference the
8 area, the buildings on the west side of Wisconsin Avenue.

9 MR. VARGA: That's right.

10 MS. FERSTER: And what does the future land use
11 map designate that side as?

12 MR. VARGA: Though the future land use map is of
13 a higher designation on the western side, when you look at
14 the character of the -- when you look at the neighborhood
15 itself, this use is in conformance with the general
16 neighborhood. In addition, the use itself, in the
17 Comprehensive Plan designation for the property itself, the
18 proposed use is well within that designation as well. It is
19 not inconsistent with that low-intensity designation that it
20 currently has.

21 MS. FERSTER: Okay. So, the future land use map
22 designates the area west of the property as moderate density
23 residential? Is that correct?

24 MR. VARGA: I don't have that information in front
25 of me right now.

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1 MS. FERSTER: Just a higher -- it could be medium
2 density, even higher than that?

3 MR. VARGA: Without a copy of the map in front of
4 me, I would not be able to --

5 MEMBER HART: It's okay. We can get that.

6 MS. FERSTER: Okay. Definitely not low density,
7 correct?

8 MR. VARGA: No.

9 MS. FERSTER: Okay. So, if an apartment building
10 were proposed on the east side of Wisconsin Avenue at that
11 site, would you argue that the apartment building is in
12 conformity with the Comprehensive Plan as in the density --

13 MEMBER HART: Are we looking, are we talking about
14 this particular site or are we talking about another site?

15 MS. FERSTER: This site. This site which is low
16 density.

17 MEMBER HART: But can you ask the question again?

18 MS. FERSTER: You indicated you believe that this
19 building was in conformity with the Comprehensive Plan's
20 lower-density designation by reference to the moderate-
21 density building across the park from this building. So, my
22 question is, if this were an apartment building, would you
23 also argue that that apartment building with equal bulk and
24 units were also in conformity with the Comprehensive Plan
25 from this one designation?

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1 MR. VARGA: Now I would just note that this
2 specific proposal before you is three stories in height, and
3 it conforms with the designation on the FLUM for low-density
4 residential.

5 MS. FERSTER: Understood. I'm just,
6 hypothetically, as an expert, if this were an apartment
7 building, 34-unit apartment building --

8 MS. MOLDENHAUER: I would just object to
9 hypotheticals.

10 MEMBER HART: Hold on, hold on, hold on.

11 So, the question is whether or not a hypothetical,
12 which is an apartment, if this were an apartment building,
13 would he perceive this to be in conformance with the Comp
14 Plan?

15 MS. FERSTER: That's correct.

16 MEMBER HART: And he has stated that he is looking
17 at this design and is not -- and I'm not putting words in his
18 mouth -- but it didn't seem like he was --

19 MS. FERSTER: Understood.

20 MEMBER HART: -- saying that was the hypothetical.

21 MS. FERSTER: Understood.

22 MEMBER HART: So, I don't know. If you have a
23 yes-or-no answer to that --

24 MS. FERSTER: My question only related to the fact
25 that the Office of Planning specifically requested a

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1 condition based on the possibility that this were to be
2 converted in the future into an apartment building.

3 MEMBER HART: Okay.

4 MS. FERSTER: And so, that would be the question,
5 is whether that apartment building would be in conformity
6 with the Comprehensive Plan, based on the same --

7 MEMBER HART: Okay, but that's not really before
8 us. So, I would rather just kind of focus on what the
9 project is at hand.

10 MS. FERSTER: Okay. Sure.

11 MR. VARGA: Again, as Meridith Moldenhauer noted,
12 we don't work in -- and that is a hypothetical question. But
13 there's a lot of other questions in terms of --

14 MEMBER HART: Okay. That's fine. That's fine.
15 So, what's your next question that you have?

16 MS. FERSTER: Yes. And so, in your report in the
17 record -- and I didn't recall whether you mentioned it in
18 your slides -- but you referenced the Glover Park Hotel as
19 a comparable property in terms of the characteristics.

20 MR. VARGA: It's a building in the area, in the
21 neighborhood as well, along Wisconsin Avenue --

22 MS. FERSTER: Yes.

23 MR. VARGA: -- as the property is.

24 MS. FERSTER: Yes. And were you aware that the
25 Glover Park Hotel is a non-conforming use to this, that

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1 location?

2 MR. VARGA: It doesn't change the fact that it's
3 a --

4 MEMBER HART: It's actually just a yes or no.
5 Were you aware of it being a non-conforming use?

6 MR. VARGA: I was not.

7 MS. FERSTER: Okay.

8 MEMBER HART: Okay. Next?

9 MS. FERSTER: Okay. So, in terms of your -- and
10 this is my last question for you, Mr. Varga -- but, in terms
11 of your statement regarding the Comprehensive Plan's, the
12 conformity with the community services and facilities element
13 of the Comp Plan, I think you made some statements that you
14 thought this was a senior center. Is that -- you didn't say
15 that in your testimony. Do you agree that this would be
16 considered a senior center?

17 MR. VARGA: No, this is a memory care facility.

18 MS. FERSTER: Okay. Okay. Thanks. And that's
19 all the questions I have for you, Mr. Varga.

20 MR. P. CUNNINGHAM: I have several questions, if
21 I might, Mr. Hart.

22 MS. FERSTER: Of Mr. Varga?

23 MR. P. CUNNINGHAM: No, not of --

24 MS. FERSTER: Okay. Yes, let me finish with
25 questions, and then, we'll just go to you.

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1 MEMBER HART: Actually, what I'm trying to kind
2 of understand, Ms. Ferster, you have questions for different
3 of the experts?

4 Mr. Cunningham, you have other questions of the
5 same people?

6 MR. P. CUNNINGHAM: No. We're splitting --

7 MS. FERSTER: No. We're splitting them up.

8 MEMBER HART: Okay. I heard you say you're
9 splitting them. I just didn't know how you were splitting
10 them.

11 MS. FERSTER: Yes. I'm just going to go first,
12 and then, we'll proceed down this way, because the ANC may
13 well have questions, too.

14 MEMBER HART: That's fine.

15 And so, you have questions for Mr. Varga and who
16 else?

17 MS. FERSTER: And Mr. Andres. I'm sorry.

18 MEMBER HART: Andres?

19 MR. ANDRES: Andres is fine.

20 MS. FERSTER: Okay. Thank you.

21 Yes, I have a few questions for you. Thank you.
22 And then, I'll turn it over to Mr. Cunningham.

23 MEMBER HART: Okay. Thank you.

24 CROSS-EXAMINATION OF ERWIN ANDRES

25 MS. FERSTER: So, yes, I noted -- this is some new

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1 information -- that you have now indicated that you will be
2 making arrangements with several hourly parking garages in
3 the area. And will this be part of your transportation
4 demand management plan?

5 MR. ANDRES: So, the answer to that is, no, we
6 haven't made arrangements. We believe that the amount of
7 parking that's available onsite as well as the supplemented
8 parking that is on-street would satisfy the parking demand
9 associated with the site.

10 What I also said is that there are other parking
11 garages in addition to those two sources of parking.

12 MS. FERSTER: Okay. Okay. So, let me ask you a
13 question about that. How far away are those other parking
14 garages from the proposed site in terms of feet?

15 MR. ANDRES: So, the first one is 1/10th of a
16 mile, and then, the other two, if we can bring it up, I
17 believe is in the range of about 4/10ths of a mile.

18 And just to give you a sense of scale, you can
19 walk a mile in roughly 20 minutes. So, 4/10ths of a mile is
20 8 to 10 minutes.

21 MS. FERSTER: Eight to 10 minutes?

22 MS. MOLDENHAUER: The image does include the
23 walking time on it.

24 MS. FERSTER: Okay. And will those slides be in
25 the record, be put in the record?

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1 MR. ANDRES: Well, yes, but this, I believe this
2 graphic is already in the record as part of our memo.

3 MS. FERSTER: Okay.

4 MS. MOLDENHAUER: Yes, just for clarification, it
5 is part of Gorove/Slade's report that's been part of the
6 record.

7 Thank you.

8 MS. FERSTER: And so, in terms of your
9 transportation demand management plan, you did note -- and
10 I think it's on page 4 of that plan -- that part of the plan
11 will include identification of parking garages that are
12 available for presumed use by visitors and others.

13 MR. ANDRES: Yes, that's correct. It's a
14 promotional program, just like any other facility of this
15 type where you can, where you would identify where they could
16 park.

17 MS. FERSTER: And would employees be anticipated
18 to use this or would this just be visitors?

19 MR. ANDRES: The employees have the choice to do
20 so. We believe, with implementation of our transportation
21 management plan, in coordination with DDOT, that they won't
22 need to. But, again, depending on people's circumstances,
23 there's the opportunity for them to use it.

24 MS. FERSTER: And has DDOT approved your
25 transportation demand management plan yet?

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1 MR. ANDRES: Yes, they've, in their September 14th
2 letter, they've -- yes.

3 MS. FERSTER: Okay. And in terms of the parking
4 onsite that you've provided, and I think in one of your
5 reports -- and I think it might have been the one dated
6 September 17th -- you indicated that you felt that seven
7 parking spaces was all that was needed for onsite parking for
8 the staff due to the staggered shifts and the way the
9 employees will be working, the times that employees would be
10 working. Is that correct?

11 MR. ANDRES: Yes, based on the industry references
12 and the transit modes.

13 MS. FERSTER: And did you do any demand survey
14 from comparable CCRCs or assisted living facilities as to
15 what the parking that they were providing based on the demand
16 on those sites? Or did you base it strictly on the ITE
17 industry standard?

18 MR. ANDRES: We based it on ITE. And the reason
19 for it is there are very limited all-memory-care-type
20 facilities in the area. And the context that this is in,
21 located where it is, it's this neighborhood is very unique.

22 MS. FERSTER: Okay. Is it more unique than, say,
23 Friendship Heights or Tenleytown?

24 MR. ANDRES: They're different.

25 MS. FERSTER: Okay. And were you aware that

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1 Sunrise, for example, which is going to be one case next
2 here, is proposing a half a parking space for every unit, and
3 they have an 86-unit building. So, that would be 34 parking
4 spaces for their facility. And if you applied that ratio,
5 you would come up with a demand -- and that's based on their
6 demand for their facilities, comparable demand in Friendship
7 Heights and Tenleytown. Would you question that judgment
8 that that same ratio should be, would be applicable here?

9 MEMBER HART: I'm sorry, this is a question on his
10 testimony? Because we weren't talking about, at least I
11 didn't hear him talk about Friendship Heights or --

12 MS. FERSTER: Understood.

13 MEMBER HART: -- another area. So, I'm just
14 trying to focus it. And I understand that there are a lot
15 of questions about this, and I'm trying to focus it on the
16 testimony that was given. So that we can, then, understand
17 if there are some clarification points and what that
18 clarification is.

19 So, were you aware of this?

20 MR. ANDRES: I was not. It's my understanding
21 that the facilities are completely different.

22 MEMBER HART: And right now, we're dealing with
23 this particular facility. So, I'm sorry for interrupting.

24 MS. FERSTER: Uh-hum. And have you done
25 transportation studies for other CCRCs or assisted living

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1 facilities before?

2 MR. ANDRES: I have done assisted living
3 facilities before. I worked on the one at Sibley Hospital
4 almost decades ago now. So, yes, I am familiar with assisted
5 living facilities.

6 MS. FERSTER: And do they typically rely on ITE
7 standards or would they perhaps do some kind of demand,
8 transportation demand, based on experience of comparable
9 facilities?

10 MR. ANDRES: Well, the ITE manual is a compilation
11 of demand at existing facilities. That's what the manual
12 does. It collects information from all over the country for
13 facilities that fall within that land use category. So, in
14 essence, you know, that's what the manual does.

15 MS. FERSTER: Okay. And one last question before
16 I turn it over to Mr. Cunningham. And that has to do with
17 how it's going to work in terms of the employees' parking.
18 Because I understand that you have 18 employees during the
19 day, you'll have nine spots, and that the shift change goes
20 from 7:00 to 3:00 and, then, 3:00 to 11:00. So, how it's
21 going to work at shift change, won't people be leaving their
22 spots at the same time other people are coming in?

23 MR. ANDRES: So, what's been identified in our
24 submittals and materials is that the shift change is going
25 to be staggered, so that not all 18 employees are leaving at

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1 the same time. So that there is going to be a point in time
2 where maybe one or two leave at a time, to allow for that
3 turnover to take place.

4 MS. FERSTER: And are you proposing that to be a
5 condition of the BZA order?

6 MR. ANDRES: The shifts staggering?

7 MS. FERSTER: Yes.

8 MR. ANDRES: Well, it's an operational -- you
9 know, it's something -- yes, I believe that it would be
10 helpful to manage that practice, but it's all dependent on,
11 well, the staff that they have. So, you know, there needs
12 to be flexibility in order to allow for that.

13 MS. FERSTER: Okay. Thank you.

14 MEMBER HART: Thank you.

15 Mr. Cunningham?

16 MR. P. CUNNINGHAM: Thank you very much, Mr. Hart.

17 CROSS-EXAMINATION OF CLAIRE DICKEY

18 MR. P. CUNNINGHAM: Ms. Dickey, good morning.

19 MS. DICKEY: Good morning.

20 MR. P. CUNNINGHAM: Did you work on the original
21 design for the building when it was considered for homeless
22 residents?

23 MS. DICKEY: No, I did not.

24 MR. P. CUNNINGHAM: Okay. And when were you
25 employed to --

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1 MS. DICKEY: We were brought onto this project
2 approximately a year ago, a little more than a year ago.

3 MR. P. CUNNINGHAM: And when did you complete your
4 initial architectural design for this memory care unit?

5 MS. DICKEY: I don't recall exactly. I think it
6 took us probably a few weeks to a month in order to generate
7 a scheme.

8 MR. P. CUNNINGHAM: And did that scheme differ
9 significantly as the characterization of the use of the
10 building changed over the period since then?

11 MS. DICKEY: Over the course of the time that I
12 have worked on this project, it has evolved. We were not
13 initially thinking that it was going to be dedicated memory
14 care, and then, once we decided that that was going to be the
15 strategy, then, yes, the project did evolve.

16 MR. P. CUNNINGHAM: And have you personally ever
17 been the lead architect through the permitting and completion
18 of a memory care unit, exclusively memory care unit?

19 MS. DICKEY: Exclusively memory care, no, but
20 Ingleside at Rock Creek, I am also working on that project,
21 which is introducing memory care into their continuum. And
22 I have been through the process there.

23 MR. P. CUNNINGHAM: Right, but you have never been
24 the lead on an exclusive care unit, is that correct, other
25 than this one?

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1 MS. DICKEY: Yes.

2 MR. P. CUNNINGHAM: Okay. Have you ever been the
3 lead architect through completion of a single-family
4 residence in an RO-1 zone?

5 MS. DICKEY: Not in the District, no.

6 MR. P. CUNNINGHAM: Not in the District?

7 Do you believe -- could we go back to your
8 drawings on the screen?

9 Have those been submitted for the record, by the
10 way, all these slides, Counsel?

11 MS. MOLDENHAUER: They will be a part of the
12 record. I believe that we can upload them after 8:00 a.m.
13 So, they'll be uploaded at the conclusion of the hearing.

14 MR. P. CUNNINGHAM: And will that include the
15 slides that were not part of the demonstration --

16 MS. MOLDENHAUER: It will include the entire
17 PowerPoint slides.

18 MR. P. CUNNINGHAM: Thank you.

19 Could we go back to those slides?

20 MS. MOLDENHAUER: Is there one, in particular, you
21 want to start?

22 MR. P. CUNNINGHAM: Yes. The one in which you
23 show the building itself.

24 MS. MOLDENHAUER: Do you have a slide number?

25 MR. P. CUNNINGHAM: I don't have a slide number

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1 because I don't have those slides.

2 MS. MOLDENHAUER: Was it a plan view, an elevation
3 view, or?

4 MR. P. CUNNINGHAM: Keep going back and I'll show
5 you.

6 MS. MOLDENHAUER: Okay.

7 MR. P. CUNNINGHAM: Thanks.

8 Right there. Forward. There. Back up one.
9 There.

10 All right. Now can you identify any single-family
11 residence in the neighborhood for which you are seeking, your
12 client is seeking a special exception that resembles that
13 building in density, size, or design?

14 MS. DICKEY: I'm sorry, could you repeat the
15 question?

16 MR. P. CUNNINGHAM: Can you identify in the
17 single-family residence zone where your client is seeking an
18 exception any single-family residence that resembles this
19 building in density, size, or design?

20 MS. DICKEY: I would need to take another look at
21 the context, in the immediate context. A single-family home?
22 No.

23 MR. P. CUNNINGHAM: So, this building is not based
24 on your study of single-family residences in the neighborhood
25 affected?

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1 MS. DICKEY: I don't know that the single-family
2 neighborhood has a cohesive character. Where I would say --

3 MR. P. CUNNINGHAM: That wasn't the question I
4 asked. I asked if you did a study --

5 MS. MOLDENHAUER: Can you please let her answer
6 the question?

7 MEMBER HART: Hold up. Yes, just hold. And could
8 you please allow me to make --

9 MR. P. CUNNINGHAM: Certainly. Pardon me. Pardon
10 me.

11 MEMBER HART: That's okay.

12 So, the question that you have is whether or not
13 Ms. Dickey has, was aware of any other building that looked
14 like the building?

15 MR. P. CUNNINGHAM: That was the first question,
16 right?

17 MEMBER HART: And then, the subsequent question
18 was -- say your subsequent --

19 MR. P. CUNNINGHAM: Was the design based on a
20 study of the individual single-family residences, of which
21 there are about 150, in the affected neighborhood?

22 MEMBER HART: Okay. Okay.

23 MS. DICKEY: I would not say that the building
24 mimics a single-family homes in exactitude in the
25 neighborhood. However, the residential characteristics, such

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1 as the double-hung windows, the color palette which is
2 similar in tone to the other buildings in the neighborhood
3 and the houses, I feel that those are reflective of the
4 single-family context.

5 MR. P. CUNNINGHAM: Did you do a study of the
6 single-family residences in the neighborhood before creating
7 this design?

8 MS. DICKEY: We did analyze them, yes.

9 MR. P. CUNNINGHAM: What does that mean?

10 MS. DICKEY: What do you mean by "study"?

11 MR. P. CUNNINGHAM: Well, did you look at each
12 house and take pictures of them and compare them to your
13 design, and use them as the basis of your design?

14 MS. DICKEY: Yes.

15 MR. P. CUNNINGHAM: Each house?

16 MS. DICKEY: I --

17 MEMBER HART: So, are you asking if she took
18 photographs of 150 houses?

19 MR. P. CUNNINGHAM: I'm asking if she did a
20 careful analysis of the architectural nature of --

21 MEMBER HART: Okay.

22 MR. P. CUNNINGHAM: -- the residences that she's
23 about to --

24 MEMBER HART: And she says she has done an
25 analysis. I don't know if you're going to get to, you know,

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1 what is the --

2 MR. P. CUNNINGHAM: I would like to be able to
3 try, if I could.

4 MEMBER HART: I don't know if you're going to be
5 able to get to a -- if your study is the same thing as her
6 analysis, is the same question.

7 MR. P. CUNNINGHAM: Could I ask her?

8 MEMBER HART: You can ask whether or not that is
9 -- if she has -- are you asking if she has something that she
10 can provide to you?

11 MR. P. CUNNINGHAM: I'm trying to figure out how
12 -- or the question I'm asking is how we could get to this
13 design, which she has said doesn't really bear any
14 resemblance to the rest of the neighborhood, from a study of
15 the neighborhood. And I want to know if she did a study in
16 the first instance, because there's been a constant assertion
17 by the Applicant, Mr. Hart, and other members, that this is
18 harmonious. And yet, we have the architect saying it's not
19 like any house in the neighborhood. And it sounds as though
20 she didn't really look at the houses in the neighborhood.

21 MEMBER HART: Okay. So, I think the question, Ms.
22 Dickey, is whether or not you did a study of some or all of
23 the houses in the neighborhood surrounding this site.

24 MS. DICKEY: The answer is yes.

25 MEMBER HART: Okay. So --

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1 MR. P. CUNNINGHAM: And what was the nature of
2 that study?

3 MS. DICKEY: We drove through the neighborhood.
4 We walked through the neighborhood. I have photographs of
5 the houses. I went back in Google Earth and walked up and
6 down the streets in order to look at the houses in the
7 surrounding context.

8 MR. P. CUNNINGHAM: Okay. I just wanted to
9 establish that, when you said this didn't look like anything
10 in the neighborhood, you had looked at the rest of the
11 neighborhood. Thank you.

12 Now, when you were asked to do this building, were
13 you given economic specifications?

14 MS. MOLDENHAUER: Objection. Outside the scope
15 of our direct.

16 MR. P. CUNNINGHAM: She's given a design only on
17 the basis --

18 MEMBER HART: Hold on. Hold on.

19 MR. P. CUNNINGHAM: I'm entitled to ask the basis
20 of her design.

21 MEMBER HART: I'm also entitled to make sure that
22 the questions that you're asking are about the testimony
23 that's been provided.

24 MR. P. CUNNINGHAM: They are.

25 MEMBER HART: In your estimation they are. I'm

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1 just trying to make sure that they are. Because we have
2 about 50 people in the room that would also like to speak.

3 MR. P. CUNNINGHAM: I understand.

4 MEMBER HART: And I'm trying to make sure that we
5 have relevant questions and that those questions, then, can
6 be answered. And then, we can understand if there's some
7 further clarity. Because, really, the cross-examination is
8 for us, so that we understand with clarity, we have a clear
9 understanding. I actually think I do, but you can have
10 another question for Ms. Dickey.

11 MR. P. CUNNINGHAM: Just one?

12 MEMBER HART: Well, you may have several. How
13 many more questions do you have?

14 MR. P. CUNNINGHAM: Well, it depends on the
15 answers, actually.

16 MEMBER HART: Well, it actually is, in making sure
17 that we can move smoothly through this process, I'm not going
18 to sit here and say that you can have unlimited questions.
19 So, I'm asking for how many questions you are thinking about
20 having.

21 MR. P. CUNNINGHAM: More than I can ask. So, I'm
22 trying to understand, I'm trying to get to the --

23 MEMBER HART: Well, we don't have that amount of
24 time. That's the problem.

25 MR. P. CUNNINGHAM: That's why I said how many I

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1 can ask.

2 MEMBER HART: Well, that's fine. I'm trying to
3 make sure that we have enough information so that we can make
4 our decision on this, not whether or not you can find as many
5 questions as you can. So, I understand that. I'm just
6 trying to make sure that we're getting to the testimony that
7 she provided, and we're trying to get clarification on that,
8 and that's it.

9 MR. P. CUNNINGHAM: This is all about the
10 testimony she provided and the design that the Applicant has
11 said is harmonious with our neighborhood.

12 MEMBER HART: So, she has said she has done an
13 analysis of the neighborhood. Do you have any other
14 questions on the analysis of the neighborhood?

15 MR. P. CUNNINGHAM: No, I finished that one.

16 MEMBER HART: Okay.

17 MR. P. CUNNINGHAM: Thank you.

18 MEMBER HART: And you're asking now?

19 MR. P. CUNNINGHAM: I'm asking whether this was
20 a value-driven design.

21 MEMBER HART: Okay. So, are you asking whether
22 or not this was -- if there was a budget for this design, Mr.
23 Cunningham?

24 MR. P. CUNNINGHAM: Mr. Varga has testified that
25 it would be a financial hardship to build underground parking

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1 here, which would indicate that there was an economic
2 analysis that was driving the design. And I'm interested to
3 understand whether that's a correct assumption.

4 MS. MOLDENHAUER: Vice Chair Hart, Mr. Varga never
5 said anything about an underground parking garage. I'm
6 sorry.

7 MEMBER HART: I understand. It's okay. What I'm
8 trying to get to is, there is a budget that the Applicant has
9 for this project. They have to. They can't just spend an
10 unlimited amount of money.

11 MR. P. CUNNINGHAM: Can we stipulate that?

12 MEMBER HART: I'm sorry?

13 MR. P. CUNNINGHAM: Can we stipulate that? That
14 will save a lot of questioning. Can the Applicant stipulate
15 that they had a budget for this budget?

16 MEMBER HART: Okay. So, your asking questions
17 about the testimony that was provided. Did they bring up how
18 much the cost of the building was?

19 MR. P. CUNNINGHAM: Were they asked to design this
20 to a cost specification?

21 MEMBER HART: Is that part of the testimony that
22 they provided?

23 MR. P. CUNNINGHAM: Yes, they had said they
24 designed this building --

25 MEMBER HART: Okay.

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1 MR. P. CUNNINGHAM: -- for various purposes. And
2 I'm asking if one of those purposes was to meet a cost
3 specification.

4 MEMBER HART: Okay.

5 MS. MOLDENHAUER: Vice Chair Hart, for the record,
6 I have to object to relevancy.

7 MEMBER HART: I'm trying to find out the relevancy
8 as well.

9 MR. P. CUNNINGHAM: I can explain the relevancy.
10 The testimony is from Mr. Varga that there are economic
11 limits, and it is in his testimony. The testimony is that
12 they cannot afford to put in adequate parking. The testimony
13 is that the design was nominally harmonious with the
14 neighborhood, but it's not like any house in the neighborhood
15 in design or bulk or density.

16 And I'm trying to figure out what drove it,
17 because there is no economic information on the record to
18 support the proposition that they can't do these things.

19 MS. MOLDENHAUER: And Vice Chair Hart, for the
20 record, I would object to relevance. This is a special
21 exception. There is no requirement for any factors that Mr.
22 Cunningham has just identified as actually part of the legal
23 standard that the Board is required to review.

24 MR. P. CUNNINGHAM: May I ask counsel a question
25 or?

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1 MEMBER HART: Well, we're still kind of working
2 through Ms. Dickey.

3 MR. P. CUNNINGHAM: Yes.

4 MEMBER HART: Why don't we move on from the
5 economic issue to some other concern that you have about the
6 actual design? Because, currently, what we're looking at is
7 a project that is -- the project that is before us, it is for
8 two special exceptions that they are looking at for the BZA
9 to approve, so that they can build this particular -- approve
10 or not approve.

11 So, do you have any further questions for the --

12 MR. P. CUNNINGHAM: Well, pardon me. I need to
13 observe for the record that the Applicants have stated that
14 they need these exceptions because they have economic
15 limitations on what they can do.

16 MS. MOLDENHAUER: Objection.

17 MEMBER HART: Well, hold on.

18 So, what I'm getting to is that there are zoning
19 regulations that determine what we are able to approve or not
20 approve, whether or not we believe that the Applicant is
21 meeting those regulations.

22 MR. P. CUNNINGHAM: Exactly.

23 MEMBER HART: So, that's what we have. There's
24 nothing about economic --

25 MR. P. CUNNINGHAM: So --

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1 MEMBER HART: There's nothing about an economic
2 aspect of that.

3 MR. P. CUNNINGHAM: Okay. So, we can strike all
4 of their testimony --

5 MEMBER HART: I didn't say that. You're putting
6 things, words into my mouth. So, I'm asking not to be
7 combative. I'm asking for you to ask cross-examination
8 questions that pertain to the testimony that was provided
9 this morning.

10 MR. P. CUNNINGHAM: Thank you.

11 MS. MOLDENHAUER: Vice Chair Hart, just for the
12 record, the opposing counsel is assuming facts not in the
13 evidence. There's been no testimony in our case-in-chief
14 regarding financial hardship. So, I would just like to have
15 that stated in the record.

16 MR. P. CUNNINGHAM: I'll stand corrected.

17 MEMBER HART: Okay.

18 MR. P. CUNNINGHAM: I'll withdraw that assumption.
19 It was in the Office of Planning report.

20 MEMBER HART: Okay.

21 MR. P. CUNNINGHAM: And the source of the
22 information for the Office of Planning was not revealed.

23 Ms. Dickey, why did you not include below-ground
24 parking in the design? I ask this because the neighborhood
25 had asked that it be included in the design.

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1 MS. DICKEY: I'm sorry, could you repeat that?

2 MR. P. CUNNINGHAM: Why did you not include below-
3 ground parking in the design? We had asked the operator --
4 or pardon me -- the owner to include that, and it didn't turn
5 up in the design. I wondered why.

6 MS. DICKEY: As we were working through our
7 programming, we determined that the surface parking would be
8 sufficient for the project. And so, we did not include an
9 underground garage.

10 MR. P. CUNNINGHAM: Okay. So, could the design
11 incorporate underground parking if the BZA were not to grant
12 the exception for parking?

13 MS. DICKEY: I mean, we don't need it.

14 MR. P. CUNNINGHAM: That's not my question. If
15 it was needed, could you put it in there?

16 MS. DICKEY: We would have to do an analysis.

17 MR. P. CUNNINGHAM: And what would you analyze?

18 MS. DICKEY: Whether it --

19 MEMBER HART: Okay. So, I'm sorry if I'm
20 interrupting, but I'm trying to get to the -- you're asking
21 what happens if we don't approve the regulations? But that's
22 not what she was testifying. She's testifying about what the
23 project is before us, not a hypothetical about what -- I'm
24 sorry I keep on coming back to that, but it's hard for us to
25 kind of wade through this if we're getting all this

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1 information that is not relevant to what we are dealing with
2 right now.

3 MR. P. CUNNINGHAM: Unfortunately, we didn't have
4 an opportunity for pre-hearing briefing for --

5 MEMBER HART: You have a presentation that you
6 have to give as well.

7 MR. P. CUNNINGHAM: Yes.

8 MEMBER HART: So, you can make all of your points
9 during the presentation. I'm just trying to get there.

10 MR. P. CUNNINGHAM: Yes.

11 MEMBER HART: So, do you have any other further
12 questions for --

13 MR. P. CUNNINGHAM: Yes, I do. I do for the --
14 yes.

15 MEMBER HART: Okay.

16 MR. P. CUNNINGHAM: There are no measurements
17 listed on your design, as it was presented in Appendix A,
18 which is the only design we have access to. Is there a
19 reason why those --

20 MS. DICKEY: Our BZA application has all of the
21 drawings in there with dimensions on it, which is public
22 record.

23 MR. P. CUNNINGHAM: I believe that is Appendix A,
24 and there are not -- our copy of that does not have interior
25 dimension measurements. Room size, for example, what is the

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1 average size of the resident's room?

2 MS. DICKEY: So, the resident rooms range in size
3 from about 300 square feet to over 365 square feet.

4 MR. P. CUNNINGHAM: Over?

5 MS. DICKEY: Three sixty-five.

6 MR. P. CUNNINGHAM: So, from 300 to 365?

7 MS. DICKEY: Yes, sir.

8 MR. P. CUNNINGHAM: That's roughly what dimension?

9 MS. DICKEY: Roughly about 16x20 to 25. It
10 varies. The outside envelope of the building does move in
11 and out, as do the corridor walls. So, it's not a perfect
12 dimension to share.

13 MR. P. CUNNINGHAM: And you mentioned that the
14 garden was about 1,000 square feet, right?

15 MS. DICKEY: Yes.

16 MR. P. CUNNINGHAM: And what's the dimension of
17 the garden

18 MS. DICKEY: The garden is about 30-feet wide and,
19 then, whatever that works out to in the other direction.

20 MR. P. CUNNINGHAM: Roughly, 30x30, you're saying?

21 MS. DICKEY: Approximately.

22 MR. P. CUNNINGHAM: All right. And what would you
23 say this room is?

24 MEMBER HART: I'm sorry, what is the relevance to
25 this room?

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1 MR. P. CUNNINGHAM: What proportion of this room
2 would you say a thousand square feet would take?

3 MS. DICKEY: I'm sorry, I missed --

4 MR. P. CUNNINGHAM: I'm trying to determine what
5 that means in terms of space.

6 MEMBER HART: He's asking whether or not that's
7 -- if a thousand square feet is bigger or smaller than this
8 room. That's what he's asking.

9 MS. DICKEY: It would be smaller than this room.

10 MR. P. CUNNINGHAM: Okay. And could 34, 37 people
11 plus assisting nurses, and so forth, whatever kind of
12 assistance Mr. Gonzales tells us we'll have, congregate in
13 that space at once comfortably?

14 MS. DICKEY: That is the intent, yes.

15 MR. P. CUNNINGHAM: So, that would be what, 40-
16 some people at least?

17 MS. DICKEY: Approximately.

18 MR. P. CUNNINGHAM: How many square foot per
19 person?

20 MEMBER HART: Okay. Mr. Cunningham, how many more
21 questions do you have? Because we're all waiting to get to
22 your presentation, and we'd love to get to your presentation,
23 but you're asking questions about interior stuff that the
24 BZA, we're not going to be focused on. We're about looking
25 at what this is in terms of the setbacks, whether or not the

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1 parking issue is a concern. And I'm just trying to see the
2 -- what --

3 MR. P. CUNNINGHAM: I can, I'll be glad to answer
4 that question.

5 MEMBER HART: You're asking a lot of questions
6 about the interior dimensions, and it is -- well, actually,
7 I'm trying to understand how many more questions that you
8 have for the architect.

9 MR. P. CUNNINGHAM: I don't know yet.

10 MEMBER HART: You have to give me a number because
11 we do have a lot of other things that we need to do in terms
12 of having your own presentation for this project. We haven't
13 even gotten to your presentation yet. So, are there things
14 that are in your presentation that --

15 MR. P. CUNNINGHAM: Two more questions.

16 MEMBER HART: Thank you.

17 MR. P. CUNNINGHAM: There are numerous
18 representations in the Applicant's statements that this is
19 harmonious with the residential character of the
20 neighborhood. In what possible respect would residential
21 spaces of the nature of this design, including the garden
22 space, which you have a very small square foot per person,
23 be comparable to the residential character of the single-
24 family houses in this neighborhood?

25 MS. DICKEY: So, as you noted, this building is

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1 at a different scale than the single-family homes in the
2 neighborhood. So, when we were doing our analysis of the
3 homes, we recognized that we can't put the same type of house
4 on this, for this project, as the single-family homes in the
5 neighborhood because it is a larger building. So, we need
6 to strike a balance between the homes and the apartments
7 across the street. This building is in a traditional zone,
8 both between scales and between uses.

9 And so, because there are a number of different
10 styles of homes in the neighborhood, this building is not --
11 while it does not look exactly like the other houses in the
12 neighborhood, it is complementary; it's not a match exactly.

13 So, in that regard as well, there are 36 residents
14 living within this building that will need to be accommodated
15 for dining programs, for gatherings at different sizes and
16 at different times of the day. And so, we designed the
17 building in order to have that level of flexibility for
18 different group sizes and different activities.

19 MR. P. CUNNINGHAM: Okay. Just one more, I
20 promise.

21 This is a hypothetical, but I think it's a
22 relevant hypothetical. If you owned the house immediately
23 to the south of the proposed building, would you find its
24 scope and scale within 8 feet of your house objectionable?

25 MS. DICKEY: It's not, it's not --

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1 MEMBER HART: Hold on. Hold on a second.

2 So, you're asking her whether or not, if she lived
3 near this, if she would find this project objectionable?

4 MR. P. CUNNINGHAM: Yes, if she lived right next
5 door.

6 MEMBER HART: I understand what you're saying.
7 So, again, the hypotheticals are difficult because it is not
8 -- she didn't say that she lived next door, and you're asking
9 her about something that she doesn't have a -- that it's hard
10 to, well --

11 MR. P. CUNNINGHAM: I'm asking her about a
12 standard -- the question is relevant under the regulations,
13 and I'm asking her about her judgment as an aesthetic,
14 sensitive person who resides in a dwelling and who has seen
15 the house next door, and has designed a building that's only
16 8 feet away, and it's roughly four times the size. Would you
17 like to live in the house next door?

18 Now wait a minute. Wait a minute.

19 MEMBER HART: Okay. So, you asked, you asked the
20 question.

21 MR. P. CUNNINGHAM: Right.

22 MEMBER HART: Which is whether or not the
23 Applicant -- actually, I let Ms. Dickey --

24 MS. DICKEY: I understand. I get that.

25 MEMBER HART: Okay.

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1 MS. DICKEY: I can answer.

2 MEMBER HART: So, go ahead.

3 MS. DICKEY: So, first, I would like to point out
4 that the building is not 8 feet away from the house next
5 door. It is more of an 8 feet away from the property line,
6 and then, the house has a distance away from the property
7 line on the other side as well.

8 MR. P. CUNNINGHAM: Okay.

9 MS. DICKEY: So, it is a greater distance. We're
10 also providing a relatively solid green buffer along there
11 in order to provide some visual screening there. And so, we
12 are compliant.

13 MR. P. CUNNINGHAM: I would note for the record
14 that she did not answer the question.

15 That's all I have for the architect.

16 MEMBER HART: Okay. Okay. So, Ms. Ferster, do
17 you have any other questions?

18 MS. FERSTER: No. I don't think you're done, are
19 you?

20 MR. P. CUNNINGHAM: No, I have questions for Mr.
21 Gonzales.

22 MEMBER HART: Oh. Oh, okay. Go ahead to those,
23 yes, please.

24 CROSS-EXAMINATION OF JOHN GONZALES

25 MR. P. CUNNINGHAM: Good afternoon. I just wanted

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1 to say it's afternoon.

2 Mr. Gonzales, do you still reside at 9912 195th
3 Avenue, East?

4 MR. GONZALES: Yes, we have a home in Seattle,
5 Washington.

6 MR. P. CUNNINGHAM: Right. It's by a lake? Is
7 that correct? Is that a --

8 MR. GONZALES: That's correct.

9 MR. P. CUNNINGHAM: And is that a single-family
10 home?

11 MR. GONZALES: Yes, it is.

12 MS. MOLDENHAUER: Objection to relevance.

13 MEMBER HART: I was giving him a little bit of
14 leeway because I'm not exactly sure what -- that where they
15 live is --

16 MR. P. CUNNINGHAM: I'll be glad to give you that
17 residence.

18 MEMBER HART: Yes, but this is not supposed to be
19 testimony. It's about questions on the testimony that they
20 provided. You're cross-examining them. You will have an
21 opportunity to provide your own -- you will be provided time
22 to provide your own testimony or --

23 MR. P. CUNNINGHAM: You'll be very happy to know
24 that I've been asked to stop, so that we can get to our lead
25 witness.

1 MEMBER HART: And I'm not trying to curtail it.
2 What I'm trying to understand is how the questions that
3 anyone has -- and on the other side as well -- how they are
4 relevant for the cross-examination itself. So, I don't want
5 you to feel that this is a -- this is not a personal thing.
6 This is more just trying to understand how is that we are --
7 the questions that are being asked, how are they relevant to
8 the testimony that has been provided.

9 MR. P. CUNNINGHAM: Well, the relevancy --

10 MEMBER HART: So, I wasn't asking a question. I
11 was just making --

12 MR. P. CUNNINGHAM: Oh, I thought you wanted to
13 understand.

14 MEMBER HART: No, I was just making a statement.

15 MR. P. CUNNINGHAM: All right.

16 MEMBER HART: So, I'm just letting you understand
17 where I was with this.

18 So, with that, the ANC has an ability, an
19 opportunity to ask cross-examination cases as well.

20 MS. MACKWOOD: We have no questions at this time.

21 MEMBER HART: Thank you.

22 MS. MACKWOOD: You're welcome.

23 MEMBER HART: No, no, thank you.

24 (Laughter.)

25 So, Ms. Ferster, we're going to start with your

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1 presentation.

2 MS. FERSTER: Oh, okay, that's good because we had
3 actually -- that would be profitable to us, and then, do
4 Office of Planning afterwards? Is that what you would like
5 to do? Because we actually have a witness --

6 MEMBER HART: Oh, no, we've got cross-examination
7 before that.

8 MS. FERSTER: Oh, I'm done with my questions.

9 MEMBER HART: No, no, no. They get to cross your
10 presentation.

11 MS. FERSTER: Right, right.

12 MEMBER HART: Yes. So, we do your presentation.

13 MS. FERSTER: Right.

14 MEMBER HART: They cross. And then, we go to the
15 Office of --

16 MS. FERSTER: Okay. That's --

17 MEMBER HART: And, ANC, Ms. Mackwood, if you have
18 any presentation that you would like to provide, you have the
19 opportunity as well.

20 MS. FERSTER: Terrific, because we have a witness,
21 actually, who's on a hard stop. So, that would be great to
22 get to our presentations.

23 MEMBER HART: I've been trying to get to this.
24 So, I do appreciate it.

25 The Applicant had, I want to say, 30 minutes, 35

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1 minutes.

2 MS. MOLDENHAUER: Thirty-one minutes and 42
3 seconds.

4 (Laughter.)

5 MEMBER HART: And I knew Ms. Moldenhauer would
6 know the exact number.

7 (Laughter.)

8 Let's put 30 minutes on, and we'll go from there.
9 And you may begin, Ms. Ferster, when you would like to.

10 MS. MACKWOOD: Mr. Hart, may I interrupt for just
11 for a moment?

12 MEMBER HART: I'm like, who's talking?

13 (Laughter.)

14 I couldn't see.

15 MS. MACKWOOD: It's Commissioner Mackwood
16 speaking.

17 MEMBER HART: Sure.

18 MS. MACKWOOD: Would you like us to leave the
19 table and go into the audience, so that we can free up some
20 chairs for witnesses at this point?

21 MEMBER HART: Yes, that would be helpful, if you
22 could, a couple of you. I don't think everybody from the
23 Applicant's side, because I think at some point they're going
24 to have to do cross-examination, but I'm not sure how many
25 chairs you need.

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1 Go ahead.

2 MS. FERSTER: Thank you.

3 So, while everybody is getting seated on our case,
4 I just wanted to say that we do have nine witnesses, but they
5 will stay within that allotted time limit.

6 So, my witnesses, please be mindful of that.

7 And we're going to start with Dr. Billig, who
8 we've provided his resume for the record, and we would like
9 to qualify him as an expert in the operational
10 characteristics of the memory care facility from a patient
11 perspective.

12 MEMBER HART: And does the Board have any
13 questions for Dr. Billig? No? Okay.

14 DR. BILLIG: I'm Nathan Billig. Good morning.

15 MS. MOLDENHAUER: Oh, I'm sorry, I would have some
16 questions or I would object to the specification as a very,
17 very, very specific statement in which Mr. Ferster identified
18 his expertise --

19 MEMBER HART: Okay.

20 MS. MOLDENHAUER: -- and without specific
21 qualifications. Maybe if she wanted to identify a broader
22 scope, but, otherwise, we'll have to go with some questions.

23 MEMBER HART: Okay. And I thought we would be
24 moving into this smoothly.

25 (Laughter.)

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1 So, sorry, the levity is just to lighten the room
2 a little bit. It's not funny about any of -- and I
3 understand that we're all serious about the particular
4 project. So, don't get that levity as being not serious
5 about it.

6 So, Ms. Moldenhauer, you said you had some
7 questions?

8 MS. MOLDENHAUER: Yes.

9 MEMBER HART: Clarification?

10 MS. MOLDENHAUER: One clarification, the
11 specificity of the expert qualification, and, two, some
12 questions about his resume, if she's trying to qualify him
13 for something to that degree.

14 MEMBER HART: Okay. So, I think these questions
15 are for you, Dr. Billig.

16 DR. BILLIG: Okay.

17 MS. MOLDENHAUER: Ms. Ferster, can you please
18 repeat the specifics as to how you wanted to qualify him?

19 MS. FERSTER: We proffered him --

20 MEMBER HART: Your mic is -- yes, thank you.

21 MS. FERSTER: We had proffered him as an expert
22 in the operational characteristics of the memory care
23 facility from a patient care perspective. He's a geriatric
24 psychiatrist with substantial experience with the operations
25 of memory care facilities.

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1 MS. MOLDENHAUER: I would be fine to qualify him
2 as a geriatric psychiatrist, but I think the specificity I
3 think is just inappropriate.

4 MEMBER HART: Since I don't know this myself, how
5 do we -- I'm trying to -- I'm looking over at OAG because I'm
6 trying to figure out how we kind of think about all of this.
7 Give me a second.

8 (Pause.)

9 Sorry, just to that I'm again clear, there are a
10 few exhibits in the record. Could you let me know which, Ms.
11 Ferster, could you let me know which exhibit we're talking
12 about for --

13 MS. FERSTER: His resume?

14 MEMBER HART: Yes.

15 MS. FERSTER: Oh.

16 MEMBER HART: Because it's been like, you know,
17 we're pouring through this --

18 MS. FERSTER: Right.

19 MS. MOLDENHAUER: It's Exhibit 318, to assist the
20 Board.

21 MS. FERSTER: Thank you.

22 MEMBER HART: It just falls off the tongue,
23 doesn't it, 318?

24 So, were there specific questions about the resume
25 or about the way Ms. Ferster characterized the testimony?

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1 MS. MOLDENHAUER: I believe that his resume, there
2 are, I think if you look at it, there are some gaps in time
3 in regard to some of his publications and kind of current
4 experience. And in addition to that, he is a medical
5 director, and there are no medical directors in our facility.
6 So, in regards to it, I would be fine clarifying him as a
7 psychiatrist for geriatrics, but I think that the opposition
8 counsel has a higher lift if she is wanting to qualify him
9 in a more specific way.

10 MEMBER HART: Okay. So, Ms. Ferster, do you
11 understand what the Applicant's counsel is asking?

12 MS. FERSTER: I believe you would agree to qualify
13 him as a geriatric psychiatrist and allow him to testify
14 about his experience. I just don't want any issues about the
15 scope of his testimony. His scope of the testimony is based
16 on his experience as a geriatric psychiatrist and somebody
17 who has consulted on, you know, professionally on, in memory
18 care facilities and design, appropriate design and best
19 practices for those facilities. You know, that would be
20 within the scope of his testimony.

21 MS. MOLDENHAUER: And he is a psychiatrist by
22 education?

23 MEMBER HART: Okay. So --

24 MS. MOLDENHAUER: And we would be fine with that,
25 but, obviously, Ms. Ferster is not testifying for him, and

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1 he would need to qualify and provide any background, any
2 foundation, legally to provide any opinion.

3 MEMBER HART: So that we don't have to go through
4 a back-and-forth on that, I mean, the reason I was looking
5 for the resume was to remember where it was, because it's
6 been a little -- there are quite a number of exhibits that
7 we're working through.

8 So, in looking through this, I didn't have any
9 particular issue with it. I didn't actually hear any issues
10 from the Board. I understand, Ms. Moldenhauer, that you have
11 some questions on the specificity of the testimony that Dr.
12 Billig might provide, but I think that the Board is wanting
13 to hear from Dr. Billig. And I think that we would like to
14 move forward with it.

15 And I think I've -- again, I didn't hear anyone
16 say that they didn't have -- that they had an issue with this
17 particular, with his resume or his credentials.

18 So, with that, I would like to start with Dr.
19 Billig. If you have some cross-examination questions after,
20 then we can do that.

21 MS. MOLDENHAUER: So, I just want to make sure
22 we're qualifying him, though, just as an expert in geriatric
23 psychiatry?

24 MEMBER HART: Yes.

25 MS. MOLDENHAUER: Thank you.

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1 MEMBER HART: Sorry, Dr. Billig.

2 DR. BILLIG: Okay. I'm Nathan Billig. I have 40
3 years' experience as a psychiatrist with a subspecialty in
4 geriatric psychiatry. I am a clinical professor of
5 psychiatry at Georgetown University Medical Center.

6 As part of my work as a geriatric psychiatrist,
7 I've been a consultant to several nursing homes with memory
8 care units or the equivalent. I consulted to the original
9 partners of Sunrise Assisted Living from its earliest stages,
10 formally and informally, through 10 to 15 years into their
11 corporate status.

12 I was a consultant to the Hebrew Home of Greater
13 Washington, participating in clinical and research efforts
14 there, and supervised fellows. And I was on the Advisory
15 Committee of Aegis Senior Care in Seattle, Washington, from
16 its inception, and helped develop its clinical programs.

17 I'm very familiar with ManorCare/Arden Courts
18 memory care facilities in the Washington, D.C., area, and
19 I've referred patients there over the years.

20 I have no financial interest in any long-term care
21 facilities, nor do I receive any remuneration from them.

22 Memory care and dementia care has developed as a
23 specialty over the last 25 or 30 years, as an outgrowth of
24 nursing home care and assisted living. It arose from the
25 realization that people with moderate to severe dementia

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1 needed and benefitted from specialized care, that neither a
2 typical nursing home nor assisted living facilities
3 fulfilled. That care is not custodial per se, but, rather,
4 seeks to provide a program to retain and enhances residual
5 functioning of the residents, with the aim of prolonging
6 maximum cognitive ability as long as possible.

7 Memory care facilities require trained nurses,
8 nursing assistants, recreational specialists, activity
9 specialists. And the units have evolved over the years to
10 incorporate certain generally-recognized standards of design.

11 One of those that is most commonly used is a
12 design which includes neighborhoods or houses within, all
13 developed on one floor. Each would be made up of several
14 bedrooms in close proximity to a living room or activity area
15 and a dining area, simulating as much as possible a familiar
16 home environment, rather than a more restrictive dormitory
17 or a typical nursing home plan.

18 An open, accessible nursing station, not a nook,
19 should be integral to the space, so that residents can freely
20 interact with nursing staff when they need or want attention,
21 and nursing staff can observe and interact, likewise, with
22 the residents for whom they are caring.

23 The planned facility, as I saw it, does not appear
24 to have this most desirable kind of a design of a dementia
25 care unit, but, rather, seems to be a rather tight,

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1 restrictive space on three floors, dictated by the space
2 available on the lot, rather than the more ideal
3 specifications.

4 One important factor is residents should not have
5 to be gathered into an elevator or stay away on a regular
6 basis to go dining facilities or other parts of the residence
7 on distant floors, as in the plan that I saw.

8 Since demented patients do best when the
9 environment and surrounding personnel are constant, this
10 forced mobility will intensify confusion, anxiety, agitation,
11 and fall risks, and lead to mealtimes, for example, being
12 unnecessary stimuli for upset, rather than a time for group
13 interaction and nourishment.

14 Since moderately to severely demented patients
15 usually have some degree of agitation, and benefit
16 significantly from being able to walk or pace ad lib in a
17 safe environment, a secure, attractive, continuous walking
18 path, both indoor, as mentioned above, and outdoor, is
19 recommended as close as possible to the living space. Often,
20 these are figure-of-eight designs, have a length of an eighth
21 to a quarter of a mile, and are continuous. So, there are
22 no walls, fences, or bumps along the way.

23 Family members and close friends of residents
24 should be encouraged to visit the facility regularly and even
25 participate in the program. Many family members spend

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1 several or more hours per day visiting in the building, and
2 contact with familiar people such as these enhances
3 retention, enhancement of memory, and ameliorates agitation.

4 Therefore, adequate and accessible unrestricted
5 parking should be available onsite for the coming and going
6 of guests, as well as indoor and outdoor spaces for visiting
7 and a provision for purchase or availability of meals by
8 visitors. I happen to know the location of the proposed
9 site, and I noted that most of the parking seemed to be
10 limited to two-hour availability.

11 Since residents of the memory care center are all
12 elderly, they will be vulnerable to medical emergencies and
13 may necessitate emergency transfer via ambulance to nearby
14 hospitals. The plan indicates that all transfer such as
15 this, deliveries, and movement from the small parking area
16 will occur through an alley at the rear of the property.
17 This does not appear on its face to be practical, adequate,
18 or safe.

19 In terms of staffing, staffing should ideally be
20 calculated at one resident care staff member, usually a
21 certified nursing assistant, per five residents during day
22 and evening shifts, and one member per 10 residents in the
23 evening. A trained staff nurse should be present on the
24 facility at all times. It's desirable to have these staff
25 members be full-time employees rather than per diem or agency

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1 nurses, so that residents and family members can form
2 trusting, positive relationships.

3 As happens in these kind of facilities, family
4 members often hire supplementary private-duty nursing aides
5 for particularly upset patients for parts of the day or even
6 the whole waking period. Provision for their being
7 integrated into the facility is essential in terms of space,
8 mealtimes, parking, et cetera.

9 Further on staffing, there's a need for regular
10 staff people who could lead art, music, poetry, language,
11 reminiscence programs, all of this with an effort towards
12 maintaining function as much as possible.

13 In summary, there is no indication, although the
14 operators seem to have experience in senior living, and that
15 covers a great swath of care, there's no particular note of
16 management of memory or dementia care facilities, which is
17 a very specialized kind of care. And some of the standards
18 that they note refer to the D.C. assisted living standards,
19 which are not adequate for this kind of intense programmatic
20 site.

21 They do not take into account the needs of
22 severely demented people and its associated complicated
23 disabilities. Staffing patterns are not well-documented or
24 specified, and there's no indication that the depth of staff
25 required is known or noted by the operators.

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1 In my work with patients and families over four
2 decades, I found that their selection of a facility for a
3 demented loved one is often based, is entirely based on
4 design, staffing, comfort, experience of the operator and
5 staff, programming, and respect for family concerns, and the
6 resident's state of significant disability. I found that the
7 proposed facility from these points of view are severely
8 lacking.

9 Thank you.

10 MEMBER HART: Thank you.

11 MR. P. CUNNINGHAM: We have no questions on
12 direct. No, I have no follow-up questions.

13 MEMBER HART: You don't have questions of your
14 own --

15 MS. FERSTER: Sorry. I thought he might have a
16 follow-up question.

17 MEMBER HART: No, no.

18 Whomever you would like to have as the next
19 presenter?

20 MS. FERSTER: Okay, and I'm wondering if we can
21 stop the clock for a moment because Dr. Billig has a hard
22 stop, and I would like to ask if he could be cross-examined
23 now, instead of waiting for the entire panel.

24 MEMBER HART: Okay. That's fine.

25 MS. FERSTER: Okay. We need to stop the clock,

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1 though. Thank you.

2 MEMBER HART: Yes, if you could, Mr. Secretary?

3 Cross-examination for Dr. Billig?

4 MS. MOLDENHAUER: I have no cross-examination
5 questions. We'll have a rebuttal witness. Thank you.

6 MEMBER HART: Thank you, Dr. Billig.

7 MS. FERSTER: Okay. Our next witness is going to
8 be Joe Mehra, who he has been previously qualified as an
9 expert, transportation expert.

10 So, proceed, Joe.

11 MR. MEHRA: Good afternoon.

12 I have reviewed the Gorove/Slade parking survey
13 and the supplemental studies that have been submitted, and
14 my comments are based on that; plus, based on standard
15 industry practice.

16 I think the issue, first of all, is the parking --

17 MS. MOLDENHAUER: Objection. I'm being handed
18 something. This is just his testimony? It's not a report?

19 MS. FERSTER: No, it's just what he sent.

20 MEMBER HART: Please go ahead.

21 MR. MEHRA: Okay. The parking corridor, the
22 proposed document is for the memory care center special
23 exception and includes a building in an R-1-B zone consisting
24 of a 34-unit facility.

25 Historically, the residential parking standard of

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1 one parking space per two units would be applicable in this
2 case, which would then require 17 parking spaces. However,
3 the CCRC special exception, as of July 2017, includes a
4 parking condition which was revoked in order for the CCRC
5 special exception to be granted. That condition is that the
6 use and related facilities shall provide sufficient off-
7 street parking spaces for employees, residents, and visitors,
8 as this is a condition to the CCRC special exception being
9 granted. Additional relief may not be sought from this
10 parking requirement.

11 However, if you have to sort of count on that
12 process, one of the things is that, typically, the parking
13 corridors are established based on the fact that this site
14 is an urban setting; that the site is near public
15 transportation, which is typical of almost all sites in
16 Washington, D.C. Therefore, requesting a further reduction
17 in parking because the site is near a bus stop is double-
18 dipping.

19 As an example, suburban jurisdictions have a
20 higher parking requirement than the District of Columbia
21 does, and the reason is primarily the urban versus suburban
22 and the availability of transit. In Arlington County, multi-
23 family requirements on transit corridors for 34 units would
24 require 28 parking spaces. In Fairfax County, multi-family
25 requirements on transit station areas for 34 units would

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1 require 55 parking spaces.

2 And one of the other things is that Gorove/Slade
3 did a parking demand study for an assisted living facility,
4 and they came up with a number that you need one space for
5 every two units. When you use that same ratio to those
6 building a facility, it shows that you need 17 units, 17
7 spaces, which is exactly what the Zoning Code requires.

8 Our next issue is the parking availability
9 methodology. The parking analysis included RPP parking
10 spaces. It included time-restrictive spaces, which for all
11 practical purposes are not suitable for use by employees and
12 by visitors who want to spend quality time at the memory care
13 center.

14 The only -- the only -- known restrictive parking
15 spaces are available on Calvert Street, and those are usually
16 occupied and could not be counted as being available for
17 staff and visitors to the memory care center. According to
18 Gorove/Slade, only a total of 24 parking spaces are non-
19 restricted. For all practical purposes, these are the only
20 parking spaces now potentially available to the memory care
21 center.

22 Another major error in the analysis is the
23 selection of time period for the parking surveys.
24 Gorove/Slade conducted the parking occupancy study of nearby
25 streets between the hours of 4:00 p.m. and 9:00 p.m. on

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1 weekdays. According to the data from the --

2 MEMBER HART: Hold on. Hold on one second.

3 Can you make sure you just turn off your mic?

4 It's just we get feedback sometimes.

5 MR. MEHRA: According to the data from the
6 Institute of Transportation Engineers' Trip Generation
7 Manual, the overall highest traffic generation to a site like
8 this occurs between 11:30 a.m. and 1:30 p.m. Again, I
9 repeat, it's between 11:30 a.m. and 1:30 p.m.

10 However, the parking study was done between the
11 hours of 4:00 p.m. and 9:00 p.m. So, they actually did not
12 count or survey the parking occupancy during the peak demand
13 for this facility. So, essentially, the parking survey that
14 was done for the week there was really futile.

15 The next issue is the parking space inventory.
16 There are errors in counting of available parking spaces
17 along the blocks. For example, the parking study shows that
18 16 spaces are available along Calvert Street on the south
19 side between Wisconsin and 36th Street. A count shows that
20 only 13 vehicles -- this is an actual observation -- 13
21 vehicles are parked along the street with no space available
22 for any additional vehicles that could park on that block.

23 Similarly, we've seen that nine parking spaces are
24 available along Edmund Street on the north side. Grossly,
25 it shows availability of 16 parking spaces on the west side

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1 of Wisconsin Avenue between Edmunds and Fulton Street. After
2 incorporating the guardrails, the no parking in front of
3 building entrances, the total number of parking spaces is
4 more like 13 instead of 16.

5 And another factor that results in the
6 introduction and relatable parking supply is the fact that
7 there are no marked or delineated parking spaces. So, people
8 would have to park by leaving adequate space, so they can
9 pull out without too much back-and-forth movements.

10 So, essentially, there are only 21 unrestricted
11 spaces available on Calvert Street that somebody can use.
12 The Gorove/Slade report confirms, in my observation, as the
13 report states, and I quote, "During the Thursday peak period,
14 occupancies were blocked very greatly, but generally the most
15 densely occupied street parking facilities were located
16 around the unrestricted north and south sides of Calvert
17 Street within two blocks of the site." The block spaces along
18 this street realize peak occupancies of 88 percent or higher,
19 and this is at 4:00 p.m. to 9:00 p.m., not between 11:30 and
20 1:30.

21 Gorove/Slade also conducted some supplemental
22 parking analysis based on a request of ANC 3C. They came up
23 with a parking requirement using employees and their mode of
24 travel. And they arbitrarily assumed that 45 percent of the
25 employees were anticipated to use non-auto modes of

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1 transportation to go to and from the site.

2 This is significantly higher than anticipated.
3 The reasons are that the employees would be working in shifts
4 that begin early in the morning and end late at night.
5 Further, the employee would be coming from various areas of
6 the Washington Metro Area, D.C., Virginia, and Maryland. The
7 bus schedules and headways are conducive for traveling by bus
8 during early and late hours. For example, the headway for
9 Route 30N is almost one hour during the early and late hours.
10 If the employee misses the bus for whatever reasons, the
11 employee will have to wait for almost an hour for the next
12 bus. Further, there is a potential for multiple transfers
13 between bus transit and rail transit to travel back and forth
14 from Maryland or Virginia to the site.

15 Using the measurement (phonetic) assumptions,
16 Gorove/Slade calculated the parking demand for the memory
17 care facility using ITE nursing home trip land use and
18 applied a 45-percent reduction to the ITE computed
19 requirement of 13 parking spaces and, then, came up with
20 seven parking spaces.

21 There is a major flaw in the Gorove/Slade
22 methodology for computing required parking spaces. They
23 assume that all 13 spaces are for employee use only. This
24 is an error, an erroneous assumption. The ITE parking
25 requirements include parking spaces made for visitors,

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1 management's vehicles, and other users of the site. The
2 parking spaces needed for these other users have to be
3 subtracted before applying the mode share factor.

4 Finally, the alley operations, the alley is about
5 12-feet wide, effectively, given the fact that there are
6 electric user poles along it. The Applicant is proposing to
7 use the alley for access to the nine parking spaces, for
8 access to the loading area, for access to their dumpsters,
9 and for boarding and alighting the memory care center
10 occupants into and out of a van and shuttle bus when they go
11 out. It is not clear from the Applicant's submissions how
12 trucks will access the loading dock, which is parallel to the
13 alley.

14 The other things is, how do the memory care
15 occupants get to the alley for boarding and lighting from the
16 van and shuttle bus since there is no rear entrance to the
17 building other than the loading area? It will be safer and
18 more convenient for the memory care center occupants to exit
19 the memory care center on Wisconsin Avenue and board and
20 alight from the van/shuttle bus on Wisconsin Avenue. The
21 alley will be significantly impacted with all these
22 operations occurring in the alley, and then, that leads to
23 safety issues with their neighbors who are trying to access
24 the rear of their houses where the garages are.

25 Finally, Gorove/Slade states that the proposed the

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1 plan is expected to generate two loading trips per week.
2 Earlier on, I just heard that there will be at least two full
3 deliveries per week. So, I'm not sure which is correct. The
4 general deliveries include truck or trash removal, linen
5 deliveries, parcel delivery, food deliveries. Based on the
6 expected truck deliveries and the loading facilities
7 provided, Gorove/Slade concludes in their supplemental report
8 that a loading plan for the site for two loading trips per
9 week is adequate. Obviously, their loading plan is not
10 adequate because there would be more than two loading trips
11 per week.

12 Thank you.

13 MS. A. CRABTREE: Good afternoon, Vice Chair Hart
14 and other Members of the Board. I didn't expect that I would
15 have so little time. I have a lot of written testimony that
16 I hope you will --

17 MEMBER HART: Could you do one thing for me?

18 MS. A. CRABTREE: Sure. Anita Crabtree.

19 MEMBER HART: Thank you.

20 MS. A. CRABTREE: I am the MAHCA Zoning
21 Coordinator. So, I was actually supposed to go first, lay
22 the groundwork, have the experts go afterwards, but
23 everything sort of went away, as I guess happens to you guys
24 all the time on Wednesday. So, I'll just speak quick, so
25 that we can get to our other expert. I'm here to testify on

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1 behalf of MAHCA.

2 The Applicant, MED Developers, is asking this
3 Board to grant it a special exception to both a large four-
4 story-plus-penthouse institutional, non-conforming memory
5 care facility, which is a healthcare facility, on two R-1-B
6 lots. Anyone who has ever visited a facility like this knows
7 all that comes with it, the staff, the visitors, the traffic,
8 moving trucks from move-ins and move-outs, the deliveries,
9 the emergency vehicles, et cetera. It's a big operation, and
10 it's very institutional.

11 When we were at the BZA the last time, which was
12 my first time at the BZA, there were a few decision cases
13 that were heard before we were called, and it struck me how
14 many of you talked about how seriously you take requests by
15 homeowners to bump out their homes, add a porch, or make some
16 other changes, many of them, arguably, minor. I appreciate
17 that the BZA takes these types of changes so seriously. It's
18 a professional hazard; I'm a stickler as an attorney. I
19 appreciate that the law is enforced and that the homeowners
20 are made to rigorously jump through all the required hoops.
21 I have seen what neighbors have gone through to complete
22 their applications and do things the right way.

23 The experience with this application and with this
24 Applicant, and the lack of rigor to provide necessary
25 information and engage with the impacted community are

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1 glaring, in contrast to the rigor with which I have seen
2 private individuals approach this process.

3 I hope and trust that the BZA will review this
4 application with the same rigor with which it reviews
5 applications by homeowners to bump out their homes because
6 building this proposed large, non-conforming, and out-of-
7 character structure in an R-1-B single-family home
8 neighborhood, which the D.C. Comprehensive Plan designates
9 as a Neighborhood Conservation Area, should not be done
10 without ensuring that the Applicant has met its burden of
11 proof and that the proposed development strictly adheres to
12 the zoning regulations.

13 For the record, there's no Art Deco home in our
14 neighborhood.

15 MAHCA opposes this application and hereby
16 respectfully requests that this Board deny the Applicant's
17 request for two special exceptions. We oppose this
18 application and request denial because the Applicant has not
19 met its burden of proof; in fact, hasn't really even made a
20 good-faith attempt to meet its burden of proof.

21 The second reason is that this special exception
22 application does not meet the six conditions required in
23 order for a CCRC facility or for a healthcare facility
24 special exception to be granted. This is pursuant to
25 Subtitle U, Section 203.1. And if it's a CCRC, it's (f); if

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1 it's a healthcare facility, it's (i).

2 In particular, the proposed facility does not
3 fulfill the parking condition which both of these special
4 exceptions have, and it certainly doesn't fulfill the
5 objectionable conditions and no adverse harm condition. The
6 parking condition for both of these relevant special
7 exceptions is that there be sufficient off-street parking
8 provided for employees, visitors, and residents. This change
9 to the Code was initiated by OP at the end of 2016, and the
10 change to the Code was made in July of 2017. And it's
11 glaring how OP and DDOT have neglected to apply the law. The
12 Applicant has also not accurately argued the law.

13 Council Member Mary Cheh has written a letter to
14 DDOT requesting that they apply the law correctly and redo
15 their letter.

16 I'm being told that I have run out of time. I
17 request that you please review my written testimony.

18 My neighbor will now speak more to how this
19 project is not in keeping with the Comprehensive Plan.

20 MAHCA respectfully requests that you deny this
21 application.

22 Thank you.

23 MS. FERSTER: And can we briefly stop the clock,
24 so that I can qualify another expert witness?

25 MEMBER HART: Four minutes?

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1 (Laughter.)

2 Yes, we can stop the clock. Sorry.

3 MS. FERSTER: Yes. And I'd also ask that Ms.
4 Crabtree's written testimony be entered into the record.

5 MEMBER HART: Are you asking that all of the
6 written testimony be --

7 MS. FERSTER: Yes. Yes.

8 MEMBER HART: Every -- all of the experts?

9 MS. FERSTER: All of it.

10 MEMBER HART: You just said "her," so I just
11 wanted to make sure.

12 MS. FERSTER: And hers, in particular, because she
13 didn't get to read all of it. So, I'd ask that the remainder
14 of it be certainly entered into the record.

15 MEMBER HART: That's fine. Just clarity; that's
16 all.

17 MS. FERSTER: Yes, yes.

18 All right. So, we would like to qualify John
19 Cunningham as an expert as well. He's going to be -- we'd
20 like to qualify him as an expert in the financing of the
21 memory care facility, and we've provided his resume in the
22 record. And it's the same exhibit number as Dr. Billig's
23 resume.

24 MS. MOLDENHAUER: Vice Chair Hart, I would object.

25 MS. FERSTER: On what grounds, his qualifications?

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1 MEMBER HART: Hold on. Hold on. Hold on.

2 I actually wanted to ask the Board if they had any
3 questions.

4 I understand your objection. I heard your
5 objection, Ms. Moldenhauer. Give me a second.

6 (Pause.)

7 What I'm doing is trying to get to it; that's all.
8 Here it is. Okay. So, it's page 16 of Exhibit 318.

9 So, you are, Ms. Ferster, you're saying that Mr.
10 Cunningham is an expert in -- can you say that again?

11 MS. FERSTER: He's an expert in the financing of
12 a memory care facility, and I don't know the basis for
13 opposing counsel's objection, whether it's to his
14 qualifications as an expert in that area or to relevancy.
15 But I can explain, if it's not to qualifications, I would be
16 happy to explain the relevancy.

17 MEMBER HART: Ms. Moldenhauer?

18 MS. MOLDENHAUER: It would be to both, Vice Chair
19 Hart. I'll throw it all in.

20 One, I don't believe that he has enough experience
21 to be qualified as an expert, based on his resume.
22 Typically, what I see from the Board is you're requiring many
23 years of experience and, also, specific examples.

24 In addition to that, there's no identification of
25 publications, presentations; no specific examples of

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1 financing of memory care. And second of all, we don't
2 believe that it is a relevant aspect of the case, and there's
3 also a bias qualification in the case.

4 Thank you.

5 MEMBER HART: You said "a bias"? What do you mean
6 by that?

7 MS. MOLDENHAUER: I can ask Mr. Cunningham his
8 specific relationship to members of the MAHCA Board. I
9 believe he's the son of Paul Cunningham.

10 MEMBER HART: I'm not sure if that's relevant per
11 se. It's just every curve ball we got today, isn't it?

12 (Laughter.)

13 MS. FERSTER: Can I respond briefly?

14 MEMBER HART: Sure.

15 MS. FERSTER: Sure. Okay. So, let me just take
16 the relationship to the President of MAHCA. Let me just say
17 that is a nonprofit citizens' association. If they could not
18 gather their experts from friends and family, they would not
19 be able to participate before these proceedings. And there's
20 plenty of evidence in precedent for people with
21 relationships, deep relationships, qualifying as experts.
22 So, that's on the bias issue.

23 On the qualifications, Mr. Cunningham has eight
24 years of professional experience, Vice President and senior
25 analysis with organizations where he does exactly what we

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1 want him to qualify -- qualify him for, which is in
2 financing. And we can provide some voir dire as well, so he
3 can provide some of his specific experience relating to
4 assisted living facilities and this type of facility, if you
5 would like to get that level, at that level of specificity
6 in terms of his qualifications. But I think eight years is
7 plenty of experience to qualify as an expert, particularly
8 given the breadth of his professional experience.

9 MEMBER HART: Does the Board have questions for
10 Mr. Cunningham?

11 VOIR DIRE EXAMINATION OF JOHN CUNNINGHAM

12 MEMBER WHITE: I guess the question is, what are
13 the parameters of your testimony? I don't know if you would
14 necessarily be an expert, but you, obviously, have experience
15 in the industry. So, I didn't know what aspect of your
16 testimony was relevant to the application that's being
17 requested by MED Developers.

18 MR. J. CUNNINGHAM: Sure, and thank you all for
19 allowing me the opportunity to speak.

20 I would be intending to speak towards the
21 financial viability and --

22 MEMBER HART: Could you just say your name for the
23 record?

24 MR. J. CUNNINGHAM: Oh, pardon me. I'm John
25 Cunningham. I am not a resident of the neighborhood.

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1 I would be intending to speak towards the
2 financial viability and financial operational life cycle of
3 the asset based on the evidence so far provided to us and my
4 knowledge based on, say, the bios on the website.

5 I bring --

6 MEMBER WHITE: Is it all -- uh-hum, go ahead.

7 MR. J. CUNNINGHAM: I have reviewed hundreds of
8 millions of dollars of volume in proposed and completed
9 transaction in seniors housing space, including assisted
10 living, memory care, as well as higher acuity care.

11 MEMBER WHITE: Okay.

12 MEMBER HART: And I do, Ms. Ferster, have a
13 question about just the relevance of this, because right now
14 what we're looking at is whether or not the Applicant is
15 meeting the requirements under the Zoning Code, and I don't
16 know what that relevance for this.

17 MS. FERSTER: So, yes, let me respond to that
18 because it's a good, an important point we want to make.

19 So, there are a couple of issues where financial
20 viability is directly related to objectionable conditions,
21 which are directly related to your standard. One, of course,
22 as I think Mr. Cunningham, Mr. Paul Cunningham, pointed out,
23 the Office of Planning in evaluating the special exception
24 standards looked at the question of underground parking,
25 which would, obviously, provide a more sufficient parking on

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1 that site than we believe -- and the Office of Planning said
2 that they did not believe that -- somebody had represented
3 that it would pose an undue financial hardship on the
4 Applicant to provide underground parking. So, certainly, to
5 the extent that the Office of Planning has brought that into
6 play, financial liability is at issue.

7 And the second point is -- and again, this relates
8 to the Office of Planning's testimony -- the Office of
9 Planning has expressed a concern that it's possible that an
10 apartment building, that this use could not be financially
11 viable, eventually that they would seek to convert it into
12 an apartment use, which would, obviously, not be, you know,
13 a matter of right or allowable by special exception in the
14 zone district. And it requested a condition that the
15 Applicant had acceded to, that that not be permitted.

16 So, financial viability of this particular use is
17 directly relevant to the objectionable conditions, and
18 particularly related to the parking, because if this is not
19 a financially viable building and they build it, then the
20 building is here and they will seek to convert it to an
21 additional use.

22 I can't read your handwriting.

23 MEMBER HART: I mean, right now, I'm sorry,
24 there's a lot of kind of hypothetical in there.

25 MS. FERSTER: Yes.

1 MEMBER HART: Because at some point -- right now,
2 we have to address the project that is before us, Ms.
3 Ferster. I have a hard time trying to get to what might
4 happen if this doesn't work. Well, they first have to get
5 to we're going to approve this, and we're not there yet.
6 We're listening to testimony and hearing and understanding
7 whether or not each of the Board members believes, or does
8 not believe, that they have met the criteria. I'm struggling
9 to find the relevance.

10 I don't know about the rest of the Board members
11 -- and I'd let them chime in, if they would like -- I would
12 like to hear, and I know that you have other witnesses that
13 you would like to give testimony to or testify. I'm just
14 having a hard time with relevance. I don't know if the other
15 Board members have that.

16 MS. FERSTER: Let me try one more way to --

17 MEMBER HART: No, no. I want to hear from the
18 other Board members. Since we actually haven't heard from
19 other Board members, let them do a little talking.

20 MS. FERSTER: Okay. Sure.

21 MEMBER JOHN: Mr. Vice Chair, I do not believe
22 that that testimony would be relevant to the issue of
23 parking, which is really what we are concerned about. And
24 I think there will be ample opportunity to ask questions of
25 the Office of Planning after the Office of Planning has

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1 testified. And I did not see anything in the record from the
2 Applicant making any sort of economic argument. So, at this
3 point, I am not inclined to support including this testimony.
4 If it is appropriate at a later time, then I would reconsider
5 it. But I think we should hear from the Applicant as to the
6 Applicant's view of whether or not this testimony is
7 relevant.

8 MEMBER HART: Mr. Miller?

9 MEMBER MILLER: Thank you, Mr. Vice Chair.

10 I would prefer to hear the financial viability
11 argument. I don't know if he qualifies as an expert of
12 financial viability of a memory care facility, but I would
13 prefer to hear the testimony, since they want to give their
14 testimony, and we can determine the relevancy at a later
15 point.

16 MEMBER HART: Board Member White?

17 MEMBER WHITE: I mean, I'm always interested in
18 the subject matter. I'm kind of borderline on the relevance
19 because I don't see how it directly relates to the criteria.
20 So, I understand Mr. Miller is kind of interested in that
21 because it could become an issue at some point. So, I don't
22 know. Maybe a limited amount of information in terms of it
23 might be helpful at some point.

24 MEMBER HART: Can I ask a question, if we actually
25 have written testimony from this witness?

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1 MS. FERSTER: Yes, we do.

2 MEMBER HART: I mean, we could also just take the
3 written testimony and --

4 MS. FERSTER: And that would be fine.

5 MEMBER HART: And that way, we at least have the
6 information. I'm still, like I said, I'm not sold on it
7 being relevant to this particular proceeding.

8 So, how would you feel about that, Commissioner --

9 MEMBER MILLER: I will defer to the Chair because
10 I think that that's your role in this proceeding.

11 (Laughter.)

12 However, I would just say that the issue of onsite
13 parking and the relief that is being sought from the onsite
14 parking requirement I think might be relevant, the financial
15 viability might be relevant to that issue. They are seeking
16 relief from onsite parking which is required for the CCRC
17 special exception and under the parking special exception.
18 So, why they are not providing the required onsite parking
19 is important, and the issue of financial viability might be
20 a dynamic there.

21 MS. FERSTER: Can I ask the Applicant to respond
22 and provide my opinion?

23 MEMBER HART: Sure.

24 MS. FERSTER: Thank you.

25 MEMBER MILLER: I will defer to the Chair and my

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1 fellow Board members.

2 MS. MOLDENHAUER: So, just on the record --

3 MEMBER HART: Sure.

4 MS. MOLDENHAUER: -- a couple of things. One,
5 obviously, we would object to the relevancy. Interestingly
6 enough, when ZR 16 was put into place, the zoning regulations
7 changed parking relief from a variance, when you used to have
8 to prove practical difficulty, and financial viability used
9 to actually have to be part of the potential analysis. Now
10 it's a special exception standard. Nothing in the new
11 special exception standard requires a practical difficulty
12 to be proven, nor has the Applicant asserted practical
13 difficulty here. Rather, we have satisfied the requirements
14 under the special exception standard to deem that it is
15 appropriate to provide a lower degree of relief because it's
16 not sufficient for the site.

17 In addition to that, Vice Chair Hart, if you were
18 to open the record, just as a potential to hear the
19 information and determine whether it's relevant later on, I
20 would ask that you not just simply accept testimony, but
21 allow us to provide cross-examination. And we have, just in
22 case the Board does determine it to be relevant, have a
23 rebuttal witness that we would want to bring forward.

24 But it's really not a question of parking per se,
25 but it's more a question of the assertions made about

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1 viability. But we don't believe that viability is part of
2 the legal standard for special exception relief under this
3 case.

4 MEMBER HART: Okay. So, thank you all for your
5 thoughts on it.

6 How about we do this? How about we listen to the
7 testimony and we'll just hear where we are, because, right
8 now, we haven't heard anything. And if you want to have a
9 rebuttal witness later, that's fine; you may do that, or
10 cross-examination questions at that time.

11 MS. MOLDENHAUER: I did hear questions from
12 Commissioner White about whether he's qualified actually as
13 an expert. I don't know if that's been resolved, and we've
14 obviously raised an objection to that.

15 MEMBER HART: Any thoughts to that from the rest
16 of the Board?

17 MEMBER WHITE: Well, I mean, he has experience in
18 lending. I don't know if I would necessarily look at his
19 resume and say he's an expert, but he's obviously been
20 involved in numerous transactions, which gives him the
21 ability to share his experience.

22 The other concern I have was that I don't know if
23 he had any access to any financials related to this
24 particular transaction. So, I mean, he can give cursory kind
25 of general comments about what his experience has been, but

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1 it may not necessarily relate to this particular transaction.

2 MEMBER HART: Board Member John?

3 MEMBER JOHN: Well, I really have nothing further
4 to add. I don't believe that his testimony would be relevant
5 to my decision for evaluation of the need for the special
6 exception for parking. So, that would be my position.

7 MEMBER HART: Thank you.

8 Commissioner Miller?

9 (No audible response)

10 MEMBER HART: He's shaking his head.

11 So, the question is whether or not Mr. Cunningham
12 can be accepted as an expert witness. We've had quite a
13 lively discussion about this, longer than I thought it was
14 going to be.

15 So, it seems as though that I would rather hear
16 this information and move on with this. So, if we could, I
17 will accept him as an expert witness, and we will have cross-
18 examination, and we'll have the testimony from Mr.
19 Cunningham. So, there we are.

20 MS. FERSTER: Thank you, and he will be brief.

21 MR. J. CUNNINGHAM: Yes. Again, thank you, and
22 you will be presented my full written testimony. I would
23 like to make just four key points, based on my knowledge and
24 based on the facts so far presented.

25 The first is that there are basic criteria which

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1 lenders use to make a determination of the financial
2 viability and creditworthiness of borrowers, and these are
3 directly related to long-term operational and
4 creditworthiness of the operator and financial viability of
5 the transaction. These are pretty universal across the
6 lending board among reputable lenders.

7 The second is that there are significant obstacles
8 in the market at the facility and in the lack of experience
9 that the full development team brings to the table, which,
10 based on the information so far provided, would make it very
11 hard to overcome and create a long-term operational facility.

12 The third point is that the evidence provided so
13 far indicates that neither the sponsor nor the operator as
14 a full development team bring the operational experience and
15 creditworthiness to achieve financing on a permanent basis
16 from a reputable lender or to continue to operate a
17 sustainable financially viable institution. In the event
18 that financing on a long-term basis and cash-flowing assets
19 are unavailable, this would expose the property and borrower
20 to default.

21 So, on to my final point, in the event of a
22 default, the lender would probably do an expedited sale, pass
23 on that asset as quickly as possible, and the buyer would
24 very likely repurpose it into another type of facility,
25 having had the brick-and-mortar construction done.

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1 And with that, I would just conclude by saying
2 again, I have not seen the financial statements, but with
3 particular regard to the market and the operational
4 experience, there seems to be a risk of default.

5 MEMBER HART: Does the Board have any questions
6 for the --

7 MS. FERSTER: All right. We have one more
8 witness.

9 MEMBER HART: I know. I just wondered -- okay.

10 MR. McDIARMID: Thank you, Vice Chairman Hart.

11 I'm Robert McDiarmid. I live at 3625 Fulton
12 Street, Northwest, a block away from the proposed facility.
13 While I once was a lawyer, I am not here testifying as a
14 lawyer.

15 But I have for many years been a part of the
16 zoning infrastructure sort of involving citizens in this
17 city, since the 1970s, when I served on the Wisconsin Avenue
18 Coordinating Committee as the Voting Chairman of Forest Hills
19 Citizens Association. And I've watched very carefully the
20 zoning on Wisconsin Avenue.

21 As the Applicant pointed out, the area here
22 involved is one of the only places on Wisconsin Avenue that
23 is zoned R-1-B and low density. It's been that way through
24 a number of changes of the Comprehensive Plan. It's not a
25 mistake; that has been intended.

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1 Everybody tries to break this, and what those of
2 us who are residents here are concerned about is that this
3 is an attempt, this now third application, third attempt to
4 build something on this site, is an attempt to break the
5 R-1-B low-density zoning on the east side of Wisconsin
6 Avenue.

7 This has for many of us a very serious issue.
8 Many of us moved here into this area because of this zoning,
9 and it's a vibrant, very active neighborhood. It has been
10 for all of us.

11 The Applicants have been saying here, oh, well,
12 this plan is sort of consistent, harmonious with. But look
13 at the things that they say it's harmonious with. And by the
14 way, you have to find something along those lines before you
15 can even get to the question of the parking. The things it's
16 harmonious with is the Russian Embassy (laughter) zoned RA-4,
17 the illegally-built Glover Park Hotel, non-conforming, zoned
18 R-12, the buildings, the high-rise apartments across the
19 street zoned R-5. Sure, it's consistent with those. It's
20 just not consistent with where any of us live and with what
21 the city has said in the Comprehensive Plan and the Future
22 Land Use Map. It should be low density. Low density is
23 important to all of us who try to maintain a neighborhood
24 that is one that works.

25 I've uploaded my full testimony, which goes into

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1 a lot more detail, yesterday afternoon, and I think you
2 should all have it before you. And I ask you that you read
3 it. But I'm over time already and I'm trying to cut this
4 down and still get the main point across. And I hope this
5 works.

6 Thank you.

7 MEMBER HART: Much appreciated.

8 So, Ms. Ferster?

9 MS. FERSTER: And that concludes our case. We
10 have many neighbors, of course, who will be testifying --

11 MEMBER HART: Sure.

12 MS. FERSTER: -- in their individual capacity, who
13 are also members of MAHCA, about the objectionable impacts
14 on them personally.

15 MEMBER HART: Sure.

16 So, right now, we're kind of at -- and I know that
17 we have cross-examination to do. So, I didn't forget that.
18 I sure didn't forget that.

19 (Laughter.)

20 So, I think I'd like to take a few-minute break
21 because we actually have been up here for a couple of hours
22 now, and then, come back for the cross-examination, then go
23 to the Office of Planning, who has been sitting here just
24 listening and watching. And then, go to the public
25 testimony, which will come after the Office of Planning

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1 report, as well any questions for the Office of Planning.

2 So, give us like five minutes, and maybe 10. I'm
3 hearing 10.

4 (Laughter.)

5 So, thank you all very much, and we'll be back in
6 about 10 minutes.

7 (Whereupon, the above-entitled matter went off the
8 record at 1:12 p.m. and resumed at 1:27 p.m.)

9 VICE CHAIRPERSON HART: We left off the other
10 episode. We were beginning the cross-examination of the
11 Applicant, of the, excuse me, party of Opposition's
12 testimony. Before I start that, I just wanted give a little
13 kind of heads up as to the kind of rest of the day.

14 So following this case we will be, I need to have
15 my list now in front of me. We'll be hearing the, excuse me,
16 following this case we'll have lunch, we've got to break for
17 lunch at some point.

18 Then have 19823, at Wisconsin Avenue Baptist
19 church, and then have the appeal which is Application Number,
20 I thought I had it. Which one is that?

21 MR. MOY: It's 19777, Mr. Vice Chair.

22 VICE CHAIRPERSON HART: 19777, ah, got you. Okay.
23 Yes, I see it now. Thank you. And following that, we'll
24 have the decision cases. We do have, we may be losing some
25 members later on if we get past 6:00. But I just wanted you

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1 all to know kind of where we are with this.

2 So thank you, Ms. Moldenhauer, for your, giving
3 me a little time to, I know you're going to start your cross,
4 but I wanted to let everybody know where we are with all of
5 that.

6 So cross-examination of the testimony. You may
7 begin when you're ready.

8 CROSS-EXAMINATION

9 MS. MOLDENHAUER: Thank you, so I'll start out
10 with Mr. Mehra. Under testimony, you stated that the Board
11 is not permitted or cannot grant additional relief. Can you
12 point out the specific section or language of the Zoning
13 Regulations that state that?

14 MR. MEHRA: I did not say the Board cannot, I just
15 said additional relief may not be sought for this parking
16 requirement.

17 MS. MOLDENHAUER: But what's your basis of saying
18 that additional relief may not be sought?

19 MR. MEHRA: Well, the Subtitle U, Section 243.1
20 S-4 states that the user-related facility shall provide
21 sufficient off-street parking spaces for employees,
22 residents, and visitors which implies to me that no
23 additional reduction can be applied for.

24 MS. MOLDENHAUER: But if the Board found that it
25 was sufficient, then they could grant relief. Is that

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1 correct?

2 MR. MEHRA: If they find that there are sufficient
3 off-street parking spaces are available, yes.

4 MS. MOLDENHAUER: You also stated that RPP could
5 not be used for visitors of the property. But isn't it true
6 that if somebody who had a family member who was suffering
7 from dementia that lived in Ward 3 and had a Ward 3 RPP
8 sticker could use RPP parking in the neighborhood?

9 MR. MEHRA: Yes, I guess, technically, yes. But
10 when you're speaking in, you know, a broad sense on a daily
11 basis that's typically not practical, I guess.

12 MS. MOLDENHAUER: And is that based on your
13 understanding of where, typically, guests, or sorry,
14 residents come from in proximity to a memory care facility?
15 Have you studied that? It that where --

16 MR. MEHRA: No, I've not studied that, no.

17 MS. MOLDENHAUER: Thank you. And you reference
18 in your written testimony as well as orally you stated that
19 there were 24 non-RPP spaces. But in fact, the Gorove/Slade
20 Report on September 17th, actually indicates that there's 46.
21 Were you misstated?

22 MR. MEHRA: No, I'm not mistaken? I did not say
23 non-RPP, I said totally unrestricted spaces.

24 MS. MOLDENHAUER: Totally unrestricted spaces.

25 MR. MEHRA: Right.

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1 MS. MOLDENHAUER: Okay, so you're making a
2 distinction then between RPP and totally unrestricted spaces?

3 MR. MEHRA: Yes, because the difference is again
4 the other, there's a parking restriction. You cannot park
5 more than two hours, or you cannot park at certain hours.

6 So the only unrestricted spaces are on Calvert
7 Street on both sides. And Gorove/Slade said there were 24,
8 and actually, when you really count it it's 21.

9 MS. MOLDENHAUER: That does not include, though,
10 someone being able to stay for two hours or less. Correct?
11 You're not including two hour less visitors?

12 MR. MEHRA: You're speaking in general?

13 MS. MOLDENHAUER: Yes.

14 MR. MEHRA: Yes, if you are two hours or less,
15 there are spaces available, yes.

16 MS. MOLDENHAUER: Thank you. And did you as a
17 traffic consultant conduct your own study? Or is there a
18 basis upon which you have refuted the fact that there are
19 over 100 available spaces in the neighborhood?

20 MR. MEHRA: No, I've not done that deep of study,
21 and I'm not saying that all 100 spaces are available or not
22 available. The point I was trying to make is that you cannot
23 count RPP spaces and restricted spaces in availability of
24 spaces for use by employees, visitors, guests, et cetera of
25 the memory center.

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1 MS. MOLDENHAUER: But we just did say that you
2 could have a guest or a visitor that would potentially live
3 in the Ward 3 area and could park unrestricted in an RPP
4 zone.

5 MR. MEHRA: Yes, but then when you look at the
6 probability and the possibility of such an event happening,
7 You come to a very restricted number.

8 MS. MOLDENHAUER: But that's not based on any
9 specific understanding or assessment? That's just your
10 opinion.

11 MR. MEHRA: Yes, that's my opinion. Yes.

12 MS. MOLDENHAUER: And you then questioned the 16
13 available spaces that were counted by Gorove/Slade versus the
14 13 spaces. Is it true that based on the type of car, whether
15 you have, you know, cars parked tighter, whether you have a
16 large van or whether you have maybe a couple of small cars?

17 The streets do vary in regards to how many spaces
18 can fit on a street at any given time?

19 MR. MEHRA: Absolutely, but the thing is, there
20 are two things that you should look at. And I've noted and
21 covered the second part of it. When you're looking at
22 parking capacity, you always give a 10 percent parking
23 efficiency on top of the actual capacity which means that if
24 the parking demand for a site is 30 spaces, for example,
25 you'd actually plan for 33 spaces.

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1 Because it's a standard industry practice that you
2 always have a parking efficiency factor involved, included
3 in it. And I've noted and touched upon that in my testimony.

4 MS. MOLDENHAUER: That's a completely different
5 point that I was asking. My question is when you're counting
6 spaces, not methodology, just counting spaces. There's a
7 variation on how many parking spaces can fit on any block on
8 a day to day?

9 MR. MEHRA: Absolutely.

10 MS. MOLDENHAUER: Thank you. Mr. Cunningham, I
11 just want to confirm, you're an analyst. Is that correct?

12 MR. CUNNINGHAM: Currently, I'm doing --

13 MS. MOLDENHAUER: You don't have your microphone
14 on.

15 VICE CHAIRPERSON HART: You need to turn the mic
16 on. It's okay. We always have to remind folks, so it's
17 okay.

18 MR. CUNNINGHAM: Currently, I'm doing private
19 consulting. Previously, I have served as an analyst, as
20 senior analyst, and vice president where I was overseeing
21 analysts. And at my most recent role, I was an underwriter.

22 MS. MOLDENHAUER: And so the gentleman next to
23 you.

24 MR. McDIARMID: McDiarmid.

25 MS. MOLDENHAUER: McDiarmid, yes. You had stated

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1 that this a third attempt. I was just, this is the first
2 time the Applicant has been before the Board, not a full
3 hearing, so I didn't understand what that was based off of.

4 MR. McDIARMID: It was based on the two earlier
5 attempts. One as, well, two earlier attempts with the
6 community. I don't remember how far. One of them went to
7 the ANC and was ultimately rejected by the Council, by the
8 City Council. That was for the homeless shelter.

9 Approximately the same design and shape of the
10 building, in my point of view, it used every cubic inch
11 possible, just as this one does.

12 And the second one was the, I guess it may have
13 been an earlier iteration of this one, which was intended as
14 a, not as a memory care, but as an assisted living facility.
15 And those are the three that I had in mind.

16 MS. MOLDENHAUER: So MAHCA was opposed to any
17 development and any of the prior developments that were
18 proposed?

19 MR. McDIARMID: No, I didn't say that. But I
20 personally was, but I'm not speaking for MAHCA on that
21 because I was personally opposed to all of them because of
22 the same consideration of inappropriate bulk and size and
23 usage. And in fact, the neighborhood they had different
24 considerations.

25 MS. MOLDENHAUER: Questions, no further question.

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1 VICE CHAIRPERSON HART: Okay, thanks. I was just
2 settling in, and again I'm just joking. I'm very happy that
3 you guys are coming to talk to us about this. Because it's
4 something that we need to hear, so I'm appreciative of that,
5 the effort.

6 I was looking for Ms. Mackwood. Since you're also
7 a party, I didn't know if you had any questions for, and she
8 has -- she shook her head and said no. But I wanted to make
9 sure that you had the opportunity to do that.

10 Ms. Mackwood, I don't know if you want to come to
11 the desk because we're going to move to the Office of
12 Planning report. I don't know if you have any questions for
13 them.

14 And we'd like to have you on mic if you did. And
15 since you're a party, that's why I'm asking that you do that.
16 You can actually do your testimony now. I'm glad that you
17 brought that up. You can come to the desk, please.

18 I'm glad that you reminded me. You do have an
19 opportunity to provide testimony yourself, and then they have
20 an opportunity to cross-examine you as well before we get to
21 the Office of Planning.

22 And I just hadn't, actually the mic, that's not
23 a mic, the other ones are. Yes. I don't know what the other
24 one is, I think it's a, I don't know what it is. A light,
25 maybe. Okay. Welcome, and so the others had 30 minutes.

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1 MS. MACKWOOD: I don't need 30 minutes.

2 VICE CHAIRPERSON HART: Bless you. So if you
3 could start, actually, how much time? Ten minutes?

4 MS. MACKWOOD: Oh, five minutes.

5 VICE CHAIRPERSON HART: Can we go three? It has
6 been a long morning and early afternoon, so far.

7 MS. MACKWOOD: I'll talk quickly.

8 VICE CHAIRPERSON HART: That's okay, it's fine.
9 We'll put five minutes up on the board, and we'll let you go
10 from there. Please.

11 DIRECT TESTIMONY

12 MS. MACKWOOD: Thank you very much. Good
13 afternoon, Vice Chair Hart and members of the Board. I'm
14 Nancy Mackwood the chair of ANC3C, and I'm representing the
15 ANC on this case.

16 You have the September 17th, 2018, ANC3C
17 resolution opposing both special exception requests by MED
18 Development. Being mindful of your time, I will highlight
19 the main points in the resolution. They go directly to the
20 standard of review.

21 To evaluate whether the proposed facility as
22 designed would not likely become objectionable to
23 neighborhood properties because of noise, traffic, or other
24 objectionable conditions. The ANC was looking for more than
25 conclusions.

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1 We were aware that a memory care facility operates
2 on a 24-hour schedule. There are services that can be
3 scheduled and there are services that will be unpredictable
4 due to the patient population.

5 When looking at the services that could be
6 scheduled. We were concerned that the open loading area off
7 the narrow alley would be the center of comings and goings,
8 both for patients and for trucks servicing the program and
9 the building.

10 There is no buffer from noise to the residential
11 properties to the south. And only the residents garages as
12 buffers to the east.

13 We also noted that DDOT reported that it might be
14 difficult for service trucks to enter or exit the narrow
15 alley without removing some on-street residentially
16 restricted parking on Edmund Street and/or Davis Place.

17 There was no evaluation of the existing use of the
18 alley by residents and whether their use of the alley would
19 be affected or whether there were contingencies to ensure the
20 loading area could manage the multiple uses anticipated.

21 Regarding unscheduled services, the ANC did not
22 receive information on the likely need for the numbers of
23 ambulances to meet the needs of the memory care patients.
24 but we assumed there would be sirens, flashing lights on the
25 alley or loading area where the parking also is.

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1 We also noted the significant number of windows
2 in the proposed facility and likelihood that there could be
3 hallway, bedroom, and common area lights on throughout the
4 night which would particularly affect the residents to the
5 south where there are minimal side yards setbacks.

6 The special exception to the number of parking
7 spaces required onsite presented the ANC with two issues.
8 One aspect of the assessment is whether the use needed all
9 17 required spaces or only 9 spaces as requested by the
10 Applicant.

11 If we found that only 9 spaces were needed onsite,
12 that would lead to a finding that 9 spaces were sufficient.
13 But if we found that the required 17 spaces should not be
14 reduced, the ANC still had to decide if the required 17
15 parking spaces was sufficient for employees, residents, and
16 visitors to support the special exception for the use.

17 The Applicant told the ANC that there would 18
18 daytime staff with some overlap during two daytime shifts.
19 The DDOT report stated that a majority of the staff would be
20 administrative and support staff.

21 The designated operator's authority said that
22 direct service staff levels would meet or exceed best
23 practices. But we don't believe there's a ratio included in
24 the Applicant's submissions.

25 At the ANC meeting on September 17th, we were told

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1 the private aides would not be not allowed. Whereas
2 previously we were told that some patients might require or
3 prefer private aides to supplement staff services.

4 The latter was consistent with what some
5 commissioners learned independently about memory care
6 facilities. The Applicant's prehearing submission states
7 that staff levels could be adjusted to meet the needs of the
8 residential population.

9 The ANC concluded that we don't really know what
10 the staff totals for a shift will be and thus the potential
11 parking demand. Regarding visitors, the ANC was not given
12 any projections for likely numbers of visitors or the
13 duration of their visits.

14 We were told the visitors would be limited to
15 business hour visits which seemed to us a difficult
16 limitation for this patient population.

17 With uncertain numbers of staff and visitors
18 traveling to the proposed facility, the ANC turned to the
19 sufficiency of off-street parking for the members of staff.
20 We were given, and unspecified numbers of visitors.

21 DDOT and the Applicant believe that parking isn't
22 an issue because people will travel to the facility by bus
23 or bike. The ANC did not think their conclusion was
24 reliable.

25 Having several or multiple bus stops near the

1 location is not enough to conclude that the bus line connects
2 conveniently and reliably with other transit lines and metro
3 lines needed to get from one's home to this location.

4 An informal survey of the staff at another D.C.
5 memory care facility revealed that most of the staff lived
6 far from the facility and nearly all of them drive.

7 Looking next to whether there is sufficient
8 parking outside the boundaries of the facility, the ANC was
9 not persuaded that 9 or 19 or 17, excuse me, off-street
10 spaces would be adequate based on the other parking options.

11 Nearly the entire area is signed for two-hour
12 restricted residential parking. The one block without
13 restrictions borders the Glover Park/Wisconsin Avenue
14 commercial corridor and Guy Mason Recreation Center and
15 playground.

16 It's well-known that this block is unique in not
17 having metered or restricted parking. For daytime shift
18 workers, the on-street spaces would have to be available by
19 6:45 a.m. or 2:45 p.m.

20 And for visitor spaces would have to open
21 throughout the day unless they limited the visit to two hours
22 and could find restricted parking spaces.

23 In its report, DDOT states that there are no
24 parking garages nearby and that on a typical weekday there
25 will not be enough unrestricted curbside spaces to

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1 accommodate even the employees.

2 At the ANC on September 17, the Applicant's
3 traffic consultant stated he found three garages in the
4 vicinity which were not mentioned in his original traffic
5 report with either valet parking or monthly parking space
6 leases.

7 Given that the ANC considered our position on this
8 case, at that meeting we did not have an opportunity to
9 investigate the reasonableness or the expense of the staff
10 or visitors using those garage options.

11 ANC3C concluded that the Applicant had not met its
12 burden of showing that it would not likely create
13 objectionable conditions in the neighborhood, or that it
14 would provide sufficient off-street parking for employees and
15 visitors.

16 Thus, ANC3C does not support the special exception
17 for the use and the special exception to reduce the parking
18 requirement. Thank you.

19 VICE CHAIRPERSON HART: Thank you, and I should
20 have been saying this, Commissioner Mackwood. I appreciate
21 that if you, I didn't know if the Board members have any
22 questions. I haven't been looking at the Board and asking
23 them, so I apologize for that. But, sure.

24 MEMBER WHITE: I had just a couple of questions.
25 So thank you very much, your testimony was good, and it was

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1 brief and to the point. It doesn't have to be long in order,
2 you know, to be clear.

3 But I did have a question for you. Was it the
4 opinion of the ANC that this type of facility, there was a
5 need for this type of facility at all? Or was it more, maybe
6 there is a need but, you know, given the parking constraints
7 it's not going to be something that we'd want to support.

8 I don't know if that question was clear but is the
9 ANC objection, the biggest objection is to this type of
10 facility being on that block because of the nature of the
11 facility, a 24-hour facility?

12 MS. MACKWOOD: Mm-hmm, we looking for -- the ANC
13 did not really discuss that in any particular depth. And I
14 think the reason that we didn't is because there is probably
15 uniform support for having assisted living care facilities
16 throughout the city including in our neighborhood.

17 But we hope that the, in fact, I'd be remiss with
18 Mr. Miller here to not say that I think we would all support
19 removing the IZ exception from assisted living.

20 I think that's, you know, these and this is an
21 affliction, and aging conditions have no income level
22 associated with them, and they're universal.

23 So I wouldn't interpret anything in our resolution
24 to indicate that we do not support these facilities, but we
25 return to, adhere to the special exception standards.

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1 MS. WHITE: Was there ever any discussion about
2 supporting it if the parking situation was different, i.e.,
3 underground parking or I mean, I don't know if those
4 discussions came up in the ANC? I'm just curious.

5 MS. MACKWOOD: No, because we dealt with what the
6 facts that we had before us. We didn't speculate about, you
7 know, if you change this or you change that, we might change
8 our position.

9 But I think you can read into our resolution and
10 our opposition to the parking exemption that if the parking
11 situation were different and we could find that it was
12 adequate that we might have reached a different conclusion.
13 At least as far as special exception is concerned.

14 VICE CHAIRPERSON HART: Okay, no other questions?
15 We're going to be, no, okay. Don't be, you can't point. I'm
16 sorry. If you could, we could start with the cross-
17 examination. And I'm looking at Ms. Moldenhauer.

18 CROSS-EXAMINATION

19 MS. MOLDENHAUER: Sorry, so two points of
20 clarification. The ANC reviewed this as CCRC. Is that
21 correct?

22 MS. MACKWOOD: Yes.

23 MS. MOLDENHAUER: And when the ANC, I remember,
24 we were at a meeting, and you were talking similarly to kind
25 of give us the background that you were referencing about the

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1 distance and the timing of public transit and the challenge
2 of that for the site, in your opinion.

3 You referenced times that the ANC considered, and
4 was it correct that you considered times when employees would
5 be traveling from Ward 7 and Ward 8. Is that correct?

6 MS. MACKWOOD: I provided some information at the
7 ANC meeting to you, the Applicant, just about my, sort of,
8 anecdotal research as to how long it would actually take and
9 what would be involved for someone who lived in Ward 7 or
10 Ward 8 to get to a facility at this location, in order to
11 arrive in time for the two daytime shifts.

12 MS. MOLDENHAUER: No other questions.

13 VICE CHAIRPERSON HART: Okay, Ms. Ferster.

14 MS. FERSTER: Yes, thank you. I just have one
15 question. So the Applicant provided in its October 24th,
16 supplemental report of Gorove/Slade, its traffic engineering.

17 A couple of Transportation Demand Management
18 points that it would include in some kind of future TDM plan.
19 And the first question is, did you consider, you the ANC,
20 consider a proposed TDM plan as part of your deliberations?

21 MS. MACKWOOD: No, we didn't.

22 MS. FERSTER: Okay, and when did you have?

23 MS. MACKWOOD: It was September 17th, I believe.
24 So it was prior to that.

25 MS. FERSTER: Prior to that, okay, and so the

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1 Applicant represented that DDOT had approved their TDM
2 report. Were you aware that DDOT approved their TDM plan?

3 MS. MACKWOOD: Yes, I believe we knew that prior
4 to, yes, we did know that prior to the ANC meeting.

5 MS. FERSTER: And when did that take place? It
6 would have had to take place after October 24th, presumably.
7 Right?

8 MS. MACKWOOD: No, we were aware that DDOT had --
9 well, let me make a distinction. We were aware of the DDOT
10 report and were familiar with. In fact, I had a conversation
11 with the DDOT analyst prior to our September 17th meeting.

12 So anything that was submitted after that, so if
13 DDOT subsequently approved a TDM, we were not aware of that.

14 MS. FERSTER: Okay, all right. So if it's not in
15 the September 14th DDOT report, that's all you know?

16 MS. MACKWOOD: That's right, that's right.

17 MS. FERSTER: Okay. That's all for me.

18 VICE CHAIRPERSON HART: Thank you. So let's move
19 to the Office of Planning. Good afternoon, and I'm assuming
20 there are no other questions for the Applicants or the ANC
21 or the Party of Opposition?

22 MEMBER MILLER: Well, I haven't asked any
23 questions of the Applicant. I don't think any of us have.

24 VICE CHAIRPERSON HART: No we haven't, I didn't
25 know if you wanted to go to OP first or --

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1 MEMBER MILLER: Yes, that's fine.

2 VICE CHAIRPERSON HART: Okay, thank you.

3 DIRECT TESTIMONY

4 MR. LAWSON: Thank you, Mr. Chair. My name's Joel
5 Lawson with the D.C. Office of Planning. In the interest of
6 time, the OP happy to, is willing to stand on the record of
7 the report by recommending approval of this application.

8 I would note that OP recommended one condition
9 associated with this, and that's really a clarification in
10 the order that any approval, if granted by the BZA, clearly
11 state that it's for this specific kind of facility.

12 This is because a different kind of facility, a
13 different kind of seniors' facility, could have different
14 impacts, including particularly related to the requested
15 parking relief.

16 So any different kind of facility, we felt, should
17 undergo this public process for that use. We just wanted to
18 make sure that the record, sorry, that the order was very
19 clear on that. And I believe the Applicant has agreed to
20 that. And with that, I'm happy to take questions. Thank
21 you.

22 VICE CHAIRPERSON HART: Let me see if the Board
23 has any questions for the Office of Planning? Please.

24 MEMBER MILLER: Thank you, Mr. Vice Chair. Thank
25 you for that report, Mr. Lawson. And I appreciate the

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1 recommendation for the condition if we ever got to an
2 approval that it would be limited to this type of assisted
3 care facility, amended to that so that any other change in
4 the future would have to come back.

5 There's a letter in our record from Councilmember
6 Cheh, well, actually there are two letters maybe from
7 Councilmember Cheh on this case. But the most recent letter
8 brings up a number of points and asks for DDOT to address
9 them.

10 I just would like you, I don't think we've gotten,
11 I don't know if she's gotten a response. I don't think we
12 have anything in our record from DDOT.

13 If you can just check with your sister agency,
14 DDOT, and make sure that a response is at least provided in
15 our record to the points that are in Councilmember Cheh's
16 letter which I found somewhat persuasive.

17 I just think we need to have that in the record.
18 They probably are working on that. Just a couple of
19 questions. I think your report notes this that other than
20 the special exception relief for the CCRC use and the special
21 exception relief for parking.

22 Otherwise, this facility, its massing, its height,
23 its lot occupancy, otherwise meets the zoning requirements
24 for the R-1-D zone?

25 MR. LAWSON: That's certainly our understanding,

1 the Applicant has not requested any additional relief. So
2 the building would have to conform to all other requirements.

3 MEMBER MILLER: Right, and that's the question I
4 also wanted to confirm with the Applicant when we get to that
5 point. I think that's it for now, Mr. Vice Chair. Thank
6 you.

7 VICE CHAIRPERSON HART: Board Member White.

8 MEMBER WHITE: Yes, one question that's directly
9 related to the special exception criteria for continuing
10 care, retirement community use.

11 I thought it would be interesting just for you to
12 verbally state on the record, you know, maybe some feedback
13 regarding why OP, why is it that OP had the position that
14 this particular facility was not objectionable to neighboring
15 properties?

16 You heard some testimony today about concerns
17 about traffic and noise and other types of conditions. But
18 I thought it would be helpful to me just get you to maybe
19 summarize that for me quickly so we could all kind of
20 reprocess that information. Thank you.

21 MR. LAWSON: Sure, happy to. With respect to
22 traffic and transportation, we would defer to DDOT which
23 issued a report stating no concerns or no objections to this
24 application.

25 In other respects, the regulations are pretty

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1 clear in terms of what the review criteria are. Our report
2 goes through those criteria mostly with regards to the
3 special exception for the continuing care use itself on Page
4 4, kind of, and onto Page 5 of our report.

5 We felt that it adequately met all of those
6 criteria and so that's why we were able to recommend
7 approval. The one issue, of course, is the parking issue.
8 And they have requested relief from parking.

9 So should the Board find that the requested relief
10 from the parking spaces has been justified and that the
11 number of spaces are adequate we believe that they've then
12 met that criteria. I think it's Criteria No. 4 for providing
13 sufficient off-street parking spaces.

14 VICE CHAIRPERSON HART: Board Member John.

15 MEMBER JOHN: Yes, just one question. A few of
16 the witnesses talked about the Comprehensive Plan and whether
17 or not this project would fit, you know, within the policies
18 of the comprehensive plan.

19 Can you address what OP's position on that would
20 be now that ZR16 has more or less established what the
21 purpose for this zone would be and the types of and density
22 of projects that could be developed with approval from BZA?
23 Thank you.

24 MR. LAWSON: Sure, happy to address that one. The
25 Comprehensive Plan actually isn't even relevant to this

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1 discussion. The Board's only adjustment is dealing with very
2 specific review criteria, none of which are the Comprehensive
3 Plan.

4 Rather the Zoning Commission addressed the
5 Comprehensive Plan issues if there were any when they
6 reviewed the text amendment related to this case. So the
7 Zoning Commission determined that this kind of use was
8 generally acceptable and consistent with the intent of this
9 kind of zoning.

10 And established that it would be subject to
11 special exception so that those review criteria could be put
12 into zoning and assessed by the Board. So as with all Board
13 of Zoning adjustment cases, the Comprehensive Plan simply
14 isn't part of the discussion.

15 MEMBER JOHN: Thank you.

16 VICE CHAIRPERSON HART: Okay, does the Applicant
17 have any questions for the Office of Planning?

18 MS. MOLDENHAUER: Sorry, I just want to confirm.
19 There was a reference made during the Opposition's testimony
20 that the facility should not be defined as a CCRC but rather
21 potentially a medical health facility.

22 Is the Office of Planning's confirmation that they
23 are assessing this appropriately under a CCRC definition?

24 MR. LAWSON: Yes.

25 MS. MOLDENHAUER: Thank you. And there's also

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1 another comment that was made in opposition that these
2 regulations have changed. I've looked at older cases that
3 have evaluated assisted living, and they're always evaluated
4 whether it's sufficient parking or adequate parking.

5 Is it your understanding that the overall special
6 exception standard has changed in any way under ZR16?

7 MR. LAWSON: The Zoning Commission took this case
8 up in 2016 to clarify the provisions related to this. That
9 happened relatively smoothly, and my understanding is with
10 no opposition, but that's the extent of what I know on that.
11 Thanks.

12 MS. MOLDENHAUER: Thank you. No further
13 questions.

14 MS. MACKWOOD: The ANC has no questions.

15 VICE CHAIRPERSON HART: Thank you. Ms. Ferster.

16 MS. FERSTER: Good afternoon, Mr. Lawson.

17 MR. LAWSON: Good afternoon.

18 MS. FERSTER: Just let me start with a couple of
19 just very quick technical corrections. We've heard testimony
20 from the applicant that this is a 34-unit CCRC and your
21 report says it is a 32-unit. Is that correction, an error
22 in your report?

23 MR. LAWSON: I believe it is for a 34-unit
24 facility, yes.

25 MS. FERSTER: Okay, and then in your statement

1 about what the normal parking requirements would be for what
2 we now know is a 34-unit building. You stated that the
3 required parking was 19, but other people have said the
4 required parking is 17, you know, one space for every two
5 units. Is that a correction that you would make as well?

6 MR. LAWSON: I believe so, I've not looked at that
7 one though.

8 MS. FERSTER: Okay. There are a couple of points
9 that you made in your report that I just wanted to follow up
10 on because there were some statements you made relating
11 things that you felt that the Applicant should do. Okay.

12 So the first thing, I think, was on Page 5. You
13 talked about that the Applicant should provide additional
14 information regarding drainage on the property to ensure that
15 it does not adversely impact neighboring properties.

16 Can you explain this concern a little bit? That's
17 the first question.

18 VICE CHAIRPERSON HART: Ms. Ferster, which page
19 are you on?

20 MS. FERSTER: On Page 5.

21 VICE CHAIRPERSON HART: Okay, Page 5 --

22 MS. FERSTER: In the middle of that page, under
23 2, little point 2.

24 VICE CHAIRPERSON HART: Thank you, Exhibit 50.

25 MS. FERSTER: Yes, the OP report.

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1 MR. LAWSON: Yes, I think we heard this comment
2 from somebody in the neighborhood. Although this is
3 something that would be normally addressed through the
4 building permit process rather than through the Board of
5 Zoning Adjustment process.

6 We felt that it might be appropriate for the
7 Applicant to address that to make sure that the neighbors
8 were satisfied.

9 MS. FERSTER: Okay, and do you know whether the
10 Applicant addressed this?

11 MR. LAWSON: As far as I know they have not but
12 that would be a question for the Applicant.

13 MS. FERSTER: So just to follow-up. Would this
14 be something that you would suggest would be an appropriate
15 condition for a BZA order?

16 MR. LAWSON: Usually not, again, this is dealt
17 with through the building permit process.

18 MS. FERSTER: Okay. All right. So just following
19 up on Applicant's counsel's question about sort of the
20 treatment of the CCRC under the zoning regulations, the 2016
21 Zoning Regulations.

22 Are you familiar with the Zoning Commission
23 rulemaking process which is in Case No. 17-01 where they, the
24 Zoning Commission, in 2017 adopted very specific new
25 standards governing CCRCs and particularly, I would direct

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1 you to the standard that a lot of, that there's been several
2 references to which is at 203.4, 203.1(f).

3 And I'm particularly directing you to (f)(4)
4 because there's been a lot of discussion, "The use and
5 related facility shall provide sufficient off-street parking
6 spaces for employees, residents, and visitors."

7 That's new in ZR16, isn't that correct?

8 MR. LAWSON: To be honest, I'm not sure.

9 MS. FERSTER: Okay, well, I'm going to drill down
10 on that for a minute. If we could look at your report where
11 you address that factor, and that would be on Page 4 of your
12 report in Factor 4.

13 And you indicated that a total of nine parking
14 spaces would be provided whereas we now know 17 spaces are
15 required. And then you didn't really go any further in
16 analyzing whether this was sufficient.

17 Instead, you simply referred to the analysis under
18 the special exception for a reduction in parking under
19 Subtitle C, Section 703.2.

20 So I guess that raises a question about your
21 interpretation of this new provision in the Zoning
22 Regulations that requires as a condition of the CCRC that the
23 Applicant "demonstrate that the use and related facility
24 shall provide sufficient off-street parking spaces for
25 employers, residents, and visitors."

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1 Do you see that as somehow being the same standard
2 as the special requirements for parking? I mean is that a
3 basically something that can be reduced based on the special
4 exception rules?

5 MR. LAWSON: I'm not sure I understand the
6 question, but I would note that the provision says to provide
7 sufficient not the required number of parking spaces per
8 zoning. So the sufficient number of spaces could be more
9 than what the zoning requires or it could be less.

10 In this case, they're asking for relief from the
11 parking requirements, so the review of what is a sufficient
12 number of parking spaces and what's appropriate is done
13 through that special exception review. So if that answers
14 your question?

15 MS. FERSTER: Somewhat, yes. So let me just
16 follow-up on that because the language is very specific. It
17 doesn't say just sufficient parking spaces; it says
18 sufficient off-street parking spaces. And if we go down --

19 MR. LAWSON: Exactly, it does.

20 MS. FERSTER: And so in the analysis under the
21 general special exception requirement under 703.2, you refer,
22 and of course the Applicant refers repeatedly to on-street
23 parking spaces as somehow supplying the required parking
24 spaces.

25 So how do you reconcile reliance on the general

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1 special exception requirement for parking which apparently
2 allowed consideration of on-street parking to the specific
3 language here that specifically talks about sufficient off-
4 street parking?

5 MR. LAWSON: Well, we didn't interpret the review
6 that way. The review for the special exception relief for
7 parking is relief from on-site parking. As part of that,
8 applicants can certainly talk about what other parking might
9 be available whether it's parking in off-site locations or
10 commercial parking lots in the neighborhood.

11 That is part of the review process but the relief
12 that would be granted, if it's granted by the Board, is
13 relief from on-site parking spaces. So it's directly
14 related.

15 MS. FERSTER: Okay. So just to follow-up on that,
16 so basically you're saying that you can waive a requirement
17 of 203.1(f)(4) based on the conformity with the special
18 exception requirement, the general Subtitle C special
19 exception for parking?

20 MR. LAWSON: No.

21 MS. FERSTER: They're just one and the same?

22 MR. LAWSON: I think I've answered this question
23 more than once but what we're saying is that the provision
24 here is whether or not there is sufficient off-street
25 parking.

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1 Through the review of the relief request for on-,
2 off-street, onsite parking. That's how that parking level
3 is being established.

4 MS. FERSTER: Okay. All right, let me ask you a
5 question, and this is actually not in your report, but it
6 seems like it should have been in your report because you did
7 address under the general parking standard, you did address
8 you know that you felt that the Applicant had satisfied the
9 Subtitle C parking special exception requirement.

10 So I want to go through a couple of questions
11 about that. The first question I have has to do with your
12 first point is A., let's see if I'm here, A. "Due to the
13 physical constraints of the property, the required parking
14 spaces cannot be provided either on the lot or within 600
15 feet of the lot."

16 So you in addressing Lot A, you make the point
17 about, and you say, "There's alternatively the provision of
18 below-grade parking would create a financial hardship for the
19 proposed use and result in unnecessary additional impacts on
20 the neighborhood."

21 And the Applicant actually did not testify to that
22 today, and I couldn't find anything in their application
23 materials that described the specific reasons why they
24 couldn't do the below-ground parking.

25 And I don't hear any neighbors raising the

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1 potential of below-grade parking as something that they
2 particularly would object to, but of course, we'll hear from
3 the neighborhood later. So the question is what was the
4 basis for making this assertion?

5 MR. LAWSON: Sure, thanks. What I suspect
6 happened is that OP basically extrapolated that comment due
7 to the considerable cost of doing underground parking. We
8 often hear from people that underground parking is
9 considerably more expensive.

10 The Applicant is actually correct in this case
11 that a financial hardship is not really part of the review
12 criteria. So actually I'm happy to just simply withdraw that
13 comment from our report.

14 MS. FERSTER: Okay, so good to know. Good,
15 because it seems to me that it doesn't seem relevant to the
16 physical constraints of the property, financial hardships.

17 MR. LAWSON: I agree.

18 MS. FERSTER: So turning next to your point on,
19 let's see, you cite B. on bicycle infrastructure improvements
20 are planned and that would be the proposed use would be well-
21 suited to people coming on bicycle.

22 Do you have any basis for believing that visitors,
23 employees, presumably not residents, will be coming to the
24 site by bicycle? Is there some basis for this?

25 MR. LAWSON: It's an option that's available to

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1 people.

2 MS. FERSTER: Okay, sure. That's a good option.
3 So turning to your points under C., D., and E. which is, you
4 know, where you primarily find the basis for the special
5 exception. It does appear, and I think I made earlier, that
6 a lot of this, the basis is based on the potential
7 availability of on-street parking.

8 And just, so you've answered that question. But
9 I did want to follow-up on the issue of the parking garages
10 because in several places you say OP's not aware of
11 commercial parking lots and we've heard testimony that there
12 are some hourly lots that are here.

13 And then earlier you say that there are none
14 within 600 feet. Have you reviewed these parking garages
15 that are identified by Applicant? Are they within 600 feet?
16 Are they farther than 600 feet?

17 MR. LAWSON: We've not reviewed that.

18 MS. FERSTER: Okay. But you were not aware of any
19 that were within 600 feet when you wrote this report?

20 MR. LAWSON: We were not.

21 MS. FERSTER: Okay. And then I guess the point
22 I wanted to also follow-up on, although this is not in your
23 report, but it is related to the standard for the special
24 exception, the parking special exception and that is the
25 standard in 703., let's see, 703.4.

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1 It says, "Any request for reduction in the minimum
2 required parking shall include a Transportation Demand
3 Management plan approved by DDOT. The implementation of this
4 shall be a condition of the BZA's approval."

5 So we've heard various testimony that from the
6 Applicant that DDOT has approved the plan. The ANC said,
7 well, the DDOT report was on September 14. The TDM Report
8 by the Applicant was in their October 24th report.

9 So clearly DDOT in their September 14th report did
10 not approve TDM plan because it wasn't before them. And I
11 guess the question for you is since DDOT is not here, are you
12 aware of whether DDOT has approved a Transportation Demand
13 Management plan?

14 MR. LAWSON: You're correct that I can speak for
15 DDOT, but I'm not aware.

16 MS. FERSTER: Okay, and I guess that does raise
17 a question since there was a request from the Board for a
18 DDOT supplemental or follow-up report is that I am troubled
19 that DDOT is not here, cannot answer questions, and is
20 apparently going to be asked to provide a document, you know,
21 after the hearing closes for everybody else.

22 And so I'd ask that the parties be allowed an
23 opportunity to provide a written response to that. And I
24 would also ask to specifically, you know, address that issue
25 as well because I think there's a clear question about

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1 whether or not DDOT has or has not approved a Traffic Demand
2 Management plan.

3 VICE CHAIRPERSON HART: Do you have any further
4 questions?

5 MS. FERSTER: No, that's it.

6 VICE CHAIRPERSON HART: Let's see so, I think
7 we're going to, and I did hear the question that you asked,
8 Ms. Ferster and I think that we can request from DDOT just
9 a clarification on if they have or have not approved the TDM
10 plan.

11 And I understand that the Applicant has stated
12 that they have. I just wanted to get that from DDOT and have
13 that on the record. So I think what we'll do is move to the
14 public testimony. And I'll ask the folks that are sitting
15 at the table now if you could make way for the folks that are
16 going to be testifying.

17 I understand that there may be one or two of you
18 that are in the audience that would like to testify and I'm
19 making a joke about that. But I'd like to first hear from,
20 typically, what we do is we have folks that are in
21 opposition, folks that are in support. They come and give
22 their testimony.

23 Because we have received quite a number of letters
24 in the record in opposition, I'm going to ask for the folks
25 that are in support first. And then work through the

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1 opposition. If you, I don't know if anyone is here in
2 support. Raise your hand. Okay.

3 So okay, I didn't see any hands. So there are
4 going to be folks that are in opposition. What I'd like to
5 do is see if I can get folks that are in opposition that are
6 within 200 feet, first.

7 And if you could kind of give me a raise of the
8 hand to see how many folks we're talking about that are
9 within 200 feet. I have six people right now within 200
10 feet, okay, opposition within 200 feet.

11 So if you all could come to the table now, I
12 understand that you're going to ask questions, so I
13 understand why you're there. Yes, yes. If you could fill
14 in the seats that are over here. We have a number of seats
15 that are available.

16 So what we'll do is and so how many people are not
17 within 200 feet but are in opposition that are here? If you
18 could just raise your hand, I'm just trying to get a count.
19 Okay.

20 Another curveball, yes, so we'll start with this
21 and then we'll, once these folks are finished we'll get to
22 the folks that are outside of that. It's just to kind of
23 have an idea of it; there's not a particular good or bad or
24 within or without 200 feet. It's just a way for us to kind
25 of move through this methodically as much as we can.

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1 Yes, Ms. Moldenhauer?

2 MS. MOLDENHAUER: Just a point of clarification,
3 there's been these images that have been put up, but there
4 haven't been objected --

5 VICE CHAIRPERSON HART: I'm going to, I'm going
6 to address that.

7 MS. MOLDENHAUER: -- just so the record is, thank
8 you very much.

9 VICE CHAIRPERSON HART: I agree with that, and I
10 was trying to figure out where they were coming from then I
11 realized they were coming from the laptop that was there.

12 And they were just kind of cycling through them
13 as they were talking about various things. But I'll address
14 that after we get through the testimony.

15 MEMBER MILLER: Mr. Vice Chair, I just want to,
16 I'm glad we're proceeding with the public testimony. People
17 have been here a long time, but we haven't asked any
18 questions of the Applicant.

19 VICE CHAIRPERSON HART: Oh, I'm sorry, I'm sorry.

20 MEMBER MILLER: I'll do it at rebuttal, at the
21 time when they come back for rebuttal, I just do have a few
22 questions of the Applicant.

23 VICE CHAIRPERSON HART: I appreciate you reminding
24 me of that. I've been somewhat focused on the process and
25 haven't really been focused on asking questions, seeing if

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1 the Board has questions at the appropriate times.

2 And you're right, Commissioner Miller, about that.
3 I'll make sure that I write that down and move forward with
4 it. I know you will.

5 Okay, so if you could. When you're presenting,
6 and we'll just go, you can present, state your name, your
7 address, and then give your, and each of you are representing
8 yourselves as individuals so you'll have three minutes a
9 piece.

10 If you'll give your name and then give your
11 presentation or your testimony and then we'll move to the
12 next person, they can announce who they are and what their
13 address is. So, thank you. Welcome.

14 PUBLIC TESTIMONY

15 MS. ALOI: Thank you, Vice Chair Hart and members
16 of the Board. My name is Amiee Aloï, and I live at 2617
17 Wisconsin Avenue which is the home immediately adjacent to
18 the proposed project on the south side.

19 If you do reference the images that you see on
20 your screen, and the image with red arrows with the small
21 white box to the south side of the proposed facility.

22 VICE CHAIRPERSON HART: So you address them, and
23 I'll just say, at some point, we're going to have to all
24 these images, they're not in the record at all. And I
25 understand that your time is going down.

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1 So we need to make sure that we get them. The
2 reason is that they're nowhere except for on here. And it's
3 helpful for us to be able to say, in Exhibit 3 you have this
4 image or you know, to reference it later. So that's why we
5 want to know where those are.

6 MS. ALOI: We can make sure that happens.

7 VICE CHAIRPERSON HART: Thank you.

8 MS. ALOI: I thank you for your patience today,
9 and for your moments of levity. As you can imagine, this is
10 very important to us as an immediate neighbor. I'll also
11 submit my full testimony for the record. I have a longer
12 testimony as well but want to summarize it today for you.

13 I believe this project would subject us, my
14 husband and I, to the loss of light, privacy. Would endanger
15 our safety and the safety of our neighbors. And would
16 directly subject our private residential backyard to the
17 noise, pollution, and commercial traffic of the proposed
18 institutional facility.

19 The application merely states that the project
20 will not adversely affect the use of the neighboring
21 property, and provides no evidence to substantiate this
22 statement, even though the law states that the Applicant
23 shall have the full burden to prove no undue adverse impact.

24 And shall demonstrate such through evidence in the
25 public record. The Applicant has this burden even if there

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1 is no opposition to the case. And as you are aware, there
2 is enormous opposition to this proposed development.

3 According to the proposed site layout, the loading
4 area would be 15 feet from the back of our house, and
5 immediately next to our backyard where we cook, relax, and
6 play with our one-year-old nephew.

7 There would be at least two food deliveries per
8 week, trash pickups, mail, UPS, FedEx deliveries, pharmacy
9 deliveries, emergency vehicles, and others that are expected
10 to parallel park in the loading area.

11 This would cause a disturbing increase in the
12 level of noise beyond that expected from a single-family home
13 that might be next door. This would also introduce a source
14 of dangerous engine emissions to flow consistently into our
15 backyard because the traffic flow will position the rear of
16 all vehicles towards our yard.

17 According to the Applicant, there would be a
18 commercial laundry facility on the south side of the
19 building, next to our house, which would vent directly into
20 our yard. Dryer exhaust isn't only water vapor but also
21 carbon monoxide and possibly other chemicals that have
22 classified on the EPA's hazardous waste list.

23 Since the Applicant is seeking to combine Lots 44
24 and 812, which are on an incline, the building height
25 measuring point will shift further uphill allowing them to

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1 build a structure significantly taller than what would be
2 permitted for a single-family home on the neighboring lot.

3 The proposed three-level building plus mechanical
4 penthouse would sit at the highest point on the block, making
5 it nearly twice as tall as our home. This is a clear and
6 direct adverse impact on me and my family and my property.

7 Because of the towering nature of the building,
8 all the windows on the south and east side will have direct
9 lines of sight over fences, garages, and trees into my house
10 and the bathrooms, bedrooms, and backyards of the neighboring
11 homes.

12 The tremendous size of the building would block
13 sunlight during the day, again, beyond what would be expected
14 of a neighboring single-family home next door.

15 At night, in order to provide for the safety of
16 the residents and staff, the project would need to have
17 complete external lighting from the top down. And again,
18 there would be significant light trespass, particularly to
19 the side and the rear of surrounding homes.

20 Finally, I'm concerned extremely about the
21 significant lot coverage proposed by this project that would
22 exacerbate water runoff. We already face an exorbitant
23 amount of water runoff due to the narrow passageway between
24 our home and the existing home.

25 And the project's plans show no option of

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1 mediating this potential water runoff and again, have
2 significant lot coverage. In summary, the Applicant has not
3 provided any evidence that its proposed facility would not
4 have an adverse impact on us and our neighborhood.

5 Instead, this proposed project would have many
6 direct serious consequences on my home and on my right to
7 quiet enjoyment of my property. Thank you.

8 VICE CHAIRPERSON HART: Thank you very much. And
9 sorry about the beeping, it was because I stopped you in the
10 middle of your testimony, yes, your testimony. And that kind
11 of gets me to another point that I should have brought up
12 earlier.

13 As you're listening, as each of you are listening
14 to the other people that are giving their testimony. You
15 don't have to repeat what they have said. So that we can,
16 you know, in trying to make things a little more efficient
17 as much as I can.

18 You could just simply say that you, you know,
19 agree with the points of, you know, the folks in front of
20 you. And you'd like to make X, you know, point as well. So,
21 thank you. Welcome.

22 MR. BROWNFIELD: Thank you, Vice Chairman Hart,
23 members of the Board. My name is Bill Brownfield, I live at
24 2604 36th Place, directly across the alley from the southeast
25 corner of the lot under consideration.

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1 I agree with everything that everyone will say now
2 already and in the future on this site, I wish to
3 specifically address the issue of the alley and make three
4 simple points.

5 One, for the neighborhood this alley is not just
6 a blob of concrete. It is in fact where virtually all of our
7 activity occurs. It's a hundred yards long; it is 12 feet,
8 9 inches wide at its narrowest point.

9 There are 11 houses, 10 occupied, that back onto
10 the alley. Thirty-three people live in those ten houses, 9
11 of them are children under the age of 12. We have access to
12 our garages, garbage, and recycling is picked up.

13 And when we have work being done, it comes through
14 the alley. Pepco goes through the alley, gas goes through
15 the alley, and the cable guy goes through the alley. When
16 the alley is blocked, we cannot get things done in the
17 neighborhood.

18 Second point, MED Developers have offered a plan
19 that involves the alley, and it is our judgment that the plan
20 is not workable. It simply will not work, we can argue about
21 the numbers of additional people brought on by this proposed
22 facility.

23 But the basic number is we are going to triple the
24 number of people who are going to be using this alley for
25 access to and from our residences or our facility. The

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1 loading dock will be in the alley. The nine parking places
2 will be in the alley.

3 And ladies and gents, we have proven over the last
4 ten years that I have lived there that it takes only one
5 vehicle to be blocking the alley that makes the alley
6 absolutely blocked over and above the noise, the pollution,
7 and the traffic.

8 Point three is the safety concern. And I wish to
9 make the point fairly emphatically that there is a safety
10 issue here. The neighborhood kids play in the alley. They
11 shoot hoops; they ride their very noisy skateboards and
12 scooters.

13 And if you asked them why they're doing it, they
14 say it's because their parents don't want them playing in the
15 street. Which undoubtedly is true, the reality is they're
16 in the alley.

17 And it takes only one tired employee who has just
18 finished an overnight shift and wants to get home. Or one
19 delivery driver who has got to make another delivery in the
20 next 15 or 20 minutes to make a mistake and we've got an
21 accident.

22 And as always the most vulnerable are the youngest
23 and the oldest, of whom we'll have 36 new ones if this
24 project comes to fruition. Ladies and gentlemen, we think
25 this is a bad idea. It overloads and blocks the alley. It

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1 causes much more traffic, noise, and pollution and it
2 generates near certainty of an accident.

3 That is why 100 percent of the residents that back
4 on this alley are 100 percent opposed to this use of the
5 alley. Thank you very much for your time.

6 VICE CHAIRPERSON HART: Thank you. Welcome.

7 MR. CRABTREE: I'm Daniel Crabtree. I live at
8 2608 36th Place Northwest. I'm one of the parents of these
9 kids that play on the alley. I have three points to make in
10 objection to the plans.

11 A thorough objection to the plans due to one,
12 safety. Secondly, noise and three, the irreversible change
13 that this will make to the character of this wonderful R-1-B
14 neighborhood.

15 The Applicant has made zero attempts to address
16 this concerns despite having months to do so. So on safety,
17 so my two young children, a four-year-old and an eight-year-
18 old, we use the alley all time.

19 We go to school, at times from school to the
20 playgrounds to restaurants. They practice their cycling and
21 basketball. And, you know, just as it is we have this non-
22 conforming structure, Glover Park Hotel, down the road,
23 trucks do come up the alley, so they have to dodge those as
24 is. Right?

25 So there's already an existing challenge. There

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1 are a number of blind spots on the alley because of
2 buildings, foliage, and telegraph poles. So literally this
3 12 foot alley, it's basically 12-foot, and parts of it get
4 blocked all the time by trucks.

5 And you've seen in lots of the exhibits; I'll add
6 my written testimony to the record. Two photos here which
7 show that Photo 1 and Photo 2, show clearly --

8 VICE CHAIRPERSON HART: It's hard because we
9 actually have people that are watching this and they don't
10 know what you're looking at. So you can just talk.

11 MR. CRABTREE: Okay. Gets blocked as Bill was
12 saying. You add into this all the commercial vehicles and
13 the car parking lots. And we basically, coming out of our
14 back gate we'll get trapped up against the gate as all this
15 traffic is coming through.

16 It's essentially a death trap, I think for my
17 children. And as a parent, it's irresponsible for me not to
18 oppose this. I mean, it's astonishing, it's insulting the
19 Applicant has made absolutely no attempt to address the
20 safety issue.

21 On the second point of noise, so it's sound, and
22 we've heard this through recent family homes. Very modest
23 traffic and again, we probably have one or two additional
24 family cars. Right? If these were single-family homes
25 perhaps a small amount of noise from kids playing in the

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1 garden, having cookouts.

2 This is going to be a 24/7 memory care center.
3 You know, so you've got vehicles coming through, so there'll
4 be the noise of that. The noise of the operations,
5 commercial laundry, commercial cooking, staff arriving,
6 coming and going all the time.

7 You've got residents being carted on and off
8 something. I don't know how they're going to be transported
9 out of the back of this facility. The garden itself, if
10 you've got 30 odd residents and you have all of the staff and
11 visitors. I imagine there's a lot of noise.

12 I'd like to point out the BZA rejected a very
13 similar case you've seen, in 2011, when Ms. Moldenhauer was
14 the Chair of the BZA. This was a daycare center, and I have
15 the case number in my testimony.

16 This was a site on a very narrow street, and the
17 BZA recognized that a lot of people coming into this facility
18 to, you know, drop kids off, pick them up, all the way
19 through the day and night. It was going to run until
20 midnight, so it's not dissimilar.

21 And it would create an adverse impact in terms of
22 traffic, in terms of safety, in terms of the close proximity
23 to neighboring homes. On character, lastly, I recognize my
24 time is running out.

25 This is a small community of single family homes

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1 that has been thoughtfully preserved over more than half a
2 century. This plan for, you know, up zone, high density, you
3 know, 52 feet monolithic institutional building. It really
4 lays to waste all of that careful planning and preservation
5 of this neighborhood.

6 Never again will there be single family homes.
7 We have the Union Building down the road at Calvert Street.
8 That's similarly, that lay vacant after it had its original
9 use. It didn't work out so now it's going to be a daycare
10 center, friendly enough, which will increase traffic flow on
11 the southern side of the neighborhood.

12 You've got a question of the viability which, you
13 know, we don't want to be faced with this being, you know,
14 essentially an unworkable. The Applicants have no
15 experience. It's their design, as we've heard.

16 And, you know, Sunrise, I think this was brought
17 up before, an industry leader, they're planning a facility
18 up at Tenleytown which is going to be, I think at least 86
19 or so units.

20 They say that you can't build something in an
21 urban center for really less than 90 units because of the
22 cost of building a CCRC, the special material that's needed.
23 The operating costs, the land costs, any number of reasons.

24 So I implore you to reject this application. It
25 is pursued at a serious adverse impact for the neighborhood,

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1 such as safety, noise, and irreversibly damaging the
2 character and the value of the neighborhood. Thank you.

3 VICE CHAIRPERSON HART: Thank you very much.

4 MR. CRABTREE: And I'll submit the testimony to
5 the Board.

6 VICE CHAIRPERSON HART: Thank you. Yes, sir.

7 MR. HENNEBERG: Good afternoon, I'm Tom Henneberg,
8 a neighbor, a block over from this proposed facility at 2608
9 36th Street.

10 VICE CHAIRPERSON HART: What was your last name
11 again?

12 MR. HENNEBERG: Henneberg, H-E-N-N-E-B-E-R-G. In
13 direct line of view once this tower is to its proposed fourth
14 and fifth stories. I started my current career after a
15 decade as a Navy SEAL officer with an MBA at Stanford,
16 studying for another master's in economics at Johns Hopkins.

17 And consulting in business strategy at McKinsey
18 and Company including real estate developer clients. Now I'm
19 CEO of a company; I know how to evaluate businesses. There
20 are many business plan holes that tilt this project to
21 failure.

22 And such viability must be relevant because the
23 Applicants themselves defended their application for parking
24 exception by arguing in public community meetings that we
25 were at. And in accounts fed to the Office of Planning that

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1 it would otherwise not be financially viable.

2 Business viability has been cited by the D.C.
3 Office of Planning as relevant in its report on the Sunrise
4 facility you will hear later today. And there would be an
5 adverse impact on this community, if likely or even intending
6 to leave a nonconforming hope available for unspecified use
7 like some Trojan horse pushed into our neighborhood as a
8 dense structure unbroken across the previous three lots in
9 a residential zone.

10 If so, what was the point of the D.C.
11 Comprehensive Plan's designation as a neighborhood
12 conservation area? Not insignificantly, a zone adjacent to
13 the U.S. Vice President on the U.S. Naval Observatory.

14 A similar nearby facility is being orchestrated
15 by Sunrise Assisted Living, a company with decades of
16 relevant experience. Expertise of whom was even cited by
17 this Applicant on their presentation today.

18 So we agree on their expertise, Sunrise's expert
19 published opinion submitted to this Board is that such
20 facilities require economies of scale of at least 86 to 90
21 units. Almost triple this facility's scale.

22 In contrast, this operator appears to have existed
23 as a business in this vicinity barely two years, though
24 attempting to freeload on the reputation of a parent company
25 in a very different hospitality industry.

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1 VICE CHAIRPERSON HART: If we could just --

2 MR. HENNEBERG: Yes, sir.

3 VICE CHAIRPERSON HART: We're just trying to keep
4 it on an even keel. So that'd be helpful.

5 MR. HENNEBERG: I'm sorry, I don't understand the
6 comment.

7 VICE CHAIRPERSON HART: The freeload on something,
8 it seems a little --

9 MR. HENNEBERG: It was, okay, inappropriate tone,
10 fair enough, I'll watch for those.

11 VICE CHAIRPERSON HART: That's okay, thanks.

12 MR. HENNEBERG: Hence, their claims about
13 business, about viable business skills starkly contrary to
14 best practices of established experts have no credibility to
15 this operator, due to this operator's comparative
16 inexperience, which the operators themselves implicitly
17 recognized in repeatedly lying to the community to cover up
18 their inexperience by claiming comparable facilities they
19 operate, recorded on video which is now online, attempting
20 to take credit for facilities not yet operational and fitting
21 entirely different profiles.

22 Regulations say a CCRC must be a suitable size to
23 provide treatment or care of the residents, a burden that
24 requires needed economies of scale. Their scant proof
25 suggests along with their attempt today to use the experience

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1 of the architects as -- I'm trying to change my word, I'm
2 sorry.

3 As compensation for the absence of relevant
4 experience by the actual operators but neither sponsor nor
5 operator has specific experience required by senior housing
6 lenders in this healthcare category to maintain debt
7 covenants to avoid default.

8 In closing, business viability is established by
9 comps, comparatives or comparables. There are no comps for
10 a standalone business of this use at such scale nor by this
11 operator or developer in such a difficult specialty scale.

12 And by definition, business viability is not
13 established merely because an inexperienced commercial entity
14 claims they can do something. To the contrary, that is the
15 source of the requirement to demonstrate viability, not proof
16 of viability that would be backward.

17 Without such comps or credibility, they cannot
18 have met burden of proof for a special exception, the core
19 underpinning of which must be the ability to sustain this
20 facility without needing to evict needy seniors at a later
21 point, in ill health.

22 Or needing to freeload on local residential,
23 sorry, it's an economics terms, sir. I'm sorry. I'm an
24 economist. To freeload on local residential parking to
25 subsidize their shaky business model which is certainly not

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1 the point of residential parking. Thank you.

2 VICE CHAIRPERSON HART: I appreciate it. I wasn't
3 trying to; I was just trying to make sure that were just kind
4 of talking about the issues that you have. And I understand
5 this is your point of view; I get that.

6 MR. HENNEBERG: This is how an economist thinks,
7 sir.

8 VICE CHAIRPERSON HART: And I also get that, you
9 know, that, you know, there are, I mean, these are people's,
10 these are your properties that are in here. And I understand
11 that as well, so I'm not, it's not that I don't understand
12 that part of it.

13 It's just that as we're moving through this, I'd
14 like to be able to just talk about what it is that the issues
15 are that we have. And honestly, we're looking at it and
16 understanding and listening to the points of view that you
17 all are bringing which is why we have this.

18 MR. HENNEBERG: I respect your desire to be civil,
19 perhaps too strong of tone. It's public speaking training
20 that I misapplied.

21 VICE CHAIRPERSON HART: No, it's fine, and like
22 I said, I didn't want to belabor it, but I think I'm doing
23 it now. So, let's move on.

24 MS. LEPERE: Hello everyone, Vice Chair, members
25 of the Board. Thank you for your time and your patience

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1 today. My name is Dana LePere, and I live at 2610 36th
2 Place. I'm immediately adjacent to the subject property.
3 And for the record, I am opposed to the application.

4 I share many of the same concerns as others in my
5 community, as you've heard, but since I'm currently working
6 on a master's degree in interior design with Marymount
7 University, I thought I would conduct some academic research
8 on best practices in facility design.

9 And just wanted to focus my personal concerns
10 regarding the design and operation of the institution, and
11 in the interest of time, I'll just cut it down to a few
12 points. So just a couple of points.

13 First, the proposed facility for housing memory
14 care patients is an institutional nature, not residential.
15 According to occupational use benchmarks established by both
16 D.C. and International Building Code, Chapter 3, Section
17 308.2.

18 "Institutional Group I-1 occupancy shall include
19 buildings, structures, or portions thereof for more than 16
20 persons excluding staff who reside on a 24-hour basis in a
21 supervised environment and receive custodial care. This
22 group shall include but not be limited to assisted living
23 facilities."

24 The needs of an institutional building, such as
25 parking, services, deliveries, maintenance, and traffic would

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1 be an undue burden for our 1B neighborhood. So either it's
2 my opinion that either this facility needs to be built in
3 line with a residential occupancy use or it should be
4 designated as an institution.

5 And then just a second point. Based on research
6 I've done, including Perkins Eastman's own research, as well
7 as others. It's my opinion that this proposed plan is not
8 designed using best practices in mind.

9 I've outlined the reasons for this in my letter
10 to the BZA which was Case Exhibit No. 52. But I will mention
11 two of the most concerning for me here. In direct
12 contradiction to research from Emily Chmielewski, she's a
13 senior design researcher at Perkins Eastman.

14 First, the small proposed garden space is
15 immediately adjacent to parking spaces, a loading dock, the
16 trash area, and a small residential alley that the Applicant
17 intends to use as their primary roadway.

18 This has an extreme potential to increase
19 disorientation and anxiety of memory care patients. And two,
20 the main entrance on Wisconsin Avenue is directly across from
21 the patient living room.

22 This proximity, in my opinion, is flat out
23 irresponsible. No matter what precautions are taken, patient
24 elopements or escapes are bound to occur. And I really don't
25 want to imagine what would happen should such an event take

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1 place right in front of Wisconsin Avenue with a bus stop or
2 nearby Massachusetts Avenue.

3 And, in fact, Brad Perkins himself, the founder
4 of Perkins Eastman, wrote in 2009 that he can safely say
5 there's no building type where you can see a more direct
6 correlation between doing something right and its impact on
7 people's lives.

8 So I think a facility like this needs to be done
9 right, on the right land. And this is, in my opinion, not
10 the right place to do such a facility.

11 VICE CHAIRPERSON HART: Thank you. Yes, ma'am.

12 MS. GRANGER: Thank you all for your time and
13 patience today. My name is Amanda Warfield Granger, and I
14 live at 3615 Edmund Street which is across Edmund Street from
15 the subject property.

16 Basically, my house is on Edmund Street at the end
17 of that alley, behind the property, placed to bear the brunt
18 of the impact from the commercial deliveries, trash removal,
19 and ambulance visits.

20 It's my understanding that to meet the standard
21 for obtaining the special exception, the Applicant needs to
22 show that the use will not likely become objectionable to
23 neighborhood properties because of noise, traffic, or other
24 objectionable conditions.

25 While I have many issues with the application, and

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1 obviously in opposition, I am going to focus on just two in
2 order to keep this brief. I think that it will clearly show
3 the objectionable nature of the proposed application.

4 First, the Applicant's plan is to use the narrow
5 alley as the sole path for deliveries and trash collection.
6 As an initial matter, I didn't know that narrow alleys in a
7 residential neighborhood were suitable for large commercial
8 activity.

9 Nevertheless, the Applicant does not appear to
10 have sought any alternative arrangements, such as siting the
11 facility to allow for deliveries from Wisconsin Avenue.
12 Instead, the Applicant will direct large delivery vehicles
13 and trash trucks through the alley numerous times per week.

14 There can be no dispute that this will greatly
15 increase the noise level, pollution, and traffic in the
16 neighborhood. In addition, it seems a likely, if
17 unfortunate, reality that ambulance visits will be a regular
18 occurrence at the property.

19 While commercial deliveries and trash collection
20 can be scheduled, an ambulance by definition cannot and is
21 accompanied by loud piercing sirens and flashing lights.

22 The presence of emergency vehicles in the
23 neighborhood will be disruptive to the peaceful enjoyment of
24 the neighboring properties, and will undoubtedly adversely
25 affect the use of neighboring properties.

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1 Secondly, the tall monolithic structure will cause
2 loss of light and privacy for the neighborhood and my house,
3 specifically. I do not believe it is specifically shown on
4 the Applicant's plans, but as my neighbors have mentioned
5 already, the subject property sits on higher ground than most
6 of the neighborhood.

7 In addition, the facility appears to have been
8 designed to maximize size and profitability, not necessarily
9 with concern for the patients. Combining the higher starting
10 position with the building's design results in a very tall,
11 for the neighborhood, facility, which spans the entire lot
12 that will unquestionably steal light from my house.

13 In addition, the subject property is directly west
14 of my house. So I expect it will cast a very long shadow on
15 my house as the sun goes down. We will no longer expect to
16 enjoy playing in the yard with our dogs or nieces.

17 There are many other objectionable aspects of the
18 transaction, but these two are the most obvious examples to
19 me of how the Applicant has not met the standard for this
20 special exception. Thank you again for your time today. I
21 appreciate your time and consideration of this issue and your
22 strict application of the legal standards.

23 VICE CHAIRPERSON HART: Thank you. Oh, so --

24 MS. CRABTREE: I was wondering, since I am an
25 immediate neighbor whether I could just make some points, as

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1 an individual?

2 VICE CHAIRPERSON HART: Since you've actually
3 given some comments already, you've provided us with pages
4 of comments. There are people in the audience that I'd like
5 to hear from --

6 MS. CRABTREE: Okay.

7 VICE CHAIRPERSON HART: -- that have been sitting
8 around all day.

9 MS. CRABTREE: Understood, I'm sure that one of
10 my neighbors would give me a minute of their time. I would
11 like to make a comment about something that OP said.

12 VICE CHAIRPERSON HART: I'd like to hear from the
13 rest of the folks --

14 MS. CRABTREE: Okay.

15 VICE CHAIRPERSON HART: -- if we could.

16 MS. CRABTREE: Sure.

17 VICE CHAIRPERSON HART: Ms. Moldenhauer, you
18 actually have cross-examination of any of the, do you have
19 any questions for any of the testimony? What I'm trying to
20 do is to get through this part then have the other folks come
21 up to provide their testimony.

22 CROSS-EXAMINATION

23 MS. MOLDENHAUER: Sorry, I didn't get your name.

24 MS. GRANGER: Oh, Amanda Granger.

25 MS. MOLDENHAUER: Ms. Granger, have you conducted

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1 a sun or shadow study?

2 MS. GRANGER: Yes.

3 MS. MOLDENHAUER: You have? Is it in the record?

4 MS. GRANGER: Is it in the record already, Dana?

5 MS. LEPERE: It is not, but I can insert it.

6 MS. GRANGER: Okay.

7 MS. LEPERE: It's not, but I can introduce that.

8 MS. GRANGER: Okay.

9 VICE CHAIRPERSON HART: Okay.

10 MS. MOLDENHAUER: I would still like to take a
11 look at that. The Board, if I have not actually seen
12 anything or they're just not referencing it. And then,
13 sorry, I'm looking to, Ms. LePere, you said that you are
14 studying. Have you graduated or received a degree?

15 MS. LEPERE: It's LePere, and I will graduate --

16 MS. MOLDENHAUER: Have you received a degree yet?

17 MS. LEPERE: Not yet.

18 MS. MOLDENHAUER: Thank you. Mr. Crabtree, you,
19 I'm sorry, what is your professional background.

20 MR. CRABTREE: I work in finance.

21 MS. MOLDENHAUER: Thank you. I have no other
22 questions.

23 VICE CHAIRPERSON HART: Thank you all, thank you
24 all. Yes, so we have a few more people that are within the
25 200 feet or have we gotten through all of them? Are you,

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1 yes, ma'am, you can come up.

2 And if the other folks that are outside of the 200
3 feet, you can come up too. I'm sorry, I should have made
4 that clear. We have four more seats. Anybody else, anybody
5 in opposition to the case would like to testify?

6 I know there were more hands up. Okay. Like
7 slowly pulling them out of the audience. And the reason I'm
8 asking is that I'd like everybody to come up so that we would
9 be able to complete this part of it because the Applicant has
10 to go through a rebuttal as well.

11 But I just wanted to make sure that there were no
12 other folks that are in the audience that wanted to testify.
13 Okay. So, welcome, thank you. If you could, please, you
14 have to hit the button so that your mic is active.

15 If you could give your name and address, and then
16 you'll have three minutes.

17 MS. TANENBAUM: My name is Susan Tanenbaum. I'm
18 at 2606 36th Place, and I have been for 40 years. And I am
19 very distraught at this proposal. My house is immediately
20 behind this building.

21 And I am very concerned about the alley traffic.
22 It's dangerous enough as it is, I have a little mirror. You
23 have to back into my garage; I'm lucky enough to have a
24 garage.

25 Although, I'm not sure if this facility is there

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1 that any friends will ever be able to park again when they
2 visit. But I notice that the big trucks that come through
3 have already taken off a piece of my mirror.

4 That shows you how narrow the alley is in parts.
5 And I think, I would agree that I think it's very dangerous.
6 I don't want to take more of your time except to say that I
7 think you should give very serious consideration to the
8 parking and to the zoning.

9 Because I wanted, initially, to buy a house that
10 was very close in so that I could go to work and get home
11 quickly because that was like a million years ago. And maybe
12 there weren't a lot of women in the workforce. And so it
13 mattered to me this house was zoned as it was.

14 I mean I've lived there all these years and raised
15 a family, they played in that alley, they played basketball
16 and goodness knows what else. And I would hate to see it
17 change.

18 VICE CHAIRPERSON HART: Thank you. Yes, ma'am.

19 MS. GERSTEN: Good afternoon, my name is Vicki
20 Gersten. I live at 3526 Edmund Street. I am the new ANC
21 commissioner-elect for 3C08. And I want to share with you
22 the extent of community opposition to this project.

23 Could everyone who is here who's opposed to this
24 project in the audience please stand? A lot of people have
25 left too, and you can also check the docket, there's a

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1 tremendous amount of opposition to this project, as you know.

2 Before the election, I knocked on 139 doors within
3 MAHCA, and I spoke personally to 94 families there. Each one
4 of the 94 families that I spoke with are emphatically opposed
5 to this development project.

6 Not even one of the families I spoke with support
7 it. Zero families are in favor of this application.
8 Opposition is spread uniformly from Garfield to Calvert
9 Streets and from Wisconsin Avenue to Mass. Ave.

10 Wisconsin Avenue, as you can see from the easels
11 that we put up there, is lined with single-family homes.

12 VICE CHAIRPERSON HART: The easels have to be on
13 -- you can submit the photographs to us later.

14 MS. GERSTEN: I'll submit the photographs, I'm
15 sorry about that. Okay. Outside MAHCA too, there is great
16 opposition to this. People were incredulous that there is
17 this attempt to "break our residential zoning," as they put
18 it.

19 MAHCA neighbors cited many reasons for their
20 opposition. One multifamily developer was outraged that MED
21 was asking the community to absorb such a huge parking
22 burden.

23 She said providing sufficient parking is generally
24 built into a developer's project cost, even if that means
25 paying for an underground lot. Other neighbors noted that

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1 the burdens of increased traffic, congestion, and alley
2 annexation were being foisted upon the neighborhood through
3 this special exception application.

4 And you pointed out how unfair it is to enrich a
5 private developer at the expense of the public.

6 MS. MOLDENHAUER: I'm sorry, can I just object,
7 a lot of this is hearsay which is repeating what other people
8 have told her and we have a lot of opposition filings in the
9 record.

10 VICE CHAIRPERSON HART: I understand that. I'd
11 just like for her to get through the, I hear your objections.

12 MS. GERSTEN: Just as I spoke to people as I was
13 canvassing, I did speak to over 350 houses.

14 VICE CHAIRPERSON HART: What the Applicant's
15 counsel is saying is that she has no opportunity to be able
16 to cross-examine them. And so you are actually speaking for
17 them but she has no way of saying, well, what about this or
18 what about that.

19 So it makes it harder for her to be able to do
20 that. That's the point that she was raising for that. So
21 if you could just --

22 MS. GERSTEN: Why don't I just continue?

23 VICE CHAIRPERSON HART: Continue with your
24 testimony.

25 MS. GERSTEN: Okay. The fact that this developer

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1 chose a food services concessionaire with little to no
2 experience in elder care was no surprise to me or to any of
3 the neighbors.

4 Time and again, what I heard from my neighbors and
5 what also concerned me is that this developer seemed to be
6 using this process or could easily be using this process to
7 upzone this lot, build this project, and then flip it.

8 Leaving our neighborhood with a gargantuan non-
9 conforming building that no one wants or needs, and again,
10 look at the sense of scale that we've put up on our easels.
11 So you have the three single family homes over there and then
12 the gargantuan proposed structure.

13 I'd just like to say that your decision, in this
14 case, is not just about one developer's attempt to profit
15 through these special exceptions. Mass Ave Heights is a
16 thirteen-block neighborhood with homes that were constructed
17 as far back as 1923.

18 It's flourished as a community because of the
19 protection afforded to it by its residential R-1-B zoning.
20 Allowing developers to use the BZA process to upzone
21 properties in neighborhoods such as ours has the potential
22 to render our residential zoning meaningless lot by lot.

23 Please don't let developers destroy this
24 neighborhood that we love so much. Thank you.

25 VICE CHAIRPERSON HART: Thank you very much. Yes,

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1 sir.

2 MR. CHIP: First, I apologize I have a cold so if
3 I cough a couple of times will you forgive me? My name is
4 Bill Chip; I live at 2700 35th Place with my wife, Sylvia.

5 One of the original testimony for the Applicant
6 had to do with fact that his mother had been in a facility
7 like this. And that's what sort of motivated him along the
8 path he took in his life.

9 And I just want to mention that my mother also
10 suffered from dementia. We moved her up here from Florida
11 after my father died, and I had this same issue of trying to
12 find an appropriate place for her to live.

13 And my experience from that, I looked a number of
14 different places. She ended up at Knollwood. But to follow-
15 up on something the doctor testified to, without exception
16 these facilities had large areas for people to go outside and
17 take a walk.

18 It's not nice living in a tightly confined
19 facility all day long, particularly if you're living in a
20 tiny room. And these facilities were usually built around
21 a large lot where people could come out and sit in the sun
22 and talk to each other.

23 And in addition, there was usually a very long
24 driveway between the street, the connecting street, and the
25 facility. Precisely because people in that condition will

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1 often wander away and you don't want them walking into a busy
2 street.

3 When I look at this facility, what I see is it's
4 very tightly confined. It has a tiny, tiny, little area to
5 sit in the back. Other than that, there's nothing to do.
6 All right?

7 And so my guess is a lot of the people who are
8 living there are going to want to go out and take a walk.
9 Well, taking a walk means walking out to one of the busiest
10 streets in Washington D.C.

11 Walking around, maybe forgetting where you're
12 going to go, once you get there maybe forgetting how to get
13 back. One thing I wasn't sure of because it wasn't covered
14 in the testimony, is whether residents in this facility would
15 be allowed to leave on their own? Or whether they would have
16 to be accompanied by a member of the staff.

17 And if that's the case whether the staffing
18 accounts for that particular need, the issue of whether the
19 city needs these kind of facilities came up. I'm reminded
20 of the homeless shelter.

21 No one doubts that the city needs homeless
22 shelters and mental care facilities. But the question always
23 is, is this actually the right place to do it? And in the
24 case of the homeless shelter, it was concluded this is
25 actually not the best place to put that kind of facility.

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1 And I'm basically arguing that based on my own
2 personal experience of finding a place for my mother to live
3 and seeing most of these other facilities, that this is
4 absolutely not the right place.

5 The people living there will either be trapped
6 with no place to go, or they'll be at risk of getting lost
7 or being hit by a car. Thank you.

8 VICE CHAIRPERSON HART: Thank you.

9 MS. HAYES: Good afternoon.

10 MEMBER HART: Welcome.

11 MS. HAYES: Thank you for all of your patience
12 with us today. We are a small neighborhood, but obviously
13 we are quite passionate about this issue. My name is Lisa
14 Hayes. I'm at 2608 36th Street NW, which as you will see on
15 the MED Developers Parking Exhibit is the green street
16 identified as having the most available parking spots.

17 For those of you in the room, you can see I
18 recently had surgery on my right arm, which means I am unable
19 to parallel park. I'm not fortunate enough to have a garage,
20 so I've been parking on the street in front of my house for
21 the last month. I can tell you, there is not a lot of
22 available parking on 36th Street. I don't have fancy degrees
23 to go out and do the parking studies, but I've lived in this
24 house for more than a year and parking is a challenge. So
25 please listen to the community when we tell you that parking

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1 is tight in our area.

2 Also today sitting here listening, I was struck
3 by the number of people who talked about this being the only
4 section of Wisconsin Avenue that hasn't been built up for
5 development. And there's a reason for that. One block away
6 from this proposed development is the R12 Zone, which is
7 zoned for the Vice President of the United States and
8 designed to give a security buffer for the Vice President of
9 the United States and the Naval Observatory. The west side
10 of Wisconsin is different than the east side of Wisconsin for
11 a reason. There is a reason that the R12 Zone was expanded
12 and enlarged in 2016, and that is to provide that additional
13 buffer of security.

14 When we are doing an end run around zoning
15 regulations and intruding into this R1B Zone less than a
16 block from the R12 Zone, we are flying in the face of what
17 the city has determined is in the best interest of the
18 community, and I hope the BZA will consider that when making
19 its decision. Thank you.

20 MEMBER HART: Thank you very much. Ms.
21 Moldenhauer, do you have any questions for the -- any of the
22 testimony that's been provided?

23 MS. MOLDENHAUER: No questions. We'll address
24 everything in either rebuttal or closing, or questions from
25 the Board.

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1 MEMBER HART: I didn't ask Ms. Ferster if you had
2 any questions. I assumed that you didn't, but I'll --

3 MS. FERSTER: I don't have any questions --

4 MEMBER HART: Okay.

5 MS. FERSTER: -- but I would like to reiterate the
6 request that Ms. Crabtree made. She testified and she had
7 to very much abbreviate her testimony in her capacity as
8 MAHCA's Zoning coordinator. So she would like to also
9 testify in her personal capacity.

10 MEMBER HART: Sure. Sure, I mean we're here.

11 MS. MOLDENHAUER: And her husband also testified
12 on behalf of --

13 MEMBER HART: It's fine. I mean we're here, it's
14 --

15 MS. CRABTREE: I think we're separate people,
16 right? We have separate identities.

17 MEMBER HART: Excuse me. If we have the questions
18 and comments to me please.

19 MS. CRABTREE: Okay.

20 MEMBER HART: Thank you.

21 MS. CRABTREE: And I will be very brief. I just
22 have -- I agree with all of my neighbors. I think they all
23 made excellent points. And most of -- we are a neighborhood
24 full of a lot of lawyers. But I think a lot of these
25 neighbors were not lawyers, so it's impressive to see them

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1 becoming so familiar with the law.

2 I would like to speak to -- I've spent a lot of
3 time on this case and have spent a lot of time looking at the
4 law. And I spent a lot of time reading Council Member Cheh's
5 letter to DDOT regarding the parking standard. I would like
6 to note that I've attached the legislative history to the
7 change in the law to my testimony. So you will see that it
8 came -- this change was initiated by Jennifer Steingasser at
9 OP in December of 2016. And the six conditions were added
10 to the CCRC special exception language as of July 2017, well
11 before this application was filed. So this application
12 wouldn't be grandfathered into the old statute.

13 The old statute simply said special exception for
14 CCRC. It didn't have any conditions. These six conditions
15 are set forth such that the granting of the special exception
16 is subject to the fulfillment of those conditions. And I
17 would request that you please spend some time with Council
18 Member Cheh's letter, because she's a tenured law professor
19 and a very good attorney. And I know that Mr. Lawson, no
20 disrespect, is not an attorney. So I would request that you
21 please review that letter.

22 Otherwise, I agree with my neighbors, and would
23 just like to stress that the applicant has not met its
24 burden. The applicant has not actively put anything into the
25 public record to address with any sort of reasoning or

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1 analysis how there will not be an adverse impact, and how
2 there will not be objectionable conditions. Thank you.

3 MEMBER HART: Thank you. Any questions?

4 MS. MOLDENHAUER: No, I'll address them during
5 rebuttal.

6 MEMBER HARD: Okay. So I wanted to thank you all
7 very much. So I wanted to kind of open it up for the Board,
8 Commissioner Miller. I think before we get to the rebuttal,
9 maybe we can get some questions -- if the Board members have
10 any questions of the applicant. I know that I kind of -- so
11 many hours ago, went -- didn't kind of stop to let the Board
12 ask questions. So here's your chance. Either -- I'm not
13 just looking at you. Anybody from the Board. Now you're
14 going to argue about who's going to --

15 MEMBER MILLER: I just was deferring to my full-
16 time BZA colleagues if they wanted to go first. So yes, I
17 had a few questions. I guess can you confirm -- I mean,
18 we've heard a lot of numbers -- I think it's in your
19 testimony in the record -- but confirm the number of units
20 and the number of residents that would be in this facility.
21 It's 34 units and 36 residents or is it 35 or what is it?

22 MS. MOLDENHAUER: So Chairman Miller, we started
23 off with 38 units and we then reduced the number of units.
24 And we provided both, so we're now down to 32 units. And
25 there are two double occupancy units there. So there's 32

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1 with 34 to 36, I'm sorry, 34 -- it went from 38 to 34 and we
2 have 36 residents.

3 MEMBER MILLER: Okay. And you're not asking for
4 relief from the -- well you are asking from relief from the
5 -- special exception relief for the continuing care
6 retirement community facility. And you are asking for relief
7 from the -- special exception relief from the parking minimum
8 requirement. But you're not asking for relief from other
9 zoning parameters for this site. Just can you confirm that
10 for the height, for the lot occupancy, for the side yard, for
11 the rear yard and what's required as a minimum -- what's
12 required as either minimum to maximums in the R1B Zone.

13 MS. MOLDENHAUER: Absolutely correct, Chairman
14 Miller from a --

15 MEMBER MILLER: I'm not chairman. I'm not
16 chairman. No offense.

17 MS. MOLDENHAUER: Commissioner Miller. Sorry,
18 it's been a long day with -- so the project is fully
19 compliant in regards to the height. It is three stories with
20 a cellar and an only mechanical penthouse. The structure
21 complies with all of our side yard requirements. We actually
22 exceed our side yard requirements on both sides of the lot.
23 The side yard requirement in this zone is eight feet. We are
24 exceeding that 11 feet on one side and I believe 15 feet on
25 the other side. Ms. Dickey can confirm that if I'm

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1 incorrect. We are compliant in regards to the penthouse
2 height.

3 MEMBER MILLER: On the penthouse --

4 MS. MOLDENHAUER: Yes?

5 MEMBER MILLER: -- I should know this, but -- so
6 a penthouse is 12 feet high. A mechanical penthouse is
7 permitted in an R1B Zone?

8 MS. MOLDENHAUER: Yes, so a 12-foot penthouse is
9 permitted in the R1B Zone and we are complying with the
10 penthouse requirements. And we're also compliant with the
11 lot occupancy requirements as well.

12 MEMBER MILLER: And --

13 MS. MOLDENHAUER: There's no aspect of the building
14 or the structure that does not meet or potentially exceed,
15 where it's the side yard relief, the specific zoning
16 standards for the R1B.

17 MEMBER MILLER: And on the height that's within
18 the 40 feet of the -- of the -- within the 40-foot
19 requirement of the R1B Zone, where are you measuring that
20 height from?

21 MS. DICKEY: So zoning requires that you measure
22 the height from the building height measuring point, which
23 is determined by taking the midpoint of the front -- of the
24 main facade of the building. And you take kind of at the
25 midpoint where the building hits the grade and you measure

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1 from that point. So that is what we have done here along
2 Wisconsin Avenue at the center of the building, where the
3 building hits the grade, we have measured from that point 40
4 feet up.

5 MEMBER MILLER: And what would you say is the
6 height -- what is the elevation of your -- elevation of your
7 building? Do you know that?

8 MS. DICKEY: So --

9 MEMBER MILLER: I'm just -- And I want to get an
10 understanding and I think we would need this in renderings,
11 which we don't have or at least I haven't seen, which show
12 the relationship of the height and elevation of this building
13 -- these would be the adjacent single family homes. I think
14 they're well below 40.

15 MS. DICKEY: Sure.

16 MEMBER MILLER: And I think due to the topography,
17 this building will seem a lot -- will seem twice as high as
18 their buildings or more.

19 MS. DICKEY: It is taller than the surrounding
20 single family homes. Most of the single family homes around
21 range around 20 -- between 20 and 30 feet tall if you take
22 into account the height to the top of the ridge of the roofs.

23 MEMBER MILLER: And are they at lower elevations
24 than this building as well?

25 MS. DICKEY: Some of them are. The way that the

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1 topography works is that the corner of Wisconsin and Edmunds
2 is the higher point. But that elevation does not change
3 significantly across from the -- in the east and west
4 directions. So the houses that are on the other side of the
5 alley are at a very similar elevation to where our building
6 is located. It's really as you go down Wisconsin and the
7 grade moves along kind of down the hill, that you would see
8 the biggest elevation change.

9 MEMBER MILLER: I had some transportation-related
10 questions and so maybe that was your signal, Mr. Andres. So
11 you -- your analysis of sufficient parking is based on a
12 number -- on some kind of an analysis about how many
13 employees and how many visitors. Do you have any analysis
14 about how many visitors would be coming to this facility and
15 for what duration? Did you look at other similar facilities
16 and also did you look at the employees who are at other
17 facilities, whether they -- whether your mode split conforms
18 in any way to -- I think you had -- was it 55 percent or some
19 -- does it conform in any way --

20 MR. ANDRES: Yes.

21 MEMBER MILLER -- to what the reality is of
22 employees driving to --

23 MR. ANDRES: So the short answer, Commissioner
24 Miller is that with respect to our analysis, we used -- it's
25 called traffic analysis zones, which is essentially census

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1 tract data, to identify what the mode split would be. And
2 in that, we've identified that 45 percent of the employees
3 would typically not drive.

4 MEMBER MILLER: But you didn't look at any kind
5 of analysis of memory-care facilities' employees or their
6 visitors?

7 MR. ANDRES: That is correct. You know, there's
8 limited number of facilities that are in the same context of
9 our -- the same context of the location of our site.

10 MEMBER MILLER: And did you answer my question on
11 what that number of visitors would be?

12 MR. ANDRES: So with respect to the number of
13 visitors, I believe, Mr. Rodriguez can be a better -- Mr.
14 Gonzales, I'm sorry. Mr. Gonzales can be a better source for
15 that information. Sorry, John.

16 MR. GONZALES: John Gonzales, President, Senior
17 Living -- and a freeloader, apparently. With respect to the
18 visitors, it fluctuates greatly. Typically I will look at
19 two to three for a building this size. It's typically going
20 to be staggered throughout the week. You'll have some that
21 will come after work. You'll have some that will come on the
22 weekends. And then there's no industry standard for what is
23 the exact amount. A lot of it has to do with family
24 involvement and how involved they are in the residents'
25 lives, which is something we promote and we would want that.

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1 In terms of staff, with an urban setting like
2 this, in my experience for the last 30 years, is you'll have
3 a large number of people that will either car pool, they'll
4 ride bikes. We intend to incentivize the use of public
5 transportation and biking and car pooling. So there will be
6 an incentive for staff to opt for those modes of
7 transportation.

8 MEMBER MILLER: Ms. Moldenhauer will probably get
9 this, to be a part of her rebuttal testimony. But since
10 you've got the mic, Mr. Gonzales, there was some testimony
11 that although Guest Services may be running -- may have
12 operated assisted living or senior facilities, that you have
13 not operated a memory-care facility. Is that correct?

14 MR. GONZALES: Yes, correct. Guest Services
15 Incorporated is a parent company for Guest Services Senior
16 Living. With all due respect to the objections, my
17 experience as president is the experience of this company.
18 Bill Gates went out and started a new consulting company for
19 IT or software and I doubt that, they would say you have no
20 experience because your company does not. I've done this for
21 two other large companies, one was publically traded, Sun
22 Healthcare started a brand new division coming in with only
23 my experience. And we built an entire division out of that.
24 I did it again a second time with Crossings Corporation out
25 of Tacoma, Washington. So I'm very familiar with walking in

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1 with the bulk of my experience, the bulk of my contacts, and
2 building a company around that. That's exactly what's going
3 on.

4 MS. MOLDENHAUER: Can I help? Have you in your
5 experience operated an all-memory care facility?

6 MR. GONZALES: Dozens.

7 MS. MOLDENHAUER: Yes.

8 MEMBER MILLER: A what?

9 MS. MOLDENHAUER: An all-memory care facility.
10 So Mr. Gonzales have you -- in your personal experience, have
11 you operated an all-memory care facility?

12 MR. GONZALES: Literally dozens, yes.

13 MEMBER MILLER: Okay, I thought he had answered
14 it different just about five minutes ago.

15 MS. MOLDENHAUER: No, so he -- I just want to make
16 sure this is clear. He stated that the company, Guest
17 Services Senior Living --

18 MEMBER MILLER: Okay.

19 MS. MOLDENHAUER: -- which is what his analogy was
20 --

21 MEMBER MILLER: Okay.

22 MS. MOLDENHAUER: -- to Bill Gates. The company
23 has not had the experience of operating an all-memory care --

24 MEMBER MILLER: Okay. Okay, thank you.

25 MS. MOLDENHAUER: -- however, he has.

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1 MEMBER MILLER: Back to Mr. Andres. Did you, in
2 your analysis of those parking -- three parking garages, do
3 any analysis of the availability of spaces within them during
4 different hours of the day. And did you do any analysis of
5 the likelihood of a visitor or employee would be willing to
6 pay whatever the -- I don't even know if all of them have
7 hourly rates. But did you do any analysis of the
8 availability of --

9 MR. ANDRES: So we did not do an analysis of the
10 availability. We did do an analysis or actually a summary
11 essentially of what the rates are.

12 MEMBER MILLER: So \$20 daily?

13 MR. ANDRES: Yes, that's right.

14 MEMBER MILLER: You think an employee is going to
15 pay \$20 a day?

16 MR. ANDRES: Well no, there's a good chance the
17 employees will -- if you think about it, this is a new
18 facility. So this is -- you know, once this facility is up
19 and running, the employee will have a choice of how to get
20 here. And you know, it's not a situation where you know
21 they're all of a sudden, you know, transferring employees to
22 this location. This is going to be a brand new facility
23 where people will choose how to get there. And if they can't
24 either afford to purchase off-site location spaces or if they
25 are not ward residents and they don't want to move their car

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1 every two hours, what will essentially happen is they'll
2 either choose to take alternative modes or they will not
3 choose to work here. You know, that condition is not unique
4 to this location. This condition is unique to the entire
5 district. You know, you have market rate parking spaces
6 downtown that are over \$25 a day. So in that instance, do
7 those -- you know, do people take alternative modes, rather
8 than coming to drive and park? So, the short answer is yes.

9 MEMBER MILLER: And the only -- I think this was
10 in your own testimony and in some of the party in opposition
11 testimony, the only non-time restricted, non-RPP nearby
12 spaces are the ones that are on Calvert Street, across from
13 the Guy Mason Recreation Center that people say are often
14 filled?

15 MR. ANDRES: So yes, there's -- that's correct.
16 There are completely non-RPP spaces on Calvert Street. There
17 are non-RPP spaces on Wisconsin Avenue in front of the site.
18 However, between 1:00 a.m. and 5:00 a.m. on Wednesdays,
19 you're not allowed to park because of the street sweeping.
20 So those are renewed restrictions on the Wisconsin Avenue
21 spaces.

22 MEMBER MILLER: The Wisconsin Avenue has no rush
23 hour restrictions?

24 MR. ANDRES: For the western side of Wisconsin
25 Avenue.

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1 MEMBER MILLER: Okay.

2 MR. ANDRES: On the eastern side, there is peak
3 hour restrictions. So essentially in front of the Russian
4 Embassy, those spaces are available at all times of the day.

5 MEMBER MILLER: Okay. Thank you. That's all my
6 questions for now. Thank you, Mr. Vice Chair.

7 MEMBER HART: Sure, thank you. Go right ahead.

8 MEMBER WHITE: Okay, a couple of follow-up
9 questions. And this is based on the feedback that we have
10 been hearing from the residents. How are you mitigating the
11 safety issues as it relates to the residents within the
12 facility? I forget who's talked about it. But there is some
13 questions about risk of flight, you know, when you have
14 memory-care patients walking out onto Wisconsin Avenue. It
15 should be a huge safety issue.

16 MS. DICKEY: Sure.

17 MEMBER WHITE: Then I have another follow-up
18 question, but I'll let you answer that first.

19 MS. DICKEY: Okay, I was going to -- so this will
20 be a secured building as a memory-care facility, which means
21 that there are actually a number of options for ways to
22 ensure that residents do not elope from the building and go
23 wondering down the street. One of those ways is to use
24 either -- like a RoamAlert or a WanderGuard type of system,
25 which is where residents will wear a bracelet or a necklace

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1 or some other form of kind of like a sensor, so that when
2 they approach one of the building exits, it will not open.
3 And so there would be that opportunity.

4 In reality, there is only the one entrance on the
5 Wisconsin side where there would be that opportunity, I mean
6 from a really kind of hard lined statement. And that point
7 would be staffed on a full-time basis as a backup method for
8 the technological, either RoamAlert, WanderGuard. There are
9 other low voltage forms of making sure that the doors don't
10 allow people to elope. We can utilize other interior design
11 strategies in order to kind of minimize the kind of
12 prevalence of that.

13 MEMBER WHITE: Got it. The other follow-up
14 question, there was a lot of conversation about concerns
15 about the loading dock. I just wondered if you could just
16 briefly just walk us -- walk me through how that process is
17 not --

18 MS. DICKEY: Sure.

19 MEMBER WHITE: -- going to have an adverse impact
20 on the neighboring properties in the community that live on
21 that -- within that radius.

22 MEMBER HART: Actually I just have kind of a
23 follow-up -- not a follow up, but an add-on to that. This
24 plan that we have is not the plan that we have in the drawing
25 section -- the updated?

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1 MS. MOLDENHAUER: There is only one change, which
2 Ms. Dickey identified, which is the common area on the second
3 and third floor. Otherwise, it's the same plan.

4 MS. DICKEY: No, there are a couple of -- there
5 a couple of --

6 MEMBER WHITE: I'm looking at both --
7 (Simultaneous speaking.)

8 MEMBER WHITE: -- and I can tell you they're not.

9 MS. DICKEY: -- there are a couple of minor --

10 MS. MOLDENHAUER: We will have it uploaded.

11 MEMBER HART: Because the reason I asked is that
12 I was trying -- I was looking at the architectural plans on
13 Exhibit 7 and I couldn't figure out the service loading area.
14 Because it actually is a parking -- it looked like a place
15 to actually park. But then it didn't look right with the
16 rest of the -- what you were showing on your presentation.
17 So then I was a little confused. So if you could kind of
18 walk through that.

19 MS. DICKEY: Sure. And the loading area is --

20 MR. ANDRES: I can take care of loading.

21 MS. DICKEY: Okay.

22 MR. ANDRES: With respect to your question,
23 Commissioner White, I can actually walk you through the
24 loading. So it's important to note that Davis Street and
25 Edmunds Street, which are both to the north and south of this

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1 site, they function as a one-way pair. So Davis is one-way
2 eastbound, Edmunds is one-way westbound. So with respect to
3 the way that it works, is that the loading vehicle would have
4 to come onto Davis Street heading eastbound, turn into the
5 alley and essentially come up to the alley. In this figure
6 you're essentially heading north up the alley, and the
7 vehicle would back into that loading space. In discussions
8 with DDOT, it was critical for DDOT -- for DDOT's
9 requirements in that DDOT requires all access for this
10 building essentially to be from the public alley; access to
11 loading and access to public parking spaces. And that is in
12 DDOT's Design and Engineering Manual as part of their
13 driveway design requirements. And that's something that we
14 spoke with them from sort of the first day we got involved.
15 We looked at other loading options, but this is the option
16 that DDOT had required us to make sure that we can make work.

17 So with respect to the loading itself, if the
18 vehicle was heading north along the alley, it would back into
19 the loading space, position itself. All the loading
20 materials would take place and the activities would take
21 place. And then the vehicle would essentially turn out of
22 the public alley, head up to Edmunds and then turn left to
23 head to Wisconsin. So that is essentially the loading plan.
24 And what was your other question?

25 MEMBER MILLER: Well before you leave loading, if

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1 you don't mind. Your report says that -- is based on
2 analysis -- is based on an assumption that there will be only
3 two loading trips per week.

4 MR. ANDRES: Yes. So it's our understanding that
5 the laundry is onsite. So the loading activity is
6 essentially related to trash, which hopefully we would
7 piggyback on the -- because there's trash that's currently
8 picked up for all of the other residences along the alley.
9 So our intent is to take advantage of that. And so when the
10 -- you know, the trash vehicle is picking up the residents'
11 trash, we can hopefully piggyback on that opportunity.

12 MEMBER MILLER: The city allows that for this type
13 of institutional facility?

14 MR. ANDRES: Well we would need to coordinate with
15 that operator to see if there's an --

16 MEMBER MILLER: It sounds very unusual.

17 MR. ANDRES: It's an opportunity that we want to
18 take advantage of. If that's not possible, then that's not
19 possible, so there's trash. The other delivery that's
20 associated with this is given that they're preparing meals --

21 MEMBER MILLER: Right, three times a day. Right?

22 MR. ANDRES: Yes. So there would be --

23 (Simultaneous speaking.)

24 MR. ANDRES: So the food is being prepared, I
25 believe onsite. So the materials that are being loaded for

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1 on-site preparation are the -- it's not prepared food per se,
2 but it's all the ingredients that they would require to
3 prepare the food on site.

4 MEMBER MILLER: Regarding the food and the trash,
5 that's more than twice -- that's way more than two trips per
6 week. To say nothing of the other things that have to go on
7 --

8 MR. ANDRES: So with respect --

9 MEMBER MILLER: -- for this facility.

10 MR. ANDRES: So with respect to the other
11 deliveries that go on, mail for example, so mail -- it's the
12 -- the mail person -- the mailman is essentially serving the
13 whole block. That mail person isn't just coming here and
14 just delivering mail to this site. So the condition related
15 to mail, condition related to some of the other couriers is
16 essentially for the whole block, not necessarily just for
17 this building.

18 MEMBER MILLER: One question that I forgot to ask,
19 it's not related to loading and Ms. White has generously
20 deferred to me. Ms. Dickey, I had a question about the --
21 can this building be designed with underground parking that
22 -- underground, onsite parking that meets the 17 number
23 requirement? And what would be the effect if it -- on the
24 program, I guess?

25 MS. DICKEY: So I think it's a complicated

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1 question, more so than a simple yes or no answer would
2 indicate. It could be possible. In order to have an
3 underground garage below grade here -- but if that were to
4 be a viable option, I believe that we would need to seek
5 height relief in order to make the building taller. Because
6 I don't believe we can get a full story of parking below this
7 cellar level. I think we could potentially do a half of a
8 level. But I don't think that we could sacrifice the floor
9 to floor height for any of the levels above. So --

10 MEMBER MILLER: And a half a level would provide
11 how many spaces?

12 MS. DICKEY: I'm not sure. I haven't -- I haven't
13 analyzed that in-depth, so I would need to look at that.

14 MEMBER MILLER: Okay. Well I may want to see that
15 if we get to a certain point where it's worth seeing. Thank
16 you.

17 MEMBER HART: No. Do you have a question?

18 MEMBER JOHN: Me?

19 MEMBER HART: Yes, Board Member John.

20 MEMBER JOHN: I did have one. I wanted to ask
21 Mrs. Moldenhauer to respond to the very heartfelt comments
22 of some of the residents concerning the congestion in the
23 alley. And what your considerations were or the architect's
24 considerations were in designing the project and what other
25 alternatives you may have looked at, because there's quite

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1 a bit of concern. I think what I've been hearing a lot of
2 is the concern about the congestion in the alley. And we all
3 live in the city and alleys are congested. So what -- you
4 know, do you have any response to all of that?

5 MS. MOLDENHAUER: Absolutely, Ms. John. I think
6 that I have responses as an attorney and responses as a
7 member of the community who as you know, I've been aware of
8 the challenges that you face sitting on the Board. I think
9 that with this case, as well as with a lot of other cases,
10 you know, alleys based on DDOT's requirements, are those
11 spaces in which we have to utilize for access and egress.
12 And while as community members and residents, we use them for
13 other things, we are also responsible then for understanding
14 that there will be other uses and vehicular uses -- that's
15 what obviously alleys are created for, in those spaces and
16 accommodate them accordingly.

17 Here, you know, we kind of hear this challenge
18 even from Commissioner Miller's comment about you know, maybe
19 putting more parking on the site. I think that the proposal
20 puts the needed and the sufficient number of parking on the
21 site. And that more parking would only, to your point, add
22 more cars to this alley, which is not necessary for the
23 proposed use.

24 I also think that from a loading perspective, I
25 mean I've had many other cases on 14th Street, in Columbia

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1 Heights, in Trinidad, where there are a variety of different
2 projects and uses, both multi-family, residential, even
3 emergency shelters where there are concerns about loading and
4 use. I think here the zoning requirements don't specifically
5 require loading on this site as it's a residential structure,
6 while loading on the site's only required for 40 or more
7 units and we aren't providing that. But we felt it important
8 that we try to hear and respond to the concerns of the
9 community and make sure and also listen to DDOT, the agency
10 upon which they review this, to ensure that we did have
11 loading that could accommodate the services of this facility
12 so it would not be blocking the alley.

13 As this Board knows, legally if you're blocking
14 the alley, that's a violation. And the community members and
15 residences should call, you know, the Metropolitan Police and
16 indicate that they're blocking the alley. We all live in the
17 city and we all deal with that. I mean I live on an alley.
18 I have a garage. I have children. But as an attorney, we
19 have to apply the standard and the law. And the law
20 indicates that, you know, the alleys are the places in which
21 it's required to provide access and vehicular -- and I think
22 that we have identified a lot of legal and I think
23 protections and operational responses to this such as our TDM
24 measures, our loading requirements.

25 We have a company, Guest Services Senior Living,

1 that has gotten a really unfortunate oppositional attack in
2 this hearing, but they've done a great job over many, many
3 years of working in many facilities all throughout Washington
4 DC on tight alleys, tight conditions. And they understand
5 how to service these types of facilities. And I think that
6 needs to be acknowledged and we can provide more testimony
7 by Mr. Gonzales. But we believe that based on the loading
8 access that there would be a respected -- at the end of the
9 day, these are residents -- these are seniors. Hopefully
10 people who live up and down in Ward 8, maybe even some of the
11 individuals in this, you know, audience in opposition, would
12 potentially come and utilize this facility. And this is a
13 residential zone for residential uses. And we would hope
14 that it would become a part of the community, not something
15 to be opposed to.

16 MEMBER JOHN: I also had another follow-up
17 question. There was a lot of discussion about whether the
18 facility would be operated properly. And I'm not sure -- I
19 should know this, but doesn't the city also do some sort of
20 approval before? Can you talk to that process?

21 MS. MOLDENHAUER: Absolutely. So part of the
22 standard is that this would have to be properly licensed.
23 And so there is a separate professional licensing requirement
24 for a CCRC. And obviously Guest Services Senior Living after
25 they get through potentially obviously with this Board's

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1 approval, the licensing process, the building would then be
2 constructed. An inspection would then occur. And then they
3 would go through the licensing process through that separate
4 agency that would look at a lot of the questions that are
5 really more appropriate for that agency in regards to, you
6 know, egress and operations and security and reviewing. And
7 I think Mr. Gonzales better than I, could answer your
8 question, Commissioner John, about you know, reviewing nurses
9 and aids and licensing, and kind of reviewing their
10 operational prospective. And I'll turn it over to Mr.
11 Gonzales to briefly respond to that because I think he can
12 answer it better.

13 MR. GONZALES: Certainly, the Department of Health
14 that would license this community and also regulate the
15 community via regular routine surveys and reports would be
16 responsible. And we would need to satisfy them prior to
17 going operational. They have specific criteria for staff
18 training. Specific criteria for services and care to be
19 provided to the residents, dignity. There's a Resident Bill
20 of Rights. So all of that as an operator, we would have to
21 adhere to 110 percent before even obtaining a license.

22 MEMBER JOHN: So assuming that your operation now
23 does not meet best practices as we have heard some people
24 testify to, would the city look at that and would it also be
25 your commitment to look at some of those best practices? And

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1 I imagine there are different models. But would that be your
2 commitment considering your extensive experience? And this
3 is beyond the scope of the Board. We don't look at the
4 operations because that's, you know, a separate agency. But
5 since it's come up, it might be helpful.

6 MR. GONZALES: Commissioner John, 100 percent
7 commitment to ensure that we not only meet, but will exceed
8 the requirements as set forth by the Department of Health.
9 We heard testimony today from Dr. Billig who referenced a
10 1 to 5 staffing ratio as being optimal in these environments
11 with a nighttime staffing ratio of 1 to 10. Our model calls
12 for a 1 to 4.2, which exceeds his staffing ratio as optimal,
13 as well as the nighttime overnight staffing ratio, ours calls
14 for a 1 to 8.5 versus the 1 to 10 that Dr. Billig cited as
15 being optimal for this kind of community. We will -- and it
16 is my passion to service this community as well as possible.
17 This is quite honestly very personal and professional for me.
18 This is my 33 years experience on the line to make sure that
19 this community is one that the entire wider community will
20 be proud of.

21 MEMBER JOHN: Thank you.

22 MR. GONZALES: Yes, ma'am.

23 MEMBER HART: And I've been kind of listening and
24 I had a few kind of -- I don't know if it's final questions
25 but -- so could you -- and I'm not sure if it's Mr. Andres,

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1 if you could talk about how emergency vehicles access this.
2 I mean are they going down the alley or are they going on
3 Edmunds Street? I'm just a little bit confused as to how
4 that works.

5 MR. ANDRES: So with respect to, you know, it
6 depends what the ambulance is there for. Obviously in a
7 life-threatening condition, they would stop where they would
8 on Wisconsin Avenue. You know, they would be in a situation
9 where the quickest way into the building is via, there's a --
10 there's an ADA ramp that takes you up to the front door of
11 the building. So in that instance, if it's a life-
12 threatening condition, yes, they would just be right on
13 Wisconsin Avenue with their sirens on, going to the nearest
14 entrance to address a life-threatening situation.

15 MEMBER HART: So the only vehicles that would --
16 I shouldn't say only -- the vehicles that you're anticipating
17 going into the building for the loading or parking are either
18 these two vehicles that are happening a week or -- and I'm
19 not adding in the, you know, delivery -- the package --
20 postal delivery stuff, and then the cars that are parking in
21 the back as well?

22 MR. ANDRES: Yes.

23 MEMBER HART: And you also stated that you don't
24 include the number of visitors or don't include how kind of
25 visitors come to this site or how many visitors you're

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1 expecting. You know, if you're -- 34, 36 people that are --
2 you know that are here, you're going to have visitors that
3 are happening and I just -- how do you see that working with
4 their coming here and parking at the -- in the proposed
5 parking area or parking in the neighborhood?

6 MR. ANDRES: So Mr. Gonzales' testimony have
7 identified that for a facility like this, at any one point
8 in time, there would be approximately two visitors that would
9 come to the site. So with our calculation of the seven for
10 the employees, there are spaces there that are available,
11 because there's a total of nine there. In the even that --
12 again, in the event that those aren't available or if more
13 than two visitors show up, as I mentioned, there are -- there
14 is significant amount of short-term visitor parking that's
15 available, both on Wisconsin Avenue and on Calvert Street
16 which are the two non-RPP locations and then further into the
17 neighborhood.

18 MEMBER HART: Okay. And I mean, that's kind of
19 like the every day, but you know, there are going to be
20 holidays or whatever that people may want to go visit their
21 loved ones. So I mean, what happens in that case when you
22 have potentially 70 people coming to this? Because I'm
23 thinking if it's 36, you know, there may be a child of one
24 of the residents and maybe their family or whatever, but
25 they're bringing cars with them and maybe a couple of cars.

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1 You may have multiple children. I don't know how to -- how
2 do you evaluate that during, you know, various times during
3 the year?

4 MR. GONZALES: You know, my experience has been
5 that particularly on holidays with this population, families
6 are 99 percent more likely to go pick mom up and take them
7 home to have a meal, have for instance Thanksgiving. Our
8 holidays, almost to a -- to a building that I've worked at,
9 always has reduced staffing because there are so many people
10 out of the building that have gone home with their families
11 for the day or the weekend. So this community and most
12 memory-cares do not have large gatherings in the community.
13 Large noisy gatherings are not conducive to servicing this
14 population well, so it's something that's avoided. Someone
15 had mentioned earlier if every single resident and staff
16 member occupied the garden for instance, what's the square
17 footage per person? Well that would never occur. We would
18 take out our residents in groups of potentially four or five
19 at the most. Because again, those large gatherings are not
20 conducive for this disease.

21 MEMBER JOHN: Mr. Vice Chairman --

22 MEMBER HART: Sure, please.

23 MEMBER JOHN: So the number of two to three
24 visitors a day seemed really very low to me. And I wanted
25 to ask that question because I from time to time visit

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1 assisted living facilities. And so that sort of seems low
2 to me.

3 MR. GONZALES: Ma'am, my experience is that
4 generally 10 percent or less on any given day. So I've
5 operated units with 100 -- communities with 100 units, to
6 have ten family members in at the exact same time didn't
7 happen very often. It could happen. Sixty unit buildings
8 which I've operated, having six family members in at the same
9 time on a Monday at 3 o'clock doesn't typically happen. So
10 that under 10 percent is in my estimation, a very generous --
11 or a very accurate reflection. So with 36 units, potentially
12 yes, you may have as many as 3.5. But that's generally not
13 the case in all of these sizes of buildings. It's generally
14 under that 10 percent.

15 MEMBER HART: Okay. I think I'd like to go to
16 the, I guess rebuttal.

17 MS. FERSTER: I have a question.

18 MEMBER HART: Yes, ma'am.

19 MS. FERSTER: -- on procedure. So a number of
20 these witnesses did make rebuttal points and raised issues
21 that were not addressed in their direct testimony. So I'd
22 be happy to reserve my questions for cross, but I just want
23 to make sure that all of these witnesses are going to be
24 testifying on rebuttal and that I can cross-examine them on
25 their response to your questions since they were also

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1 directly related to rebuttal.

2 MEMBER HART: So you want the folks that are
3 sitting next to, to be -- is that what you just said?

4 MS. FERSTER: If they're not testifying on
5 rebuttal, I'd like to ask my questions now. And if they are
6 testifying on rebuttal, then I would be happy to hold all my
7 questions until they provide their rebuttal testimony.

8 MEMBER HART: Okay, so you kind of want a cross-
9 examination?

10 MS. FERSTER: Yes, and I do have a right to cross-
11 examine them on rebuttal testimony. They happen to have
12 provided it in response to your questions. But you know,
13 it's new. They brought up issues that were not part of their
14 opening direct testimony. And some of them are actually --
15 some of the statements were actually inconsistent.

16 MEMBER HART: Okay. I'm not sure if I understand
17 that. Let me ask OAG. Give me a second. Okay, so Ms.
18 Moldenhauer, are you -- it's okay. Are your experts going
19 to testify -- or are they going to be part of your rebuttal?

20 MS. MOLDENHAUER: Yes, we have two new witnesses
21 that would be part of our rebuttal. And then I do believe
22 I have maybe one or two questions for some of the witnesses
23 that are currently up at the table now.

24 MEMBER HART: Okay. So I think that they could
25 do -- you could do your questions after. It sounds like

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1 they're --

2 MS. MOLDENHAUER: That's fine. That's fine if
3 they're all going to be rebuttal, I'll hold them.

4 MEMBER HART: Okay. Go right ahead.

5 MS. MOLDENHAUER: Okay.

6 MEMBER HART: And how long are we talking about?

7 MS. MOLDENHAUER: We've had about two hours, maybe
8 more of opposition. So we have things that need to be
9 rebutted. So I would say we'll try to limit it to maybe 15,
10 20 minutes.

11 MEMBER HART: That would be good.

12 MS. MOLDENHAUER: But we also have two new
13 witnesses. Then I'll ask all of my witnesses to come back
14 up to the table and my two new witnesses -- the two new
15 witnesses are also experts in responses from the expert
16 testimony that was provided earlier. Their testimony -- I'm
17 sorry, their resumes are part of Exhibit 399, just for the
18 board's easy reference. I will let everybody introduce
19 themselves by name first. And then I will just identify the
20 expert qualifications that I would like to have the board
21 confirm.

22 MEMBER HART: Okay, welcome. Welcome. Welcome.
23 So if you could introduce yourselves.

24 MR. GALE: My name is Tom Gale and I work for
25 Lancaster Pollard Investment Banking Firm.

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1 MR. KELLER: My name is Jeff Keller and I run the
2 Dementia Institute in Baton Rouge, Louisiana.

3 MEMBER HART: Your last name again was?

4 MR. KELLER: Keller.

5 MEMBER HART: Okay.

6 MR. KELLER: K-E-L-L-E-R.

7 MEMBER HART: Okay. So they are not in our book.

8 MS. MOLDENHAUER: No, they are not in your book.

9 MEMBER HART: That's fine. Does the board have
10 any -- Does the board have any issue with accepting these
11 experts into the -- into the book?

12 MEMBER WHITE: What type of experts are they?

13 MS. MOLDENHAUER: So Mr. Gale is a senior vice
14 president with over probably 30 years of experience -- 25,
15 20 years of experience and he would be qualified as an expert
16 in financing memory-care in senior living facilities.

17 MEMBER WHITE: Okay.

18 MS. MOLDENHAUER: And then Mr. Jeff Keller would
19 be an expert in memory-care facilities.

20 MEMBER MILLER: Now are their resumes in the record
21 or --

22 MS. MOLDENHAUER: They are. They're Exhibit 399.

23 MEMBER MILLER: Okay, thank you.

24 MS. MOLDENHAUER: Dr. Keller.

25 MS. FERSTER: I have a quick question.

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1 MEMBER HART: Sure.

2 MS. FERSTER: So if you could just identify what
3 witness that your experts will be rebutting.

4 MS. MOLDENHAUER: Mr. Gale will be rebutting Mr.
5 Cunningham's statement, as well as I cannot remember the
6 gentleman's name, but the Navy SEAL who provided other
7 opposition statements. And Dr. Keller will be rebutting
8 comments made by Mr. Billig, as well as additional testimony
9 that was presented in the evidence by individual witnesses
10 in regards to assertions that Guest Services Senior Living
11 is not -- does not have the level of experience, nor you
12 know, the quality of the actual proposed facility. With that
13 being said if --

14 MS. FERSTER: I have no objection to their
15 qualification.

16 MEMBER HART: Thank you. Thank you. Okay, the
17 Board, sounds like they're accepting the experts. So Ms.
18 Moldenhauer.

19 MS. MOLDENHAUER: Mr. Gale, I'll turn it over to
20 you to start. Thank you.

21 MR. GALE: Thank you, Vice Chair Hart and the rest
22 of the board. I have found the proceedings fairly
23 interesting. Typically from the finance side, I get involved
24 in these transactions after they go through zoning, so it's
25 a nice insight to what my clients go through.

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1 MEMBER HART: Welcome.

2 MR. GALE: I will try to avoid them in the future.
3 I'll keep this brief. I have spent 20 years financing --
4 directly financing senior housing facilities, not only on a
5 local level in the Mid-Atlantic region, but also on a
6 national level. I've worked for commercial banks. For
7 probably ten of those years, I've also worked for funds, Ziko
8 Healthcare Capital, which we had an equity fund -- a
9 mezzanine debt fund and also a first mortgage fund that was
10 strictly financing senior housing facilities. And I've spent
11 the last ten years at Lancaster Pollard, which is a unique
12 investment banking finance company again, directly related
13 to senior housing memory-care, skilled nursing facilities,
14 retirement communities.

15 My work at Lancaster Pollard, we have financed
16 these facilities, probably seven to eight different ways.
17 No one way fits every project. We work with the government
18 programs; FHA, Fannie Mae, USDA. We also work with non-
19 profits in the bond market -- tax exempt bonds. We have a
20 private rate where we actually own the facility and we lease
21 it back to operators with the understanding that they'll want
22 to buy it back after a couple of years. It's really used as
23 a financing vehicle for a lot of our clients. And then we
24 also do balance sheet lending where we actually put the risk
25 capital out. And lastly, we have a syndications group. That

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1 has relationships with probably 300 to 400 financial
2 institutions, including banks and financing companies across
3 the country.

4 So over the 20 years that I've been in this
5 business and I actually helped Paul Clawson back in the day
6 start Sunrise in some of the facilities they did because I
7 was working for First National Bank of Maryland here up in
8 Baltimore. So I do understand the industry. When I walk
9 into a project or someone calls me about a project, I go in
10 with open eyes. I do the analysis on the operators.
11 Gentleman John has extensive experience in what I'm typically
12 used to seeing. When I have someone in an operating
13 facility, even though it might be a new company that's doing
14 it, I need to see the president of that company with
15 extensive experience and John actually brings that -- brings
16 that to the table. And then we have a development team with
17 MED Developers that also has extensive experience in
18 developments and especially in the urban areas.

19 So when I look at this project, I see a team
20 together that works. What my job is then is to help them fit
21 their goals with the financing vehicle that is best fit for
22 them. I heard a couple of people reference that you'd have
23 this facility sitting there with no changes of -- you know,
24 it would never be a memory-care facility. It could fail and
25 then it would just sit there as this albatross. I, in my 20

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1 years' experience, went through PPS when the skilled nursing
2 facilities failed because of the changes in government
3 reimbursement, that was Genesis, that was IHS. You guys
4 remember in this area.

5 I went through the assisted living overbuild in
6 the early 2000s. And I also just went through the CCRC
7 collapse after the housing market. And these are projects
8 across the country that I've worked with. And almost every
9 single instance, what happens is it gets reconfigured. Not
10 reconfigured in an operational standpoint, but on a debt
11 standpoint. So if a bank has \$10 million worth of debt on
12 this facility, it's not working. Residents will come to this
13 facility, whether it's \$12,000 a month. If you drop it to
14 \$10,000, it only supports so much debt. So what you do is
15 you resize the debt for that facility and it continues to
16 operate. We had one in Chicago that was \$200 million
17 project. It got bought 30 cents on the dollar. It continues
18 to run today as a CCRC. That's what happens to these
19 projects. They don't get sold. They don't get changed.
20 They don't come back to you to try to reconfigure it. They
21 will work with memory-care because it is a need.

22 So with this project, it's solid. The zoning,
23 Paul Clawson at Sunrise used to go years trying to get zoning
24 to get his facilities into certain areas where opposition
25 filled the room. But his facilities have done very well and

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1 they've become part of the community and I think this one
2 will too. Thank you.

3 MR. KELLER: Vice Chairman Hart, you have the
4 patience of Job and have been amazing to watch in this entire
5 process. As a private citizen, this has been an amazing
6 thing to watch. I've been part of the designing,
7 programming, helping as a consultant in the operation design,
8 planning of several dozen assisted livings and memory-cares
9 throughout the United States. I was involved with one with
10 Mr. Gonzales that was a memory-care only. It was 22 beds.
11 It opened in January. It is doing well. And not only doing
12 well, it's thriving. So I'm here just to comment on a couple
13 of things, just to clarify some issues that were raised. And
14 also speak on some issues that were raised with Mr. Gonzales.

15 So I've never heard Sunrise referred to so often
16 favorably. And anything, being someone in memory-care, that
17 is not typically the way that it's referred to, as a golden
18 shining star. But suffice it to say that this place, there
19 are hundreds of memory-care facilities throughout the United
20 States that operate on fewer than 40 beds. They thrive.
21 This place will have a waiting list before it's opened. The
22 problem is the need. There is no issue in terms of having
23 enough people. You just have to have a place that is able
24 to operate. And John brings to -- while Guest Services does
25 not have extensive experience in memory-care, this gentleman

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1 does and I've seen it first-hand. And not only first-hand,
2 I've seen him do it in a place that 22 beds. And so I just
3 want to give that background.

4 The other thing is, it was a misconception --
5 because that's part of this. People don't -- most people
6 don't understand the difference between assisted living
7 memory-care nursing homes, CCRCs in the way that we
8 understand them. Memory-care is its own entity. It is for
9 -- There is no medical care provided at this place. There
10 will not be medical care. This is a higher level of assisted
11 living for people that are memory-impaired. So the
12 individuals are secured. That's a requirement for these
13 locations. The staffing will be different because it's
14 smaller -- it's a universal worker model. So when we hear
15 about the staffing ratios compared to Sunrise and all these
16 other places and you're going to have the business model.
17 The way Sunrise is operated is they have people that cook.
18 They have people that clean. They have people that do -- And
19 in this model, you're going to have a universal worker model.
20 And I've seen John do it and it's actually running in Florida
21 at one place that I was personally involved with him.

22 The second thing is you're going to have to have
23 very clear intake on who is appropriate for this place. So
24 people that have severe psychiatric issues, chemical
25 restraints for example aren't going to be allowed here. And

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1 they're working through all of the details. But I've been
2 speaking with John about it over the past few weeks. And
3 he's very well versed in the fact that you're going to have
4 to have clear rules on who's allowed to come to this place
5 because of its limitations. And when people are no longer
6 appropriate for this place, which is going to happen.

7 So I just want to set the tone that this is not
8 a nursing home. This is not a place where medical care is
9 going to be provided. It is a place to hold individuals in
10 the best nurturing type of environment possible who are no
11 longer able to be safely within their homes. And I believe
12 that the programming that John and them are going -- that
13 they've outlined is going to make this a very stimulating
14 environment. I wish to God parking was an issue at most of
15 the places that I work with around the United States. People
16 do not go see their loved ones once they enter memory-care.
17 It is not an assisted living. It is assisted living memory-
18 care. I hope to God this one is different and they have a
19 parking problem, but that is not generally the case of what
20 happens. That's never the case of what happens. This is
21 where whenever people have reached their limit and it's an
22 emergency and I just can't do it anymore, this is where they
23 go.

24 And then let me see. Let me give a couple more.
25 The movements of people, you're going to be -- John knows how

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1 to run a place. And yes, you don't -- everybody doesn't eat
2 lunch at the same time. Everybody doesn't eat dinner at the
3 same time. Everybody doesn't go to the garden at the same
4 time. It's a coordinated thing. There will be people that
5 are higher functioning. People that are lower functioning.
6 People that prefer to be around one another. People who
7 don't like to be around one another. And so what you'll do
8 is in a universal working model, work through that and the
9 operations of this place. And I have full confidence that
10 John can do that. I've seen it firsthand.

11 Lastly, I understand the passion here. If it was
12 my house right next to it, I'd be passionate fighting for
13 whatever goals I had and everything else. I understand all
14 of this. But I just want to point out, there is -- there are
15 things that are nondeniable. There is the aging of America.
16 10,000 people a day turn 65. The amount of Alzheimer's
17 Disease in the United States is going to go from 5 million
18 to 15 million in the next 22 years. The need for places like
19 this are only going to increase. And finding ways -- most
20 people that go to a memory-care center come from within a 10
21 to 15 mile radius of that center.

22 If you use Chevy Chase as an example, there's
23 2,300 people over the age of 65. There's at least 230 people
24 with dementia just in that one community of Chevy Chase. So
25 you're going to have more and more people here. Nobody in

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1 their right mind plans on being an Alzheimer's caregiver and
2 it happens to you. And when it happens to you, you want to
3 have options. And so the reason that I came here was to be
4 an advocate for memory-care. And I have zero doubts that
5 this gentleman right here can put in place a great operation.
6 And I have zero doubts that, that place will have a waiting
7 line whenever it starts. And it will continue to be needed.

8 MS. MOLDENHAUER: Thank you very much. I'm just
9 going to turn to Mr. Gonzales. I think that there was some
10 questions about ambulances. Can you maybe just address some
11 of the other alternatives for a non-emergency type of
12 situation?

13 MR. GONZALES: I certainly can. There's always
14 the option for private ambulance services that mitigate the
15 loud sirens and noises. There's also a lot of technology
16 that will be bringing to bear in this community that will
17 allow us to determine whether or not an ER admission is
18 appropriate or not. Let me back up a little. We'll allow
19 our EMTs to make that determination based on information that
20 we'll be gathering within the rooms via different
21 technologies. There's wearable technology. There's WiFi
22 enabled cameras that still maintain the privacy of the
23 resident. And active and passive motion sensors, all of
24 which allow us to get a better understanding of any event
25 that occurs in the building.

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1 We've partnered or are partnering with an
2 organization out of the University of Berkeley, Safely You,
3 that has refined and perfected this technology. And it's
4 very groundbreaking. A lot of the newer methods for managing
5 behaviors are going to be employed here via training and
6 technology. So yes, there are -- there will be reduced
7 instances of ambulance coming screaming into the community.

8 MS. MOLDENHAUER: And Mr. Gonzales, you've heard
9 concerns about safety and operations. Can you just indicate
10 to the board kind of your commitment to work with the
11 community and address those issues you've heard from some of
12 the neighbors who live, you know, right nearby or across the
13 alley?

14 MR. GONZALES: Related to the safety of the
15 residents, there's no greater priority for me as an operator
16 to ensure that, that happens. In 33 years, I've experienced
17 approximately five elopements from a community that were
18 serious in 33 years. The last one occurred when I was the
19 chief operating officer for a company in Tacoma, Washington.
20 We had an elopement because a gardener that was contracted
21 came in to service the plants and neglected to lock the gate
22 on the way out. So we had a resident elope, was missing for
23 a period of about 48 hours. As soon as we were made aware
24 of the elopement, not only myself but my entire corporate
25 team descended on the building and started looking through

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1 the marsh, through the forests, climbing hills and mountains.
2 We engaged in an all-out search in addition to what you would
3 expect, the police would come out and all. It's not
4 something that is ever desired. Sometimes as in this case,
5 we look at other -- what could we have done to prevent it
6 But there's no greater priority for an operator than to
7 ensure the safety of the residents for the families that put
8 their trust in us.

9 Our front desk is planned on being staffed between
10 7:00 in the morning and 8:00 at night, so there is physically
11 a person at that building that controls the inflow and outgo
12 of visitors. Visitors' logs, we'll always know who's in the
13 building at what time. And again the breakthroughs in
14 technology today are such that we'll be cutting edge in this
15 building. And most of that is related to the safety of our
16 residents, in addition to programs and services that we'll
17 be delivering.

18 MS. MOLDENHAUER: I'm going to turn to Ms. Dickey
19 to address some of the other opposition questions that we
20 have discussed.

21 MS. DICKEY: Thank you. So a couple of points
22 that I wanted to raise in response to comments that were made
23 earlier. You know, in response to the loss of light access
24 that this building would impose upon the neighboring
25 buildings, we actually did do a series of sun studies. We

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1 looked at the building on its site across the entire year at
2 6:00 a.m., noon, 4:00, and 8:00 p.m. so that we could
3 understand how that works. What we found was that we -- this
4 building minimally impacts the surrounding buildings. At its
5 most impactful --

6 MEMBER HART: Did you submit those to the record?

7 MS. DICKEY: We have not submitted them to the
8 record.

9 MEMBER HART: Can you submit those to the record?

10 MS. DICKEY: We can.

11 MEMBER HART: Thank you. You can continue. I'm
12 sorry.

13 MS. DICKEY: I think we can have them pull them
14 up if that would be helpful.

15 MEMBER HART: I still would like them for the
16 record though. So you can do both of those if you'd like.

17 MS. MOLDENHAUER: They are on a separate drive.

18 MS. DICKEY: They are on a separate drive. We can
19 provide them at a later time. So we did not see that the
20 mass of this building was reducing the quality of light or
21 air on the adjacent neighbors. And in fact, in the alley,
22 if you look at the photographs of the structures and the
23 heavy vegetation that lined that alleyway, even if our shadow
24 did manage to kind of reach across there, it would be stopped
25 by the structures that already exist there. So we don't

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1 shade anybody any more than they are already shaded.

2 To address the concept of the -- whether or not
3 this is a residential building or whether or not this is an
4 institutional building. From a life safety perspective, this
5 would be classified as an I1 assisted living building. And
6 that basically governs the building code concerns. So life
7 safety, egress, dead end corridors, et cetera, et cetera, it
8 in no way is reflective of the appearance or interior design
9 of this building. It is a residential building. And it will
10 be designed in such a way that it is as residential and
11 welcoming as we possibly can make it. And everything from
12 our research -- everything that we know from our experience
13 as senior living design says that residents thrive better in
14 a residential environment. And that is what we would
15 absolutely design. So that was a misunderstanding of the
16 information.

17 To discuss the storm water management concerns of
18 the neighbors, we have heard that this is something that they
19 are concerned about. As you are probably aware, the District
20 has some of the most stringent storm water management
21 requirements in the entire country. Over the last few years,
22 requirements have been ratcheted up in such a way that it is
23 extremely burdensome, actually, on developments that are
24 under -- that are in design in order to be able to manage the
25 water appropriately to eliminate the runoff from the site.

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1 So we would be -- we would have to comply with all of those
2 requirements in order to get a building permit at all. So
3 while I understand that right now with the site being empty
4 and essentially very easy for water to sheet across the
5 ground and run from the north side to the south, once the
6 building is in place, actually, we would need to manage the
7 water in a far superior way to the kind of vacant lot that
8 exists currently.

9 MEMBER HART: And are we nearly done?

10 MS. MOLDENHAUER: I believe that. And then there
11 might be just one other comment from -- thank you.

12 MR. ANDRES: So there were some comments made by
13 Mr. Mehra regarding our analysis and our parking analysis.
14 Unfortunately I didn't have a lot of time to go through it
15 given that it was presented today. But the things that I do
16 want to point out that are relevant is he cites Fairfax
17 County and all the county requirements. Obviously we don't
18 believe this is relevant. You know, we are in the District
19 of Columbia where some of the transportation initiatives and
20 the TMD initiatives are progressive and are looking to reduce
21 parking demand.

22 He questioned why we didn't do parking counts
23 between 11:30 and 1:30, the reason is because typically if
24 you go to most residential neighborhoods in the District,
25 between 11:30 and 1:30, a lot of the residential streets have

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1 a lot of parking occupancy. So what we focused on is when
2 people come home from work and typically that's in the
3 evening. And so that's why -- typically that's in the
4 evening and typically when there's spaces that are restricted
5 during rush hour. So we focused our parking analysis during
6 those times because that's when the community can really feel
7 the crunch during those hours. So that's why we don't do
8 parking counts in the middle of the day.

9 Some of the other items that I just want to
10 quickly bring up. He talked about us using arbitrary mode
11 share. As I responded earlier to Vice Chair Hart, we have --
12 our analysis is data driven. So we've used our traffic
13 analysis zones that's associated with census tract data for
14 the neighborhood to look at our mode sharing analysis.

15 And with respect to the transportation demand
16 management plan, there's been a lot of questions related to
17 that. In DDOT's review letter dated September 17th -- excuse
18 me, September 14th, on page 3 of their letter, they
19 essentially ask that in order of -- one of their conditions
20 is to satisfy the TDM requirement. And the TDM requirement
21 that they want us to satisfy is provide a transit subsidy.
22 And that is the only element of the TDM plan that they are
23 requiring. So we have wholeheartedly agreed to meet that
24 requirement. And we also wholeheartedly agreed to the
25 bicycle requirement that DDOT asked for. In addition to

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1 that, in our October submission, we identified several other
2 TDM elements that we believe would be good for the community.
3 And so in that respect, we support DDOT's TDM requirement
4 with our own. So I just wanted to make that clarification.

5 And then again, I just wanted to stress that when
6 we first started out this project, the alley and the
7 considerations related to access and parking and the loading
8 was something that was well vetted with DDOT. And they made
9 it very clear from the beginning that the alley was the only
10 way we can access any of our parking and/or loading. Thank
11 you.

12 MS. MOLDENHAUER: So I have some legal points I'd
13 like to make in closing. I don't know if the Board would
14 like to have me make those now. There's also some comments
15 and responses to Council Member Cheh's letter that I'd like
16 to address. I can hold those and we can have cross-
17 examination. I know that that was already requested. And
18 then I can provide that in my closing if that would be
19 appropriate.

20 MEMBER HART: Yes, I'm actually thinking about
21 just kind of logistically how we're going to do some of this.
22 And what I mean by that is I wanted to hear from the Board --
23 well, I don't think I'm ready -- actually I know I'm not
24 ready to decide this today. There's a lot of information
25 that we got even today. So I'd prefer to have some time to

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1 kind of read through this. So it is hard to -- So I'm trying
2 to understand if we're going to not decide it today, do I
3 want to have the conclusion today? I'm not sure. And I'd
4 like to hear from the rest of the Board if they have any
5 thoughts on this. Anyhow, I'd just like to hear from the
6 rest of the Board.

7 MEMBER WHITE: I definitely am not prepared to
8 decide this today. There's some additional information that
9 we've asked for. So I don't think we're in a position of
10 doing that. In lieu of having conclusions, you could think
11 about just having them file written conclusions. But I'm
12 flexible.

13 MEMBER HART: Board Member John?

14 MEMBER JOHN: I think it might be helpful if we
15 save the closing arguments for another day, so that we can
16 review some of the material that's come in today. And
17 there's been a lot of information. And I'm not prepared to
18 decide today either. So whatever would work best.

19 MEMBER HART: You were about to say?

20 MS. MOLDENHAUER: That I would just like to be
21 provided some information as there were questions that I'd
22 like to at least then address in my rebuttal.

23 MEMBER HART: Okay. Sure. I know the cross is
24 going to happen.

25 MS. MOLDENHAUER: Well then -- I'll provide this,

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1 then I'll just see. But I think that there were some
2 questions that were raised regarding Council Member Cheh's
3 letter and the legal standard of sufficiency. And I would
4 just like to point out that the language of the special
5 exception standard for a CCRC specifically identifies
6 sufficient parking. In other words, if you look up as the
7 zoning regulations indicate, terms that are not defined. You
8 go to Webster's, the parking, and then it defines parking
9 must be enough to meet the needs of the project. I point out
10 that there are the Court of Appeals, is it words of the
11 statute should be construed in accordance to the ordinary
12 sense within the meaning of the commonly attrued to them.
13 This is Davis vs. US. And here I just point out that the
14 Zoning Commission, if they had intended for CCRCs to not be
15 able to go below what was specifically identified in Subtitle
16 C of the parking requirement, they would have said so. And
17 they have said so in other sections. I point you to Section
18 U511.1J, which is an MU Zone for fast food establishments and
19 retail uses. There they use the exact same language of
20 sufficient parking -- off-street parking. But then they add
21 the words, "but, not less than the required under Subtitle
22 C, Chapter 7." We don't have that language here.

23 So one of the reasons why I have asked the
24 question of Mr. Mehra, well where is your restriction to say
25 there isn't -- the Board does not have the ability to find

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1 that it is sufficient if it is less than the zoning
2 requirement? And the answer is that it's not in the
3 regulations. And it's our opinion that, you know, Office of
4 Planning, they identified in their report and as DDOT
5 identified in their report, that the board is to evaluate
6 what is sufficient. And the regulations do not require that
7 sufficiency is equal to or not less than what is identified
8 in Subtitle 7. I think that, that's really important for
9 this board in regards to this context.

10 In addition to that, I would just point out that
11 there were some assertions that the language has changed over
12 time. We all know that the zoning regulations were re-
13 written in 2016 for a very specific reason, because there
14 were sections that were kind of all over the place. But if
15 you go back and you look at even cases that kind of start out
16 in like 1986, the language in those orders -- this is Order
17 14497 identifies -- and this is for a similar type of use --
18 which is adequate off-street parking and curbside parking
19 exists to ensure the operation of the transitional home,
20 which at that time was under the same general umbrella, would
21 not adversely affect it. And if you go through multiple
22 other cases, the language in other types of either community
23 residential facilities, which was what was identified in
24 1958, the same language, "adequate off-street parking for
25 guests, residents, and employees" is the same. That language

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1 whether it was in the old regulations is still the same,
2 whether it was adequate or sufficient.

3 And so there are multiple instances in which the
4 prior boards in other situations where these types of uses,
5 whether they are emergency facilities, CCRCs have applied
6 that similar standard. And the Board has evaluated it based
7 on sufficiency of parking for that use. And I think we have
8 a lot of testimony here. I wanted to just kind of address
9 that very pointed question to the Board. And maybe be
10 available for questions if they had any questions about that.

11 MEMBER HART: Thank you. Does the Board have any
12 questions at this moment for the -- on rebuttal? Ms.
13 Ferster?

14 MS. FERSTER: So before I ask questions. A point
15 of clarification here, because Counsel made a number of legal
16 arguments and the nature of the closing statement, which is
17 fine. I don't have a problem with that. But I would stress
18 it is very important that MAHCA also be entitled to provide
19 proposed findings of fact and conclusions of law in this case
20 after the record is closed and all the additional exhibits
21 come in. And we've had a chance to respond to that.

22 MEMBER HART: I mean MAHCA is a party.

23 MS. FERSTER: Okay, just to be clear.

24 MEMBER HART: As is the ANC.

25 MS. FERSTER: Right. Okay. So Mr. Cunningham and

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1 I, we're going to share cross-examination. So let me just
2 kick it off here. I'd like to start, a couple questions with
3 Mr. Gonzales here. My first question has to do with your
4 testimony and this was really in response to questioning from
5 the board about the Department of Health licensing of
6 assisted living facilities. I'd ask you to clarify this
7 because your counsel, when she was describing those licensing
8 requirements stated that this facility would need to be
9 licensed by the Department of Health before there was
10 construction. And you stated that licensing would have to
11 happen before it became operational. Would you like to
12 clarify your testimony or do you feel correct in that
13 statement that it's simply -- licensing occurs before it
14 becomes operational as opposed to before construction?

15 MR. GONZALES: No, my statement is correct. From
16 my interpretation of the reading, licensing would occur
17 before Resident 1 moves into the community.

18 MS. FERSTER: Okay. So you can construct the
19 facility and then go to the Department of Health and ask for
20 them to license it?

21 MS. DICKEY: The Department of Health review is
22 part of the permitting review process. So they are involved
23 through the permitting phase to give feedback on the project.
24 It's just the actual licensing that happens before the
25 building opens.

1 MS. FERSTER: Right. And thank you for that. But
2 okay, so let me clarify about the permitting here.

3 MEMBER HART: So the question you're trying to get
4 to is can they build a building without having it being
5 licensed by the Health Department?

6 MS. FERSTER: That is my question.

7 MEMBER HART: And so I think what you're asking
8 is can the building be constructed and then all the sudden,
9 well we don't have the ability to -- the license -- we can't
10 get the license, so we have a structure. We've got to use
11 it for something and it's here. So I mean I'm assuming
12 that's what you're getting to.

13 MS. FERSTER: And that is. And it's my question
14 to Mr. Gonzales with all due respect.

15 MEMBER HART: The licensing aspect of this is
16 still -- it's kind of beyond us.

17 MS. FERSTER: I understood but it was -- there was
18 a discrepancy with the testimony that it's important to
19 clarify.

20 MEMBER HART: Okay.

21 MEMBER JOHN: Mr. Vice Chair, if I might.

22 MEMBER HART: Please.

23 MEMBER JOHN: I raised that question because it
24 was mentioned in the Office of Planning's report. And I
25 wanted to be clear that, that process has nothing to do with

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1 the BZA. We only look at the zoning issues. And so it's
2 entirely outside the scope of this hearing. It was sort of
3 like a giveaway. Just, you know, for educational purposes,
4 but it has entirely no relevance to what we do here.

5 MS. FERSTER: I have not heard an objection to my
6 question. So if you'd like to rule it out of order, you may.

7 MEMBER HART: I would just like to move on. It's
8 not that I don't -- I just don't think it's relevant to this.

9 MS. FERSTER: Understood.

10 MEMBER HART: I'm trying to get to the -- are
11 there things that we need to understand to be able to say oh,
12 this is something that's relevant to the issue of us saying
13 yes or no to the building.

14 MS. FERSTER: And I would be happy to move on, but
15 I would like to get it on the record that you're not allowing
16 this question --

17 MEMBER HART: I'm not saying that I -- I'm not
18 saying that --

19 MS. FERSTER: -- just for the record.

20 MEMBER HART: That's fine. You can move along.

21 MS. FERSTER: Okay, thank you. So my next
22 question has to do with the staffing. So you, Mr. Gonzalez,
23 you testified that -- in response to Dr. Billig's testimony
24 about the staffing ratio, you indicated Dr. Billig's had
25 testified that in his view, the best practice and standard

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1 of care would be to have one trained nursing assistant per
2 five residents. And you indicated you were doing better than
3 that. And you were providing -- But you were unclear about
4 this. You're providing one staff member for every 4.2
5 residents. And I just want to clarify, were you referring
6 to any staff that is employed by the memory-care facility or
7 were you saying that you will actually have 4.2 staff members
8 who are trained personal nursing assistants for every -- one
9 trained personal assistant for every 4.2 residents?

10 MR. GONZALES: I couldn't have articulated it
11 better myself. That is direct-care staff only. At any given
12 time, there will be approximately 17 staff in various
13 positions. Direct-care only would comprise at least 50
14 percent of that, if not more on different shifts.

15 MS. FERSTER: Okay. So that would be -- just to
16 break it down for me a little bit. So in any one shift --
17 So take the 7:00 a.m. to 3:00 p.m. shift, you would have --
18 in addition to -- you would have -- let's see, you say you
19 have 18 staff people at any one time. So that would be seven
20 trained personal assistants, plus 11 other people. Is that
21 correct?

22 MR. GONZALES: I think your math may just be off
23 a little.

24 MS. FERSTER: Okay, help me please. That's why
25 I went to law school.

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1 MR. GONZALES: At 7:00 a.m., we would have seven
2 direct-care staff and nine total staff in the building. If
3 you give me another time of day, 9:00 a.m., we'll have 15
4 total staff, eight of which will be direct-care. At 3:00
5 p.m., we'll have 15 total staff, eight direct-care. Oh, and
6 I'm looking on my phone. I'm not texting. At 8:00 p.m., we
7 go to seven total. And all of those are direct-care.

8 MS. FERSTER: Okay. And by direct-care, what do
9 you mean?

10 MR. GONZALES: CNAs, CMAs, licensed nurses,
11 certified med assistants.

12 MS. FERSTER: Okay. And does that also --

13 MEMBER HART: So Ms. Ferster, you're asking these
14 questions to try to get how many staff are going to be there
15 at any given time? Are you looking at the number of vehicles
16 that are going to be there? I'm just trying to get to the --

17 MS. FERSTER: Including that, yes. But that --
18 You've answered my question, so thank you.

19 MEMBER HART: I just didn't know if it was
20 clarification or --

21 MS. FERSTER: That's okay.

22 MEMBER HART: -- clarification for the number of
23 staff or you were just trying to figure out if there were
24 going to be -- Well, I don't know -- what type of staff was
25 going to be there. I was just a little bit unclear.

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1 MS. FERSTER: It was both. Thank you.

2 MEMBER HART: Okay.

3 MS. FERSTER: So I have -- I'll come back to Mr.
4 Keller. Why don't you do -- I actually do have one question
5 for Mr. Keller too.

6 MR. CUNNINGHAM: Do you currently have a financing
7 relationship with MED or with GSI?

8 PARTICIPANT: Absolutely not.

9 MR. CUNNINGHAM: No, not you. Mr. Gale.

10 MR. GALE: I don't.

11 MR. CUNNINGHAM: And that includes your firm,
12 right?

13 MR. GALE: I don't know -- We don't. We don't.

14 MR. CUNNINGHAM: Okay, great. And how many
15 memory-care units -- urban memory-care units with fewer than
16 35 or fewer than 40 --

17 MEMBER HART: Mr. Cunningham, can you get a little
18 bit closer to the mic?

19 MR. CUNNINGHAM: Sure.

20 MEMBER HART: It's a little bit hard to hear.

21 MR. CUNNINGHAM: How many memory-care units with
22 fewer than 40 residents have you financed in a major
23 Metropolitan area like DC?

24 MR. GALE: In major Metropolitan --

25 MR. CUNNINGHAM: These urban areas.

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1 MR. GALE: Right. You know the industry is kind
2 of changing and going to more of an urban. I mean if you
3 include some of the Sunrise facilities, they would count some
4 of the Smith Packett facilities, HH Hunt. You know, it's not
5 dense downtown DC, but it is more of a you know, non-rural
6 area.

7 MR. CUNNINGHAM: But have you financed fewer than
8 residents in a dense urban area?

9 MR. GALE: Two years ago we did Eden Homes. It
10 was more of a heavy AL with some dementia. They had pod
11 homes. Each had eight. So you had 32.

12 MR. CUNNINGHAM: Okay. And that's it?

13 MR. GALE: Yes. It's just in Bethesda.

14 MR. CUNNINGHAM: But that one unit?

15 MR. GALE: That's the one I can come up with off
16 the top of my head, yes.

17 MR. CUNNINGHAM: Okay. Because there was a
18 reference to a lot of stuff. And then in financing, would
19 you anticipate that a building like this could get FHA or
20 Fannie Mae?

21 MR. GALE: On this project, I think it would be
22 more of a conventional financing.

23 MR. CUNNINGHAM: Okay. And those programs as I'm
24 sure you know, require an experienced level for the owners,
25 as well as the operator.

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1 MR. GALE: Absolutely. Absolutely.

2 MR. CUNNINGHAM: Is that generally true for
3 lending?

4 MR. GALE: Absolutely, yes.

5 MR. CUNNINGHAM: So the fact that MED doesn't have
6 any experience wouldn't reduce the likelihood of financing?

7 MR. GALE: That is why John is -- They have an
8 ownership interest in it.

9 MR. CUNNINGHAM: GSI has an ownership interest?

10 MR. GALE: Yes. And what will typically happen
11 is if you have just a management contract, you know, some of
12 the banks, some of the financing -- even HUD, FHA --

13 MR. CUNNINGHAM: Right.

14 MR. GALE: -- I've probably financed the most in
15 the country through the 232 program. And what you find is
16 if you don't have the operator tied in --

17 MR. CUNNINGHAM: Right.

18 MR. GALE: -- financially, an incentive and we
19 talked about that early on in which John and his group are.
20 That adds stability to it.

21 MR. CUNNINGHAM: So GSI would have a stake and
22 that would substitute for ownership. And if this were a
23 balance sheet loan to a conventional lender, wouldn't we have
24 a -- wouldn't it require a clear route to permanent debt?

25 MR. GALE: Most commercial banks will hold onto

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1 it. They'll renew it every five years. My balance sheet,
2 I'm a two to three year deal, so I would look for something
3 permanent. As I had mentioned earlier, I don't get involved
4 in these this early in the zoning. I've reviewed some of the
5 finances. I've looked at the group, the partnership, it
6 makes sense. But it's a very dynamic process when you go
7 through the financing side.

8 MR. CUNNINGHAM: So it's a -- How do you assure --
9 What kind of assurances do you require in order to take that
10 front end risk?

11 MR. GALE: Being that I've done it for 20 years --

12 MEMBER JOHN: Mr. Vice Chair --

13 MEMBER HART: Sure.

14 MEMBER JOHN: -- we do have an entire calendar
15 left to do.

16 MEMBER HART: Yes, that's true.

17 MEMBER JOHN: So maybe at this point if we have
18 a lot of questions left, we should probably continue this
19 case for another day. Because we have people -- We have
20 another big case right after this. And we have several
21 people who have been here from 9:30 this morning.

22 MEMBER HART: I appreciate the -- your concern.

23 MEMBER JOHN: So maybe we can have lunch.

24 MEMBER HART: No, no.

25 MEMBER JOHN: So maybe we might want to continue

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1 this case.

2 MEMBER HART: Yes and I've been trying to provide
3 enough ability for folks to ask questions. I know that Ms.
4 Ferster wanted to have an ability to do some cross-
5 examination. I don't know how many questions that we have
6 left. I don't know how many questions Mr. Cunningham has
7 left. And I do appreciate your respect for time. And we
8 have been here for five, six hours working through this. And
9 I'll ask how many questions you think that you might have for
10 this.

11 MR. CUNNINGHAM: I have -- since Mr. Gale's being
12 very straightforward, I have relatively few; two or three
13 max.

14 MEMBER HART: And Ms. Ferster, how many questions
15 do you have left?

16 MS. FERSTER: I'm done. No, I'm finished. You're
17 going to ask -- You were going to ask Mr. Keller a question.

18 MEMBER HART: I was?

19 MS. FERSTER: Oh, I thought you were.

20 (Simultaneous speaking)

21 MEMBER HART: I think -- How about this. How
22 about we have two more questions. And we're not going to do
23 closings today. And we're going to take a break and some
24 folks can leave. And we'll come back and -- Well actually
25 we'll set up what the actual timeline is for getting -- for

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1 the next -- I think it's going to be a continued hearing.
2 Actually it will have to be a continued hearing. And anyhow
3 -- but I do want to finish this point. And I will say I do
4 appreciate everyone for staying and listening. And I know
5 that this is important to everyone here. So two more
6 questions if you could, Mr. Cunningham.

7 MS. MOLDENHAUER: Mr. Hart, I just -- We obviously
8 objected to the relevancy of this initially --

9 MR. HART: Yes.

10 MS. MOLDENHAUER: -- where Mr. Cunningham --

11 MR. HART: I understand.

12 MS. MOLDENHAUER: And I would just indicate
13 obviously we are allowing this to play out --

14 MR. HART: I understand.

15 MS. MOLDENHAUER: -- for the opposition, but I
16 just want to for the record, object to the relevancy of this.
17 We put our rebuttal witness on for simply rebutting --

18 MR. HART: I understand.

19 MS. MOLDENHAUER: -- but the relevancy is still
20 up to the board. Thank you.

21 MR. HART: I understood. Thank you very much.

22 MR. CUNNINGHAM: So maybe now that you've had --

23 MR. HART: So Question Number 1, Mr. Cunningham.

24 MR. CUNNINGHAM: I haven't had time to think about
25 this. If you could answer my question concerning risk

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1 taking. I asked you about how you assessed that front end
2 risk when you were going in and then getting out again.

3 MR. GALE: You mean on a short-term basis or --

4 MR. CUNNINGHAM: Yes.

5 MR. GALE: -- on a longer term basis?

6 MR. CUNNINGHAM: On a short-term basis.

7 MR. GALE: You know, we're going to go through an
8 extensive market study. You're going to get an appraisal
9 done, which will look at the margins. We'll look at the
10 operational efficiencies. We'll look at the market in the
11 area, the viability. Any project -- Just to be blunt, any
12 project is viable if you put enough equity into it. So a
13 project like this, that's where the give and take is going
14 to be. The market for this product is there. I see it
15 across the country. But because it's an expensive project
16 because of the land downtown, that's when you're going to get
17 the give and take on the equity side. So that is what we're
18 going to massage as we go through the process. And that
19 leads to not being over leveraged and being able to get out
20 either in three to five years.

21 MEMBER HART: And is this -- is this the second
22 question, Mr. Cunningham? You said you had two.

23 MR. CUNNINGHAM: Well that was --

24 MEMBER HART: You have one more question to go.

25 Thank you.

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1 MR. CUNNINGHAM: Okay, then I'll ask a different
2 one.

3 MEMBER MILLER: Can you pull your mic closer, Mr.
4 Cunningham? I can't --

5 MR. CUNNINGHAM: Yes. Is this a -- if you don't
6 have a financial relationship, will there be competition with
7 you for the front end financing if there's to be --

8 MR. GALE: I'm assuming. I'm always in
9 competition, yes.

10 MEMBER HART: Thank you very much. So there were
11 a couple of things. Thank you all again for sticking with
12 us. And I appreciate everyone kind of moving through as
13 quickly as they could. There were a couple of things I think
14 we -- the board asked for. One of them was the sun study if
15 we could have from the applicant. I also would like to have
16 this PowerPoint or updated drawings because I think the --
17 I know that the drawings are not updated in the packet that's
18 in the Exhibit 7, I think. What else are we looking for?

19 MEMBER WHITE: The response from DDOT on --

20 MEMBER HART: The TDM plan. I think Mr. Andres
21 noted in his, I think, rebuttal testimony that the DDOT
22 required that -- they had one requirement and that the
23 applicant is wholeheartedly accepting that requirement. So
24 to me, that sounds like they've -- DDOT was -- I don't know
25 if we need a -- if you want to have an email from DDOT saying

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1 that they've accepted the plan.

2 MEMBER WHITE: I thought there was also -- OP was
3 going to follow up with DDOT on their response to Council
4 Member Cheh's letter.

5 MEMBER HART: And actually I think we would like
6 to have that from OP if we could.

7 MR. LAWSON: Sorry I'd just request clarification.
8 Are you asking for comments from DDOT or are you asking for
9 comments from the Office of Planning because I heard that you
10 were asking for comments from DDOT. And we can certainly --

11 MEMBER HART: Yes, it is DDOT --

12 (Simultaneous speaking)

13 MEMBER HART: I'm only you because you're here.

14 MR. LAWSON: I understand.

15 MEMBER HART: But yes, if you could coordinate
16 with them, that would be helpful. There was something else
17 I was looking for. Did you -- Mr. Andres, did you have
18 movements through the alley? Like how you're getting into
19 the alley and out of the alley? Do you have those somewhere?

20 MR. ANDRES: Yes, in coordinating with DDOT to
21 show them the loading, we do have AutoTURN exhibits that we
22 can provide.

23 MEMBER HART: If you could provide that, that
24 would be helpful. And that's with the updated plans so that
25 we understand where they -- how they -- how any movements

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1 actually happen with that. Anything else that I'm missing?

2 MEMBER MILLER: I had asked for some illustrative
3 renderings that showed the relationship of this proposed
4 development with the adjacent -- with the nearby single
5 family homes. And we have some matching things, but we often
6 get, you know, an illustration of the project and showing how
7 it looks from the adjacent single family homes. And it's
8 like it's popped down into the neighborhood where you can
9 really see what it would look like and feel like. Unless
10 that's already in the record -- I don't think it's adequately
11 in the record from my perspective.

12 MEMBER HART: So are you looking for elevations
13 or are you looking for perspective renderings?

14 MEMBER MILLER: Perspective renderings.

15 MEMBER HART: Oh, okay.

16 (Simultaneous speaking)

17 MS. MOLDENHAUER: An aerial image that then has
18 the project --

19 (Simultaneous speaking)

20 MEMBER MILLER: -- from the backs of the homes or
21 more than one thing.

22 MEMBER HART: You're looking for images from both
23 the -- on the other side of the alley, on the other side of
24 Edmunds Street, kind of what this is looking from, from those
25 vantage points. I think there are a couple that are in the

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1 record already and they're in the drawings. But I think it
2 may be helpful to have anything from -- I guess it's going
3 to be hard to do from the alley -- from the neighbors to the
4 east of the alley. I don't know if you have any images, Ms.
5 Dickey, if you --

6 MS. DICKEY: I don't have any currently. I would
7 have to produce them.

8 MEMBER HART: I would at least like to have one
9 of those to see what that is. Because I don't think we have
10 -- I know there's one that you've shown in your presentation
11 that's from the -- from the sidewalk if I'm correct.

12 MS. DICKEY: There's --

13 MEMBER HART: But nothing that actually shows the
14 -- So this one -- Yes, that's the one I was thinking -- This
15 is the one that I was thinking. It's kind of from the --
16 Well, it's actually in the middle of the road. But it
17 doesn't have the context of the buildings on kind of either
18 side. I think that's what Commissioner Miller is looking
19 for. This one again kind of has it, but you know, this is
20 --

21 MS. DICKEY: Sure. So part of the struggle that
22 we had in generating these renderings was that the vegetation
23 is so heavy that it's really hard to get a decent view. So
24 if you have particular views that you would want us to
25 produce, I would need you to let me know. So that we could

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1 figure out how to get those.

2 MEMBER HART: Okay.

3 MEMBER MILLER: Well the vegetation is less heavy
4 than when this picture was developed.

5 MEMBER HART: Yes, I mean -- I think -- I mean,
6 I think -- the vegetation -- deciduous trees and you know,
7 during the winter, you're going to be able to see some of
8 this stuff. I just don't know what's actually around the
9 site on the other properties. I don't know if somebody --
10 There may be some folks in here that may allow you to look
11 at -- you to get photographs from their property. But I
12 think it's helpful to see what -- These are from the east --
13 looking from the east -- on the eastern side of that alley,
14 looking towards your property or your proposal, I should say.

15 Okay, anything else? Mr. Miller?

16 MEMBER MILLER: Yes, in my dialogue with Ms.
17 Dickey, the architect, I said I might want to request a
18 design that included the onsite parking requirement. She
19 verbally responded about how she'd have to go higher. I
20 guess I just want to see some options and alternatives.
21 Maybe with the one that she suggested, but also maybe one
22 that's taking a floor off of the building, just so I can --
23 She didn't know how many spaces a half level would even
24 provide. So I think we just need -- I need more -- I would
25 like to have more information if we're going to continue this

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1 hearing. I might be ready to actually make a decision today
2 without this information. But if we're going to get more
3 information anyway, then I'd like to have that parking
4 information related to the design.

5 MEMBER HART: So I think what you're asking for
6 is a design option that shows a --

7 MEMBER MILLER: That shows 17 onsite spaces and
8 what the -- you know what the possible effects of that would
9 be under different scenarios.

10 MEMBER HART: And you're also looking for that
11 within the 40 foot envelope?

12 MEMBER MILLER: I would like to see that -- I
13 would like that to be one of the options. But they can
14 provide more than one option. She mentioned one that would
15 be -- that she thought would -- she thought one of the
16 affects would be they have to seek an upper height relief.
17 So they can provide that too.

18 MEMBER HART: Yes.

19 MS. MOLDENHAUER: I mean obviously the board can
20 request documentation, but that's almost applying a standard
21 of a variance, asking us to, you know produce and provide
22 information on, you know, whether it's practically difficult
23 is what it sounds like you're asking for, which is not the
24 standard. So I'm just confused as to, you know, in regards
25 to satisfying the special exception standard, how that would

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1 be relevant to the standard and you know, in providing that
2 to the board.

3 MEMBER MILLER: I'm familiar with the difference
4 between variance and special exception standards. I don't
5 think you frankly have met the burden of proof for at least
6 three of the conditions that are in the special exception
7 standards.

8 MS. MOLDENHAUER: You only have to meet one in
9 order to satisfy the special exception standards. You don't
10 have to actually meet all of them.

11 MEMBER MILLER: Well I'm saying that I would --
12 that I think it's important that you meet the three that I'm
13 talking about. One talks about sufficient off-street
14 parking. I don't think that burden has been met. One that
15 talks about -- I don't have to go into all this. I think you
16 know what I'm asking for. And if you can't provide it, you
17 can't provide it.

18 MEMBER HART: So I think that Commissioner Miller
19 is looking for that, so I would like to see that if you
20 could, an option that shows the -- at least a partial below
21 grade parking, I think is what Commissioner Miller just
22 requested.

23 So right now we're, I think looking for dates.
24 And I'm not really sure kind of how long -- Actually I'm not
25 even sure when Commissioner Miller is back.

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1 MS. MOLDENHAUER: I think earlier Commissioner
2 Miller said he's back on January 16th.

3 MEMBER HART: Okay, I won't be here.

4 MS. MOLDENHAUER: I mean we delayed this, you
5 know, seven weeks before a prior hearing to accommodate the
6 opposition. We would ask for -- We can provide the
7 information as quickly as necessary to get for the board at
8 a sooner date.

9 MEMBER MILLER: I'll come back whenever it's
10 scheduled.

11 MS. MOLDENHAUER: We'd very much appreciate that.

12 MEMBER HART: So I'm assuming it may take several
13 weeks for -- I mean I don't know what our schedule is for the
14 next couple of meetings. Is there a possibility of doing
15 this in December, like mid-December?

16 MR. MOY: Well Mr. Vice Chair, if I may ask two
17 questions.

18 MEMBER HART: Sure.

19 MR. MOY: The first is in terms of additional
20 information into the record that the board has just
21 clarified. I'm assuming that also includes these photographs
22 on the board that I think were submitted by Vicki Gersten who
23 testified earlier today. So with that -- with the filing --
24 with all these filings -- with the additional information
25 filed by the applicant, do you wish for the party opposition

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1 to respond to those prior to the scheduled continued hearing
2 date or not? Because that would add another date before the
3 continued hearing date.

4 MS. FERSTER: If I may address you?

5 MR. MOY: I wasn't sure --

6 (Simultaneous speaking)

7 MS. FERSTER: So we're talking about dates and I
8 wanted to talk a little bit about those dates as well. Yes,
9 the opposition would like an opportunity to file response to
10 the new information that's being submitted into the record.
11 So we would ask that you set at a date for the applicants to
12 file that information. The same date would apply to the
13 other -- the neighborhood witness that said they would
14 provide a sun study as well for the record, as well as the
15 photographs. And then we would ask that -- you know that we
16 have an opportunity to respond to that in writing, not at a
17 hearing, but in writing. And then we would definitely ask
18 for an opportunity to submit proposed findings of fact. So
19 that seems to me that it would be three dates before a
20 decision date that would preferably be set. And I would like
21 to say we very much appreciate your patience. It has been
22 a long day.

23 MEMBER HART: Thanks. So Mr. Secretary, taking
24 all that into account.

25 MR. MOY: All right, let's start at the beginning

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1 then. What's driving the dates is going to be the applicant.
2 When does the applicant think they can submit the additional
3 information?

4 MS. MOLDENHAUER: We can get it in by the 26th,
5 27th.

6 MR. MOY: That's Monday, the 26th of November.
7 And then if the opposition party including the ANC can
8 provide a response in a week's time or do you need two weeks?

9 PARTICIPANT: Two weeks.

10 MS. MOLDENHAUER: One please.

11 MR. MOY: Two weeks?

12 MEMBER HART: Well it's --

13 MS. MOLDENHAUER: And we're working over
14 Thanksgiving. We're trying to accommodate an earlier
15 timeframe.

16 MEMBER HART: I understand that.

17 MS. MOLDENHAUER: So if they could respond in one
18 week, that would be seven days that's legally required by the
19 regs.

20 MEMBER HART: And I appreciate that. So if we
21 could have -- their providing it on the 26th. If we're
22 looking at maybe -- if we are looking at seven days, that
23 would be the 3rd of December.

24 MR. MOY: That's correct.

25 MEMBER HART: Okay. And from there?

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1 MR. MOY: And then from there, an opportunity --
2 will OP/DDOT need additional time to provide a supplemental
3 report or can DDOT provide that also by December 3rd?

4 MEMBER HART: We can probably -- OP would not be
5 providing an additional report. I can check with DDOT, but
6 I suspect they could provide it by the 26th.

7 MR. MOY: November 26th?

8 MEMBER HART: Yes.

9 MR. MOY: Okay. Then the other question I have,
10 Mr. Vice Chair is whether or not -- Ms. Ferster mentioned
11 findings of fact, conclusions of law, do you want that now
12 or is that something you want to set up after the continued
13 hearing? We've done it either way.

14 MEMBER HART: I know. What's the timing on it if
15 we were going to do it before or you know, do it before the
16 continued hearing?

17 MR. MOY: Okay, just a second. The two dates in
18 December would be either December 12th or December 19th. But
19 I would add -- and both the dates have an appeal. But I
20 think you could do either of those two dates.

21 MEMBER HART: How many cases do we have on the
22 12th and 19th?

23 MR. MOY: Okay, on the 12th, the board has ten
24 case applications, one appeal. And on the 19th, it is six
25 applications, one appeal.

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1 MEMBER HART: Yes, I think the 19th might be --

2 MR. MOY: Okay. That would be the last hearing
3 before the new year.

4 MEMBER HART: So we'd be sending it off right.

5 MR. MOY: So if you schedule a continued hearing
6 date of the 19th of December, then does the board plan to
7 make a decision on the 19th or are you going to set it for
8 decision? If you set it for decision, then you could
9 schedule -- if you care for a draft findings of facts and
10 conclusions of law, that could be set at the time of the
11 19th. If you want it sooner, then we're looking at probably
12 December the 12th or December the 17th for draft findings of
13 fact.

14 MS. MOLDENHAUER: Vice Chair Hart if the
15 opposition is asking to voluntarily provide findings of facts
16 and conclusions of the law, I don't know that it's necessary.
17 The record is quite voluminous. We're also be providing
18 closings the day of our hearing on December 19th. And then
19 they can provide them on December 3rd when the respond to
20 everything else.

21 MEMBER HART: So can you say -- Hold on a second.
22 Can you say that again, Mr. Moy?

23 MR. MOY: I don't remember. Which part?

24 MEMBER HART: Just the deadlines for the --

25 MR. MOY: All right, okay. Let's start at the

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1 top.

2 MEMBER HART: I got the -- I know that the
3 documents are -- the documents that have been requested are
4 November the 26th.

5 MR. MOY: Correct.

6 MEMBER HART: The response to those documents from
7 the parties is December the 3rd.

8 MR. MOY: Correct.

9 MEMBER HART: DDOT report is November the 26th.

10 MR. MOY: Yes.

11 MEMBER HART: The question that I have is really
12 around the findings of fact and conclusions of law, when that
13 date is.

14 MR. MOY: Well if the board set a continued
15 hearing date of December 19th --

16 MEMBER HART: Yes.

17 MR. MOY: So I'm assuming you would like to have
18 that draft findings of fact before the 19th?

19 MEMBER HART: Oh yes.

20 MR. MOY: Am I correct?

21 MEMBER HART: Yes.

22 MR. MOY: So if we do that, then I would say to
23 provide enough time for the applicant and parties if they
24 wish to do that, then I would say let's say Monday, December
25 the 17th.

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1 MS. FERSTER: Can I ask a question here? Because
2 normally the transcript would need to be available for us to
3 prepare our proposed findings of fact. And we would normally
4 get 30 days. That would be typical to prepare that,
5 particularly you know, since we will be at the same time
6 preparing a response to all these additional submissions.
7 And if we submit our proposed findings of fact on the actual
8 day of your decision, that doesn't give us an opportunity to
9 respond to closing statements that are made by the applicant,
10 which you would normally do. And it doesn't give you an
11 opportunity to even read our proposed findings of fact before
12 you make a decision. So you know, I would ask that we be
13 given an opportunity after the transcript is available, an
14 adequate opportunity to submit proposed findings of fact.
15 And I'd ask that be done after the closing is made by the
16 applicant, which under the normal order procedure, that would
17 be done. You know, proposed findings are post-hearing
18 filing. And so the record -- if you're keeping the record
19 open for all these additional filings and closings, then we
20 would need additional time after that, before you make a
21 decision. So I had not understood that December 17th and
22 19th was your decision date. I just thought it was a
23 continued hearing date.

24 MEMBER HART: It is a continued hearing date. It
25 is a continued hearing date.

1 MS. FERSTER: Okay.

2 MEMBER HART: But as you're probably aware, we
3 could have made a decision today on it and this is a hearing
4 date. So at any hearing, we can make that. So we're trying
5 to understand if we can get this information to be able to
6 then have the information to be able to make the decision
7 possibly on the 19th. Without it, we would -- it would be --
8 it just would not be -- I think it would be preferential if
9 we would be able to have that. And that's what we're trying
10 to kind of decide now.

11 MS. FERSTER: And if I could just say, I mean this
12 case raises really, I think, an unanswered question about the
13 interpretation of this new standard for CCRC special
14 exceptions and how that meshes with the special exception
15 general parking rules. So I feel like before a legal -- a
16 decision has been made, that you know addresses a pretty
17 important legal issue to the interpretation of the zoning
18 regulations, that we follow the normal order of procedure.
19 So if applicant is willing to provide their closing in
20 writing for example earlier, that would allow us to dispense
21 with the closings and simply make that argument as part of
22 their proposed findings of fact, that's fine. But I think
23 it really is important given the fact that you have the right
24 to make a decision on this case, you know, after a hearing,
25 that there be enough time so that you can consider the legal

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1 arguments that we will present to you involving the
2 interpretation of the zoning regulations, as well as the full
3 record of this case, which as you know is very lengthy --

4 MEMBER HART: Yes.

5 MS. MOLDENHAUER: -- and has a lot of things that
6 need to be pulled together.

7 MEMBER HART: No, I understand. I understand --
8 I understand what you're requesting or stating, I should say.
9 So right now, we had a -- the question for us is whether or
10 not we want to have the findings of fact prior to or after?
11 We were looking at having them prior to the meeting. Ms.
12 Ferster's stating that -- Well she's thinking that it may be
13 premature to do that. I think that we have the -- and maybe
14 we just do this. We have the findings of fact after the
15 19th. We keep it is a public hearing. And we have a
16 decision date set at some point in the -- some point after
17 that if we need that.

18 MS. MOLDENHAUER: Sir, can I ask you a question?
19 So one under Section Y601.2, findings of facts are only
20 required when requested by the board, a party shall submit
21 them. And while obviously if the board requires it, we would
22 do it, but I don't really know that's it's going to be
23 necessary. I mean I think that the question is does the
24 board, you know, need draft findings of facts and conclusions
25 of law? I mean I think that it's a question of whether

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1 that's actually is something that is helpful at times. And
2 typically they're not something in which we provide an
3 argumentative presentation, but rather a summary of actually
4 the facts as they occurred. This is not a long delay between
5 this long hearing and then when the board will have closing.
6 So it's not a situation in which you need to be reminded of
7 what occurred during today's hearing.

8 MEMBER HART: So what I am -- what I would -- I
9 appreciate the information. I think that we will have the
10 public hearing on the 19th. And we will decide at that point
11 what we -- if we want to have the findings of fact. I
12 understand that Ms. Ferster had stated that they are amenable
13 to doing them. I think we need to have these documents that
14 we've requested. And we can make our -- see where we are on
15 the 19th of December. So that's where we are. So right now,
16 no findings of facts, but having the documents that we've
17 requested on November 26th. Having the DDOT report also on
18 November 26th. Having the response from the parties on the
19 new exhibits. Having that on December 3rd. And then having
20 the hearing itself on the 19th -- continued hearing. And the
21 continued hearing is focused on the -- on the -- I'm thinking
22 of the new information. If there are questions on the new
23 information that's been submitted to us and the closing for
24 the case overall. Okay.

25 MS. MOLDENHAUER: Just one point of clarification.

1 MEMBER HART: Please.

2 MS. MOLDENHAUER: Sorry. I just want to make
3 sure. You've asked for images, the TDM, confirmation from
4 DDOT, the loading AutoTURN, the DDOT response from Council
5 Member Cheh's letter, the shadow studies, the PowerPoint, but
6 you have not asked for any additional argument or written
7 documentation from either us or opposition in the record.
8 Is that correct? So otherwise the record is closed?

9 MEMBER HART: I am not going to close any of this.

10 MS. MOLDENHAUER: You want more than 491 --

11 MEMBER HART: Yes, because we don't have enough
12 there. No, I would just focus on the things that we've
13 requested. That's what we're looking to have. I guess I can
14 close the record, so that we're not getting additional
15 information in. So that would be the -- only have the
16 information that we've requested today or in the last few
17 minutes.

18 MS. MOLDENHAUER: And so we'll provide just a
19 written statement with those documents. And then obviously
20 opposition will be able to respond to those --

21 MEMBER HART: Yes.

22 MS. MOLDENHAUER: -- only those documents?

23 MEMBER HART: Yes.

24 MS. MOLDENHAUER: Thank you.

25 MEMBER HART: So thank you all very much. We're

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1 going to take a little --

2 MS. FERSTER: I'm sorry, just one point that in
3 terms of the limitation of our response.

4 MEMBER HART: Sure.

5 MS. FERSTER: Because we believe the proposed
6 findings of fact and conclusions of the law are important,
7 I would like to provide a brief paragraph in the form of a
8 cover letter to our documents that explains why we think that
9 it is important to reach a good decision in this case, that
10 you do allow us to provide proposed findings of fact and
11 conclusions of law, if you will permit that.

12 MEMBER HART: I think that what we have requested
13 is sufficient for us. And we have asked for a number of
14 documents. I don't think that we're looking for -- Actually
15 I know we're not looking for any other documents. I
16 appreciate the question, but I think we are going to just go
17 with what we've laid out for the timeline.

18 MS. FERSTER: Thank you.

19 MEMBER HART: Thank you.

20 MS. FERSTER: And thanks again for your patience.

21 MEMBER HART: Thank you. We're going to take a
22 break. We'll be back. Actually it's going to be maybe 20
23 minutes. I know folks have been waiting here, so anyhow.
24 Thank you.

25 (Whereupon, the above-entitled matter went off the

1 record at 5:02 p.m. and resumed at 5:29 p.m.)

2 CHAIRPERSON HILL: Mr. White, I have a couple of
3 questions. Let's see, so there are some other some cases
4 outside of the one that we're, I think, the majority of
5 people are here for.

6 And, I guess, you can go ahead and, and tell some
7 of the issues, Mr. Moy, that we're trying to, to, to clear
8 up. But I did want to ask, if a couple of people are here,
9 before, for a couple of cases, I think, that we first called
10 in the morning, is 19808 here?

11 (No response.)

12 CHAIRPERSON HILL: Is 19808 here?

13 (No response.)

14 CHAIRPERSON HILL: Okay. Is 19809 here?

15 (No response.)

16 CHAIRPERSON HILL: Is 19809 here?

17 (No response.)

18 CHAIRPERSON HILL: Okay. Is 19850 here?

19 (Off the record comments.)

20 CHAIRPERSON HILL: Okay, 19850 is here.

21 (Pause.)

22 CHAIRPERSON HILL: So, Mr. Moy, I would suggest
23 we do 19850 first, and then we'll move on over to 19823, but
24 I'll let you announce the case, please.

25 MR. MOY: Thank you, Mr. Chairman. The Court is

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1 reconvened in session and the time is about 5:31 p.m. So I
2 see the Applicants at the table. This is to Case Application
3 Number 19850 of Charles Paret.

4 MR. DZIERANOWSKI: Correct, it's for Charles
5 Paret. I'm the agent representing the Applicant.

6 MR. MOY: Okay, thank you. So as caption
7 advertised, for a special exception under Subtitle D, Section
8 1006.3 and 5201, from the rear yard requirements of Subtitle
9 D, Section 1006.2, this would construct a rare addition to
10 an existing attached principle dwelling unit R-17 Zone this
11 is at 2507 I Street, NW, Square 16, Lot 587.

12 CHAIRPERSON HILL: Great. Thank you, Mr. Moy.
13 Is the OP person here for this?

14 (Off the record comments.)

15 MR. LAWSON: My apologies.

16 CHAIRPERSON HILL: Okay, just seeing, I was just
17 seeing who was here for it, okay, thanks, Mr. Lawson.

18 (Simultaneous speaking.)

19 CHAIRPERSON HILL: All right, would you please
20 introduce yourself for the record?

21 MR. DZIERANOWSKI: I'm Mr. Mateusez Dzieranowski,
22 I'm here from D.C. Architecture, on behalf of Mr. Charles
23 Paret.

24 CHAIRPERSON HILL: Okay. Mr. Dzieranowski, I
25 don't have a whole lot of questions for you, about the

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1 application. I think we've reviewed the record pretty
2 thoroughly.

3 There was one question I did have, and I am going
4 to ask you to walk through a little bit of the project and,
5 also, how you're meeting the standard review for us to do
6 this, or, you know, determine?

7 And the -- there was -- it is --OP did make a note
8 that this is contingent upon the proposal complying with the
9 height development standards approved by HPRB, so you're
10 aware of that, correct?

11 MR. DZIERANOWSKI: Correct, yes.

12 CHAIRPERSON HILL: So you can speak to that, or
13 a little bit as you go through a proposal. I'm going to put
14 ten minutes on the clock and you can start whenever you
15 begin, start whenever you like.

16 MR. DZIERANOWSKI: Great, thank you, Chairman Hill
17 and the rest of the Board Members. As I mentioned, my name's
18 Mateusz Dzieranowski, I'm here with D.C. Architecture. The
19 project here before you is for 2507 I Street, NW, the
20 property, here, highlighted in blue, is an existing attached
21 row home that, I believe, after two failed attempts at
22 construction has been left abandoned and decrepit.

23 As I flip to the next slide this gives a little
24 bit more site imagery. The image to your bottom left here,
25 the, the red brick row unit that's the project, itself.

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1 That's the property that we are looking to do a full scope
2 that involves the gut renovation and restoration on the front
3 of the primary structure and a rear addition that will be a
4 three-story proposed rear addition, all conforming to the
5 zoning standards set forth by R-17 in the zoned area.

6 As I siphon through, this is just some, again,
7 additional context images. If we look down across the I
8 Street, again, we just want to show some of the diversity,
9 what we're dealing with along the street, going from left to
10 right along the top row for the front facade.

11 If you look to the rear, we have this, you know,
12 really, kind of, a horrendous rear condition where there's
13 a rear-brick-facing wall, kind of, a temporary overhanging
14 roof structure and, and a good idea and understanding of how
15 there is significant elevation change, from I Street, all the
16 way to the back, coming off from the alley, which plays a
17 little bit into how we --

18 CHAIRPERSON HILL: Mr. Dzieranowski, I'm going to
19 --

20 MR. DZIERANOWSKI: Yes?

21 CHAIRPERSON HILL: -- cut you off just one second.
22 I'm just --

23 MR. DZIERANOWSKI: Sure, no problem.

24 CHAIRPERSON HILL: -- I'm just looking at the
25 standard of relief, right now.

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1 MR. DZIERANOWSKI: Okay.

2 CHAIRPERSON HILL: And continue to go through
3 that, so --

4 MR. DZIERANOWSKI: Sure.

5 CHAIRPERSON HILL: -- what I'm going to go --
6 because we've all looked at your plans, already.

7 MR. DZIERANOWSKI: Okay.

8 CHAIRPERSON HILL: I'm going to turn to the Office
9 of Planning, first.

10 MR. DZIERANOWSKI: Okay.

11 CHAIRPERSON HILL: Okay, can we hear from the
12 Office of Planning, please.

13 MR. DZIERANOWSKI: Sure.

14 MR. LAWSON: Sure. Sorry, once again, Joel
15 Lawson, with the D.C. Office of Planning. We're happy to
16 stand on the record with our report.

17 CHAIRPERSON HILL: Okay. Does the Board have any
18 questions for, either, the Applicant, or the Office of
19 Planning?

20 (No audible response.)

21 CHAIRPERSON HILL: Okay. Do you have any
22 questions for the Office of Planning?

23 MR. DZIERANOWSKI: No I do not.

24 CHAIRPERSON HILL: Okay. Is there anyone here,
25 who wishes to speak in support?

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1 (No audible response.)

2 CHAIRPERSON HILL: Is there anyone here, who
3 wishes to speak in opposition?

4 (No audible response.)

5 CHAIRPERSON HILL: Okay, you outlasted your
6 opposition, because there was some opposition. And, I guess,
7 I did have a couple of questions. I get -- there, there,
8 there was some, something in the record, concerning the
9 opposition was about, like, kind of, like a group home.

10 I don't, necessarily, think that the group home
11 does apply to the standards that we're looking at, but I am
12 just, kind of, curious, there were a lot of bedrooms in
13 there, correct? How many bedrooms?

14 MR. DZIERANOWSKI: Correct. I believe, the goal
15 would be to have four legal bedrooms and a den, pending the
16 accessibility of a front window.

17 CHAIRPERSON HILL: Okay, so four bedrooms. And,
18 how did you guys get to that program?

19 MR. DZIERANOWSKI: So the client went and wanted
20 to explore the full capacity of the development that could
21 be done on the site. He just wanted to, again, provide a
22 really nice renovated project and property here at this
23 location. As we went through all the floors, the square
24 footage that we had to work with, it really just came down
25 to a three, or four, bedroom with the --

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1 CHAIRPERSON HILL: Okay.

2 MR. DZIERANOWSKI: -- intent of having a nice
3 single-family --

4 CHAIRPERSON HILL: Okay. All right.

5 MR. DZIERANOWSKI: -- residential --

6 CHAIRPERSON HILL: Okay.

7 MR. DZIERANOWSKI: -- unit.

8 CHAIRPERSON HILL: All right. Again, anymore
9 questions for the Applicant?

10 MEMBER WHITE: Just one question. If you could
11 just provide some feedback on, from the adjacent owners, you
12 know, what their feedback has been on this, because you're
13 going back, in the rear, pretty far side, so I just wanted
14 to get some feedback.

15 MR. DZIERANOWSKI: Sure. So the property, when
16 looking, you know, planning elevation to the right, is
17 currently, the, the homeowner, it leases the space, or rents
18 the space out, and last we checked, it was tenantless.

19 Us, personally, my understanding is that the
20 owner, Mr. Charles Paret, has reached out to both homeowners
21 and they're, relatively, they're positive for it, because
22 they have their own considerations for their own potential
23 reworking, renovation and, even addition work, in the future.

24 Other than that, we didn't have any other
25 opposition, or anybody come to us from the most adjacent

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1 properties on, on the street.

2 CHAIRPERSON HILL: Okay, and you presented your
3 ANC 2A and they were in approval seven to zero?

4 MR. DZIERANOWSKI: Correct, they're in approval.
5 The only special condition was that we delay our HPRB review
6 that's upcoming, so they have more time they need to review
7 the criteria. So we were originally scheduled to meet with
8 HPRB tomorrow, that's now pushed back to the 20th of
9 December.

10 CHAIRPERSON HILL: Okay. And as I mentioned,
11 again, OP had in their notes recommendations on the
12 contingent on the proposal complying with the height
13 development standards approved by HPRB?

14 MR. DZIERANOWSKI: Correct and we understand. We
15 had intention to do flag tests and work with HPRB to just
16 make sure that everything for the third-story component of
17 the rear addition --

18 CHAIRPERSON HILL: Okay.

19 MR. DZIERANOWSKI: -- is --

20 CHAIRPERSON HILL: Okay.

21 MR. DZIERANOWSKI: -- at their liking.

22 CHAIRPERSON HILL: Does the Board have any other
23 questions?

24 (No audible response.)

25 CHAIRPERSON HILL: Okay, do you have anything else

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1 you'd like to add?

2 MR. DZIERANOWSKI: No --

3 CHAIRPERSON HILL: All right --

4 MR. DZIERANOWSKI: -- thank you for your time.

5 CHAIRPERSON HILL: -- time to close the hearing.

6 Is the Board ready to deliberate?

7 (Off the record comments.)

8 CHAIRPERSON HILL: Okay. I thought that, again,
9 based upon the record and the report that was provided by the
10 Office of Planning, as well as, the report that's been
11 provided by ANC 2A, there was an approval seven to zero.
12 DDOT, also, had no objections.

13 The Applicant has spoken to the note that I
14 mentioned that the Office of Planning had, in terms of, them
15 complying with the height development standards approved by
16 HPRB. I believe that they've met the standard of review and
17 I will be voting in support of the application, does anyone
18 have anything else they'd like to add?

19 (Off the record comments.)

20 CHAIRPERSON HILL: Okay. I'm going to make a
21 motion to approve Application Number 1819850, as caption
22 read, by the Secretary, and ask for a second.

23 MEMBER JOHN: Second.

24 CHAIRPERSON HILL: Motion made and seconded, all
25 those in favor say aye.

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1 (Chorus of Ayes.)

2 CHAIRPERSON HILL: All those opposed?

3 (No audible response.)

4 CHAIRPERSON HILL: Motion passed, Mr. Moy.

5 MR. MOY: The staff would record the vote, as four
6 to zero to one, this on a motion of Chairman Hill to approve
7 the application for the relief requested, second, seconded
8 the motion, Ms. John, also in support, Ms. White, Mr. Rob
9 Miller, we have a Board Member not present, not
10 participating, motion carries.

11 CHAIRPERSON HILL: Okay. Thank you. Thank you
12 very much.

13 MR. DZIERANOWSKI: Thank you.

14 (Off the record comments.)

15 MR. MOY: Before I call the next case,
16 application, Mr. Chairman, there's a couple of preliminary
17 matters, housekeeping that I'd like to read into the record.
18 First is that, the four decision cases, scheduled today, have
19 been rescheduled to next, to the next public meeting day,
20 which is November the 28th.

21 Second, the -- what was that? Oh. Secondly, the
22 Appeal Number 19777 of Hilary Dove and Cavaceppi has been
23 postponed/rescheduled to, to, also, the same day, which will
24 be Wednesday, November the 28th, and it will be the first
25 case heard on, on that public hearing day.

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1 And, finally, Mr. Chair, just want to take a step
2 back. On the two cases, where the Applicant was a no-show,
3 Case Number 19808 and 19809, typically, the Board will
4 reschedule that to the following week, to allow staff to
5 notice those applicants to appear at their hearing,
6 otherwise, the Board will move forward and dispose of those
7 two applications.

8 CHAIRPERSON HILL: Okay that sounds good, Mr. Moy,
9 thank you.

10 (Pause.)

11 CHAIRPERSON HILL: Okay, you can call our last
12 case, Mr. Moy.

13 MR. MOY: Okay that would be, should be -- okay,
14 if we can have parties to the table? This is to Case
15 Application Number 19823, of Wisconsin Avenue Baptist Church.
16 The caption advertised for special exceptions, under the use
17 requirements Subtitle U, Section 203.1(f).

18 And, under Subtitle C, Section 1402, from the
19 retaining wall requirements of Subtitle C, 1401.3(c), and
20 pursuant to Subtitle X, Chapter 10, for variances from the
21 height limitations of Subtitle D, Section 303.1.

22 And, from the lot occupancy requirements of
23 Subtitle D, Section 304.1, side yard requirements D, Section
24 307.1, which will construct a new four-story church and
25 continuing care retirement facility R1-B Zone, this is at

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1 3920 Alton Place, NW, Square 1779, Lot 14.

2 Finally, Mr. Chair, I believe, there are some
3 people in the audience, who wish to provide testimony, but
4 they may have to leave sooner, so I want to bring that to the
5 Board's attention.

6 I also have, in my hand, a hard copy of a
7 testimony from Sheryl Cort, representing the Coalition for
8 a Smarter Growth. I'll make copies for the Board. And,
9 also, I have additional copies of testimony from ANC 3E,
10 which I'll pass to the Board.

11 CHAIRPERSON HILL: Okay, great, thank you. I will
12 -- good evening. First of all, congratulations in making it
13 this long. I've been sitting in that little room, so I've
14 been here, also, the same amount of time, but I haven't been
15 out here.

16 Let's see, there is a request, I think, for
17 additional party status and so why don't -- let's first
18 introduce ourselves and then, and then we'll, kind of, slowly
19 get through this. If we could -- well, actually, give me one
20 second. Let me, let me think. Who's, who's here with the
21 Tenleytown Neighborhood Association?

22 (Off the record comments.)

23 CHAIRPERSON HILL: Okay. And --

24 (Off the record comments.)

25 CHAIRPERSON HILL: -- I -- let's -- okay, let's

1 -- I'll try to introduce everybody, first. If you could,
2 please, just, I know we're all, kind of, jammed in there, but
3 if you could, maybe, introduce yourselves from --

4 (Off the record comments.)

5 CHAIRPERSON HILL: -- let's just go from one end
6 all the way around and, and hopefully I can get the names
7 straight.

8 MS. CHESSER: Judy Chesser, Tenleytown Neighbor's
9 Association.

10 MS. GUNNING: Barbara Gunning, Tenleytown
11 Neighbor's Association.

12 MS. FERSTER: Andrea Ferster, I represent the nine
13 individuals, who live within 200 feet of this site, who are
14 requesting party status and it has, and it, it, that hasn't
15 been acted upon, yet.

16 MS. BROOKS: Janet Brooks, Wisconsin Ave. Baptist
17 Church.

18 MS. DUEHOLM: Patricia Dueholm, Wisconsin Avenue
19 Baptist Church.

20 MR. HEATH: Chuck Heath, Heath Architecture.

21 MR. CARRERA: Michael Carrera, Donohue and
22 Stearns, for the Applicant.

23 MS. BROWN: Carolyn Brown, Donohue and Stearns,
24 for the Applicant.

25 MR. KROSKIN: Philip Kroskin, Sunrise Senior

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1 Living.

2 MS. BAUM: Deborah Baum, Pillsbury, Winthrop,
3 Shaw, Pittman, for the Applicant.

4 MR. VAN PELT: Daniel VanPelt, Gorove/Slade
5 Associates, working for the Applicant.

6 MR. SCHIESEL: And, Rob Schiesel, from
7 Gorove/Slade Associates.

8 MS. FERSTER: Mr. Chairman, I'm sorry to interrupt
9 your thought.

10 CHAIRPERSON HILL: That's all right.

11 MS. FERSTER: There are several witnesses that
12 have not --

13 CHAIRPERSON HILL: Okay, can you turn --

14 MS. FERSTER: -- been sworn in, yet.

15 CHAIRPERSON HILL: -- off that other microphone?
16 I'm sorry, I get feedback --

17 MS. FERSTER: Yes.

18 CHAIRPERSON HILL: -- on it. There are several
19 witnesses that haven't been sworn in, yet, okay we need to
20 do that first. All right, if anybody hasn't been sworn in,
21 and you would like to testify, at some point, if you could,
22 please, stand and take the oath, administered by the
23 Secretary, to the left.

24 MR. MOY: All right, good evening, do you solemnly
25 swear, or affirm, that the testimony you're about to present

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1 in this proceeding is the truth, whole truth, and nothing but
2 the truth?

3 (Witnesses sworn)

4 MR. MOY: Thank you, you may be seated.

5 CHAIRPERSON HILL: Okay, so I know --

6 (Off the record comments.)

7 CHAIRPERSON HILL: -- we've all been here for a
8 long time and, and, Ms. Ferster, you've been here a really
9 long time. But, I'm trying to figure out, kind of, where are
10 in this a little bit, so the -- so do we grant party -- we
11 did grant party status in Tenleytown Neighbor's Association,
12 correct?

13 (Off the record comments.)

14 CHAIRPERSON HILL: And, and so then that's one
15 issue. Then there's another issue where there were six
16 neighbors, I guess, in, and, and we'll get to that request
17 for party status. And that -- and, if we didn't approve that
18 request, Ms. Ferster, you would be representing them,
19 correct?

20 MS. FERSTER: That's correct.

21 CHAIRPERSON HILL: Okay. And so if I --

22 MS. FERSTER: Just one classification, it's
23 actually nine, now.

24 CHAIRPERSON HILL: Sure. Well, I mean, that will
25 -- there were six that you got in, on-time, without a

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1 problem, and then there were three additional that were
2 coming in, after the time limit. However, those three are
3 going to be represented by you, correct?

4 MS. FERSTER: That's correct.

5 CHAIRPERSON HILL: So could you, please, just kind
6 of, go over, again, why we should grant your client's party
7 status?

8 MS. FERSTER: And I, I think that, that's been
9 laid out in our request, but my clients are all, all nine of
10 them, are within 200 feet of the facility, so these are the
11 residents, who will most directly experience any impacts
12 associated with the facility.

13 And we, we have -- we, we do intend to share time
14 with Tenley Neighbors, so we will not take additional time
15 to do that, but they feel that it's important that,
16 individually, they be, they be represented, as a party, in
17 this proceeding, because of the unique specific impacts that
18 they will experience, as the most closely abutting neighbors.

19 CHAIRPERSON HILL: Okay. And, and we will -- and
20 the reason why I'm asking -- and, and I, I have read the, the
21 request and the reasons that you have given, and we don't
22 always, necessarily, give to them, just because you're in the
23 200 feet, but I don't have an issue with granting the party
24 status to the six neighbors, or waiving the time requirement,
25 to allow the further three to be allowed in.

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1 And, since you're going to share the time with the
2 Tenleytown Neighborhood Association that means we might
3 actually get out of here before midnight. And then, I will
4 be in approval of that, if the Board has any -- well, first
5 of all, do you have any objections, Ms. Brown?

6 MS. BROWN: The Applicant doesn't have any
7 objections.

8 CHAIRPERSON HILL: Okay. So does the Board have
9 any thoughts?

10 (Off the record comments.)

11 CHAIRPERSON HILL: Okay. So we're going to go
12 ahead and grant your party status to the, the nine that
13 you're representing, and then, the -- and, and so -- and,
14 also, for the Tenleytown Neighborhood Association, which one
15 will be speaking for the organization?

16 (Off the record comments.)

17 CHAIRPERSON HILL: You need to --

18 (Off the record comments.)

19 CHAIRPERSON HILL: -- okay that's fine, you need
20 to speak into the microphone, though, whatever you, what you
21 just said.

22 (Simultaneous speaking.)

23 MS. CHESSER: Good point. I said, both of us are
24 going to be part of the presentation.

25 CHAIRPERSON HILL: Okay.

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1 MS. CHESSER: We've divided it up.

2 CHAIRPERSON HILL: Okay, great. All right, so --

3 MS. CHESSER: Thank you.

4 CHAIRPERSON HILL: You're welcome. So let's see,
5 Ms. Brown, I assume you're going to be presenting to us?

6 MS. BROWN: That's correct and Co-Counsel will
7 also be asking questions, but we will -- I don't, I don't
8 know how far we're going to get to cross-examination, today.

9 CHAIRPERSON HILL: Okay. Well, I'm hoping we're
10 getting all the way through this.

11 MS. BROWN: Okay.

12 CHAIRPERSON HILL: Right.

13 MS. BROWN: Good.

14 CHAIRPERSON HILL: So let's see, so what do we
15 have? I'm going to go ahead and start -- I'm just trying to
16 figure out, if you need all your people there, at one time,
17 or it doesn't matter -- I guess -- that's fine. So how much
18 time do you think you need?

19 MS. BROWN: We had, initially, wanted an hour, but
20 we've, after we've been here for so long, I think that we've,
21 we can try to condense it to 30 minutes.

22 CHAIRPERSON HILL: Okay. So what, what -- we'll
23 go ahead and start it --

24 (Laughter.)

25 CHAIRPERSON HILL: That's what, that's what the

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1 first Applicant had and --

2 MS. BROWN: Yes.

3 CHAIRPERSON HILL: -- so -- the same amount of
4 time. So we'll go ahead and put you on for 30 minutes --

5 MS. BROWN: Well, I'm --

6 CHAIRPERSON HILL: -- Mr. Moy --

7 MS. BROWN: -- there were two other procedural
8 issues, I think that need to be ruled upon, there was a
9 motion from the Applicant to accept the late filed request
10 of the testimony of Alice Katz, as an expert witness, and
11 then, there was also the Tenleytown Neighborhood Association
12 related motion to exclude her testimony.

13 CHAIRPERSON HILL: Okay, tell me that one, again,
14 I'm sorry.

15 MS. BROWN: So on October 24th, we submitted our
16 prehearing submission. We did not list and have, as a
17 witness, Ms. Alice Katz, on --

18 CHAIRPERSON HILL: Right, okay.

19 MS. BROWN: -- October 31st, we filed that, so it
20 was a week late and we asked for a waiver of the regulations
21 to allow, to accept that late filing. Tenleytown
22 Neighborhood Association filed a motion to exclude her
23 testimony, as irrelevant.

24 And I, actually, I also need a, yesterday, I filed
25 the outline of witness testimony for Mr. Andy Altman, our

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1 expert land planner, and I asked for a waiver of that, as
2 well. He was listed as a, as an expert witness, previously,
3 though.

4 CHAIRPERSON HILL: Okay. So I'm going to get to
5 ask the Tenleytown Neighborhood Association, why you're in
6 objection to having this testimony allowed into the record,
7 but, before I do that, does the Board have any -- like, I,
8 I'll just -- I, personally, would like to hear the testimony.

9 And, I like to hear the testimony that's being
10 given, so I'm not interested in, necessarily, excluding it,
11 unless the Board wants it to be excluded and/or they agree
12 with what you're about to tell us. So could you tell us why
13 you don't want to have it in the record?

14 MS. CHESSER: Because I think this is a zoning
15 hearing and not a hearing about the finances of senior
16 facilities. And, I know there was a big debate about this,
17 in a previous case.

18 And, if we go down the path of, we're going to do
19 finances and financial viability, yes, we can't see anybody's
20 financial records. That seems, to me, like we're at a bit
21 of a disadvantage, if we're going to weigh whatever the
22 Applicant puts in, but nobody else can challenge it.

23 And, also, sort of, where does this end? You do
24 this for CCRCs. Restaurants come and go, all the time, can
25 they come in and say, I want to do something and I want this

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1 expert to say I have to double the size of my restaurant,
2 because, financially, I'll be better off. I mean, to me,
3 there's, there's, sort of, no end to this.

4 CHAIRPERSON HILL: Okay. Well, how do you say
5 your name, again, Ma'am?

6 MS. CHESSER: Pardon me?

7 CHAIRPERSON HILL: How do you say your name,
8 again?

9 MS. CHESSER: Chesser, C-H-E-S-S-E-R.

10 CHAIRPERSON HILL: Okay, Ms. Chesser. I mean, I
11 can just give you my opinion, now, in that, we have looked
12 at financial viability for projects. I know that there was
13 a lot of discussion on, whether or not, it was relevant, in
14 the previous case.

15 But, given that, it is a little late here, right
16 now, in the day, I mean, I'd rather hear all the information
17 we're going to hear. You'll have an opportunity to cross any
18 information that's given.

19 And then, the Board will have an opportunity to
20 judge, or determine, whether or not that is the information
21 that we would think that we need, necessary, in order to make
22 a determination, whether or not, the standards are being met.

23 MS. CHESSER: And --

24 CHAIRPERSON HILL: So --

25 MS. CHESSER: And, yet, you'd save so much time

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1 by excluding it, but --

2 (Laughter.)

3 MS. CHESSER: -- we'll continue.

4 (Laughter.)

5 CHAIRPERSON HILL: You never know, I don't --

6 (Laughter.)

7 CHAIRPERSON HILL: -- I don't know what I get to
8 exclude that saves time, but --

9 MS. CHESSER: Okay.

10 CHAIRPERSON HILL: -- if I get better than Mr.
11 Hart, you let me know, okay?

12 MS. CHESSER: Okay.

13 CHAIRPERSON HILL: So I'm going to go ahead and,
14 unless the Board has any objection, allow the, the late
15 filing of the 31st for the testimony of Ms. Katz into the
16 record, and then, deny the motion of Tenleytown, to exclude
17 that information into the record, and then, also, allow for
18 the late filing of the information that, Ms. Brown, you just
19 put in something?

20 MS. BROWN: It was just an outline of testimony
21 from Mr. Altman.

22 CHAIRPERSON HILL: Okay.

23 MS. BROWN: But his resume and listing him as a
24 --

25 CHAIRPERSON HILL: Okay. So I'd like --

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1 MS. BROWN: -- resident --

2 CHAIRPERSON HILL: -- I'd like to --

3 MS. BROWN: -- of the area.

4 (Simultaneous speaking.)

5 CHAIRPERSON HILL: I'd like for the Board to hear
6 everything the Board's supposed to hear, in order to make a
7 decision, so I will allow that into the record. Does the
8 Board have any other comments, or otherwise, we'll do that?

9 (Off the record comments.)

10 CHAIRPERSON HILL: Okay, all right, so Mr. Moy,
11 we're going to go ahead and do that. So, Ms. Brown, that
12 brings me back around to you. We've got 30 minutes on the
13 clock for you and we are going to begin.

14 MS. BROWN: Thank you. Again, for the record,
15 Carolyn Brown, on behalf of Wisconsin Avenue Baptist Church
16 and Sunrise Senior Living. I'm going to dispense with my
17 opening remarks, given the lateness of the day, so we can get
18 right into the testimony, so I'd like to turn to our first
19 witness, Ms. Pat Dueholm, from the Wisconsin Avenue Baptist
20 Church.

21 CHAIRPERSON HILL: Okay, and all I would also like
22 to point out is that, you know, as you're going through the
23 testimony, there was a couple of -- and you don't have to
24 touch on them, necessarily, but -- and, Mr. Moy, this doesn't
25 count toward the time.

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1 But there, the couple of comments that OP had, in
2 terms of the, the lighting and the amplified music, and then
3 there was a couple of comments from DDOT. But, I guess, if
4 you could, Ms. Brown, continue to speak towards the standards
5 of relief, in terms of, how we're supposed to be applying
6 those standards to grant this one way or the other, as you're
7 going through your testimony.

8 MS. BROWN: Great. So Ms. Dueholm and Ms. Janet
9 Brooks speaking on behalf of the Church, will speak to the
10 institutional need of the Church and, as a non-profit
11 facility that they are subject to more flexibility, when we
12 analyze the exceptional extraordinary conditions of the
13 property.

14 CHAIRPERSON HILL: Okay. All right. Okay, and
15 you can go ahead and start again.

16 MS. DUEHOLM: Good evening. My name is Patricia
17 Dueholm. I am one of the trustees of Wisconsin Avenue
18 Baptist Church. I'm here, with our Pastor, Dr. Lynn
19 Bergfalk, and Janet Brooks, another trustee.

20 We have reached a crossroads. This is a critical
21 time in the life of our congregation. We need to ensure our
22 future and we are firmly convinced that, this project with
23 Sunrise Senior Living will do that.

24 We have never considered leaving our property.
25 Our congregants live very close by and we have been in

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1 Tenleytown, since 1880. This project is the one that the
2 Church has approved.

3 It is the one the congregation supports, and this
4 is the church building that will give us the space, the
5 functionality, and the visibility we need for our
6 congregation and our ministry.

7 This new church has already been downsized to make
8 its footprint as small, as possible. It cannot be made any
9 smaller, without cutting its ability to serve our
10 congregants.

11 Wisconsin Avenue Baptist Church is a small
12 congregation, with little money, worshiping in an obsolescent
13 building, which has much delayed maintenance. We don't have
14 the resources to repair, or maintain to stay viable, but we
15 are not a dying church. We have new congregants, a
16 well-attended Bible study, two pastoral interns, and an
17 expanding music ministry.

18 Our greatest challenge today is the 63-year-old
19 aged and functionally obsolete church structure. We want to
20 be ADA accessible. We want to be environmentally friendly
21 and we are not, but we will be in a new church building.

22 This past Sunday, we had no heat, due to a massive
23 flood in our boiler room. We spent \$1,000, just to pump out
24 the water. Now, we have extensive boiler repairs to pay for.
25 Our baptistery is in a state of disrepair. It has rusted

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1 water pipes and leaks. There's no heat in the baptistery.
2 The free-standing heater we purchased doesn't operate.

3 The kitchen is dysfunctional. It's not
4 well-heated and the use of space heaters causes fuses to
5 blow. The sinks clog and often overflow. Exhaust fans don't
6 work. The paint is peeling off the walls.

7 The floor needs to be professionally cleaned. The
8 sanctuary has inadequate lighting, and one area has no
9 lights, at all, because the ballast needs replacing. The
10 windows are rusted and several don't open anymore.

11 It is also too large for our needs. It can
12 support seating for 350 people, but we only require seating
13 for a maximum of 250, primarily, for weddings, funerals, and
14 holiday services.

15 The social hall is in desperate need of
16 renovations and repairs. The acoustics are terrible. Floor
17 tiles are loose, or missing, and heating is inadequate. The
18 church is not ADA accessible. There are no funds to build
19 a ramp, or install a lift elevator, to get inside the
20 building.

21 The step platform is not large enough for a
22 wheelchair turnaround. There's no way to get downstairs to
23 the social hall, for meetings and dinners. The bathrooms are
24 not accessible.

25 The exterior of the building is in need of

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1 significant repairs, as well. The retaining walls securing
2 the front steps has bricks missing. Bricks are also missing
3 at other steps.

4 Outside doorframes are rotten and need paint. All
5 doors need weather stripping and some doors don't close
6 properly. This only exasperates the heating problems with
7 the building.

8 There's evidence of roof leakage, also. Finally,
9 there's no security system, or sprinkler system. The lack
10 of a sprinkler system is particularly critical, in light of
11 all the other issues with the building.

12 We cannot afford to maintain a non-ADA accessible
13 building. We have two members using walkers and one in a
14 wheelchair. There's a great urgency to act now. What are
15 our choices?

16 Many developers have approached us, offering to
17 buy our property and provide expert relocation advice. But
18 we have been in our building, since 1955. This is our home.
19 We value the convenience and visibility of our property.

20 For all these years, we have been a responsive
21 community amenity. We are not going to leave. We could
22 combine with a mega-church. We would lose our identity, our
23 independence, and our family-like feel.

24 There would be much traffic and noise. However,
25 we know a new church would have the right to build a 60-foot

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1 tall facility on 60 percent of the property. Some neighbors
2 suggests we could sale off two parcels of our property, along
3 Yuma Street, for approximately \$1.7 million total. We've
4 considered this, it is just not feasible.

5 Our only viable option and an option
6 fully-supported, by our Pastor, trustees, and congregation,
7 is to partner with Sunrise Senior Living. They will build
8 us a new church, which will be ADA accessible and the right
9 size for our congregation.

10 This church will have minimal maintenance and will
11 serve our needs for the next 50 to 60 years. We will receive
12 funds for an endowment, to secure our future. We are excited
13 to partner with Sunrise, because we can offer services and
14 ministry opportunities to its residents and staff. The
15 residents can go to church, without leaving their building.
16 Sunrise will be a quiet use of the property, and there's a
17 great need for senior care in this community.

18 The disrepair of our building, our handicapped
19 members, our lack of money, our desire not to be a landlord,
20 all make this project with Sunrise Senior Living an absolute
21 necessity for our congregation. It is our only option to
22 secure our future.

23 I thank you for your consideration and ask for
24 your support of our congregation in this endeavor. Next
25 Janet Brooks will tell you more about our church, today.

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1 CHAIRPERSON HILL: Thank you. Just one second.
2 So, Ms. Brown, again, the testimony that was, that's speaking
3 to which part of the standard, again?

4 MS. BROWN: It is the Church property that's
5 seeking this partnership with Sunrise, to request the
6 variances and the special exceptions. Second, there's a
7 lower threshold of review for non-profits, such as churches,
8 based on the Hillel case in GW, the Saint Mary's case --

9 CHAIRPERSON HILL: Got, got it.

10 MS. BROWN: -- and then --

11 CHAIRPERSON HILL: That's what --

12 MS. BROWN: -- the okay --

13 CHAIRPERSON HILL: -- I was trying to get to.
14 Okay, great. Thank you, please continue.

15 (Simultaneous speaking.)

16 MS. BROOKS: My name is Janet Brooks and I'm a
17 trustee, at the Wisconsin Ave. Baptist Church. Our church
18 has served the needs of a changing community for several
19 generations and has become a demographically diverse
20 congregation that reflects our city.

21 This project will allow the Church to embrace a
22 vibrant future and enhance its worship and ministry. The
23 mission of Wisconsin Ave. Baptist Church is to display the
24 love of Christ, to preach the gospel, and to connect with
25 people from all walks of life, through service to community,

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1 discipleship, and outreach, in the Tenleytown neighborhood
2 and the city, at large.

3 Our vision is to be a church, where people are
4 encouraged to grow in faith and are empowered to serve. We
5 reflect the diversity of our city and find unity in our
6 commitment to follow Jesus.

7 We are devoted and engaging and affecting one
8 another in a positive light and we believe we've been given
9 the responsibility of the service that Jesus displayed and
10 encouraged. We see ourselves, as family-oriented and we also
11 see ourselves as shepherds, not ranchers.

12 We seek to provide a smaller, personal
13 family-oriented environment. The visibility and the
14 convenience of our valued Tenleytown location allows us to
15 serve the neighborhood, as well as, the community, at large.

16 We welcome new members and we will serve, as a
17 bridge, for the AU students and the temporary area residents,
18 who come to us. They come to learn about Christ and they
19 depart with God's love and message.

20 We believe in the power of a great, healthy, small
21 church. Our focus is service. Our goal is engaging in
22 community partnerships and organizations and expanding and
23 develop Christian educational group programs.

24 In addition to worship services, religious
25 instruction and Bible studies, we seek to meet the needs of

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1 the congregation and the community, through fellowship groups
2 and work ministries, ministries for the elderly, sick, and
3 infirmed, support group meetings, counseling services, food
4 and clothing drives, and programs and lecture series,
5 weddings, funerals, and religious ceremonies, and support
6 international missions.

7 I would like to share that, our mission, also, is
8 to seek support and -- sorry. We seek the support and
9 mission of our congregation on the land that the Church has
10 owned, since 1955, by leveraging the value of our property.

11 Staying in this location allows us to secure a
12 financial health and well-being of our congregation, by
13 joining forces with a mission-compatible of Sunrise. It's
14 important that we, we are able to hire a full-time pastor.

15 We would like to increase the Church's ability to
16 give to international missions, as well as, do more ministry
17 work throughout the Washington, D.C. area. We want to
18 eliminate the need to rent out our church to outside groups,
19 including preschools, just to cover our operating cost.

20 So finally, I'd like to say, the partnership with
21 Sunrise will allow our congregation to support the residents
22 of the assisted living facility, through religious outreach
23 and service programs.

24 We seek to integrate the Church in the low packed
25 assisted living facility into the community. We cannot

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1 stress enough, how critical this project is to our Church,
2 community, and we thank you, very much, for your time and
3 your consideration. Thank you.

4 CHAIRPERSON HILL: Thank you.

5 MS. BROWN: Our next witness is Mr. Philip
6 Kroskin, with Sunrise Assisted Living, and he will focus on
7 the peculiar needs of an assisted living facility.

8 CHAIRPERSON HILL: Ms. Brown, which one is he,
9 again, sorry?

10 MS. BROWN: He, he -- Philip Kroskin, Senior Vice
11 President of Real Estate, at Sunrise Assisted Living, Sunrise
12 Senior Living.

13 CHAIRPERSON HILL: Okay. I don't know, there was,
14 there was some people that were offered up, as experts, and
15 proffered as experts, and some of them were not in our book,
16 I just didn't know, whether all of them were here and were,
17 were going to testify, just wanted to read their names, if
18 I could?

19 MS. BROWN: Sure.

20 CHAIRPERSON HILL: Steve Ruise (phonetic).

21 MS. BROWN: He's not here.

22 CHAIRPERSON HILL: Okay, Charles Heath.

23 MS. BROWN: He is here.

24 CHAIRPERSON HILL: Okay. Andrew Altman.

25 MS. BROWN: He is here.

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1 CHAIRPERSON HILL: Dan VanPelt.

2 MS. BROWN: He is here.

3 CHAIRPERSON HILL: Okay, actually, he's in the
4 book, as is Robert.

5 MS. BROWN: Yes.

6 CHAIRPERSON HILL: And I can't pronounce his last
7 name, S-C-H- --

8 MS. BROWN: Schiesel.

9 CHAIRPERSON HILL: Schiesel, is he here, is --
10 outside --

11 MS. BROWN: Robert.

12 CHAIRPERSON HILL: -- there we go. And then,
13 Connie Fan?

14 MS. BROWN: She will not be testifying.

15 CHAIRPERSON HILL: Okay. Alice Katz.

16 MS. BROWN: She is here.

17 CHAIRPERSON HILL: Okay. So I have looked at all
18 of the resumes and I didn't have any questions with any of
19 them being admitted, as experts, does the Board?

20 (Off the record comments.)

21 CHAIRPERSON HILL: Okay. All right, so then we'll
22 -- we did that. So -- now go ahead and start, start again,
23 I'm sorry.

24 MS. BROWN: So we're turning now to Mr. Kroskin,
25 to testify about the CCRC use that's going to be on the

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1 property and it's special needs of that, the programing of
2 that facility.

3 CHAIRPERSON HILL: Okay.

4 MR. KROSKIN: Thank you. My name is Philip
5 Kroskin. I'm the Senior Vice President of Real Estate at
6 Sunrise Senior Living. I'm going to be curtailing a lot of
7 my comments, but the first thing I wanted to just comment on
8 was, Janet's comment about the Church's focuses being
9 service-oriented.

10 Sunrise Senior Living has served the community,
11 the United States, and the world, for 37 years. Our mission
12 has been clear, to champion the quality of life for all
13 seniors. Our mission was recently validated, when Sunrise
14 was awarded the highest in customer service satisfaction
15 among all senior care providers, by J.D. Power and
16 Associates.

17 Today, we operate more than 327 communities in the
18 UK, Canada, and the United States and serve in excess of
19 33,000 residents. Nearly 90 percent of the buildings that
20 we operate are buildings that we purpose-built.

21 While we are international in our size, we are
22 very proud to say that each property serves its local
23 community. Our statistics show that, 70 percent of our
24 resident population identifies with a home that is within ten
25 or 15-minute drive of their facility. As a result, we look

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1 to hire local staff, who knows the neighborhood and engages
2 with the neighborhood.

3 The next two slides are to discuss community
4 outreach and inter-generational programming and community
5 benefits. I'm going to quickly touch on a couple of items,
6 instead of reading everything.

7 So the major point of this is that, Sunrise is
8 known in the industry for being very active in our community
9 outreach. We have a very active inter-generational program
10 that we're very proud of.

11 There's a significant research that proves the
12 importance of these connections between young and old. For
13 the seniors, they enjoy improved life satisfaction, enhanced
14 self-esteem and other benefits.

15 For the youth, more importantly, they benefit from
16 developing healthy attitudes towards aging, strengthened
17 sense of community, promotion of culture, heritage, and
18 history, enhanced social skills and improved academic
19 performance.

20 As an example, Sunrise on Connecticut Avenue has
21 partnered with Saint Albans, Kinder House, Blessed Sacrament,
22 Nurture Elementary, the Field School, Georgetown Day,
23 Johnston Elementary, Saint Johns, Wilson High School, and
24 Edmund Burke.

25 Community benefits that we offer go just beyond

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1 those mentioned. As Pat and Janet so beautifully described,
2 the Church will be able to continue to offer religious and
3 community service.

4 Sunrise will provide care, support, and services,
5 for those in the community that can no longer care for
6 themselves. This will allow long-time Northwest residents
7 to stay in their neighborhood, where they can easily be
8 visited by their friends and family.

9 We will be creating 70 new full-time equivalent
10 jobs and generating new real estate-type revenue, real estate
11 tax benefits, on land that, currently, does not pay taxes.
12 These taxes will be a net positive to the city, as this
13 project will have a limited burden on public resources and
14 zero impact on schools.

15 Local businesses will benefit from family and
16 employee resident patronage and we will significantly improve
17 the neighborhood ascetic from the current building and lack
18 of landscaping, and this includes the improvement of the
19 National Park Service land with new trees, landscaping,
20 hardscaping, and benches, for all to benefit in the public.

21 As I mentioned, we draw from a ten to a 15-minute
22 radius or, approximately, three-mile radius, ten or 15, ten
23 or 15-minute drive, or in this case, approximately, three
24 miles.

25 Alice Kantz, from Vinca, will talk briefly to

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1 demand. But, I think, it goes without saying, and again, I'm
2 going to skip ahead in my notes, that demand is far out
3 stricken supply, both, today and in the future.

4 The following slides are just going to be nice
5 images of our building, as I talk through some, some items.
6 In considering senior housing, you need to distinguish
7 between independent living and entry into continuing care
8 communities, skilled nursing buildings, and assisted living
9 buildings.

10 And then, you need to identify, within each
11 building type, those that are subsidized for only affordable
12 housing and those that are unique to a specific infinity
13 group, like Knollwood Military, and those that require
14 sizeable up-front payment, like Ingleside.

15 Each offers something that the market needs. To
16 be clear, though, we are also not skilled nursing, whose
17 services are covered by Medicare, or Medicaid, for either
18 long-term, or fixed, period of time, after hospitalization.

19 What Sunrise does is provide private pay, monthly
20 rental, assisted living, and memory care, to people who need
21 help with the activities of daily living. What we do is
22 important, as each resident is somebody's Mom, or Dad, and
23 has a family, who cares and loves for them. But family
24 cannot provide that care alone. We are there for them, when
25 they need us most.

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1 To be clear, in this market, given the lack of
2 available land, difficulty in achieving entitlements, and the
3 high cost of construction, it is near impossible to foresee
4 a way that you can overbuild the current and future demand.

5 The city needs our services desperately, if the
6 city is looking to support all of its residents. Projects,
7 such as ours, should be celebrated for what they provide
8 versus the perceived impacts of those in close proximity.
9 In fact, the Zoning Regulations do recognize this.

10 The District Code was modified in 2000, with the
11 Assisted Living Facilities Care Act. The Zoning Code was
12 amended in 2016, to create the CCRC use. Here, I want to
13 quickly clarify that the general public meaning of CCRC is
14 considered continuing care retirement community, those are
15 buildings that include all independent living, assisted
16 living, and nursing, in one building, Ingleside, for example
17 is a CCRC.

18 We, however, fall under the D.C. Code definition,
19 where it's a facility that includes dwelling units for
20 independent living, assisted living, or skilled nursing, our
21 use falls under that Code.

22 The fact is that it's extremely difficult to
23 identify current locations in the R-1B Zone that could, both,
24 support a financially viable CCRC use and be large enough to
25 not require a variance for lot occupancy and number of

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1 stories. In fact, on this site, assuming that we were solely
2 building a CCRC use, our building could only max 47 units,
3 to be able to avoid asking for any variance relief.

4 Our business, due to the cost of land,
5 construction, and operations, it's extremely rare to see a
6 building constructed in the last five to ten years smaller
7 than 85 to 100 units. As a result, this creates a difficulty
8 that the Code allows the use of CCRC, but limitations on lot
9 occupancy, height and number of stories do not allow for the
10 creation of a financially-viable project.

11 In preparing for this hearing, we met with the ANC
12 six times, ward3vision two times, held two informal community
13 meetings, in the Church, did neighborhood door-knocking and
14 sat in living rooms and coffee houses, toured many neighbors
15 through our Sunrise Connecticut Avenue and Sunrise Chevy
16 Chase properties.

17 What we found is that this community is not as
18 divided, as the opposition would have you believe. In fact,
19 the opposition voice, while very loud, have scared and
20 intimidated many we spoke with into remaining quiet. You
21 will see, however, that there are many supporters here today,
22 who would bravely speak and who have written letters of
23 support. I'm sorry, but we know three have left.

24 The ANC deliberated long and hard and made
25 sizeable changes in scope, size, orientation of our building,

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1 to accommodate the request. They voted in favor, the process
2 worked.

3 In conclusion, Sunrise and Wisconsin Baptist
4 Church are presenting a sensitively planned,
5 beautifully-designed and landscaped building that serves the
6 care and spiritual needs of the community, with little to no
7 true impact on, both, the immediate abutters, or surrounding
8 neighbors.

9 What has been said, filed by, and will be said
10 today by the opposition, in large measure, is simply just
11 wrong, by citing incorrect facts. I'm sorry, they are
12 fighting a good project, by citing incorrect facts.

13 The surrounding neighbors that do support the
14 project, the ANC that supports the project, the Office of
15 Planning that supports the project, the Department of
16 Transportation that supports the project, and the National
17 Park Service supports the project, all know that this is a
18 great use of the land and this location for these uses. I
19 encourage you to support the project.

20 CHAIRPERSON HILL: Again, I'm just going to say
21 something, real quick. So, and I know you still got time.
22 We're going to get through this, as best we can. So, so
23 we're all here -- and I, I saw, I saw the last case and so
24 we're all here, everyone has differences of opinions.

25 We've, I've been here, now, for four years, we've

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1 seen a lot of different cases. We're going to try to get
2 through this, as best we can. And I know everybody's
3 prepared their remarks and is all, you know, figured out what
4 they're going to say and how they're going to say it.

5 If we can try not to use adjectives like, bravely,
6 and, you know, no offense to bravely, but I'm just saying,
7 like, words that might get everybody going. We're just
8 trying to sit here and understand the standard of review that
9 we're looking at.

10 We're looking at things that are within the
11 regulation, we're just trying to figure it out. We've been
12 here a long time. I've been here a long time, even though,
13 I haven't been, again, with you all, and, and I just, and
14 then we're going to take a lot of testimony, from a lot of
15 people, so we're just trying to hear, to understand the
16 standard in which we're reviewing the case.

17 So as you're going through your testimony,
18 whatever you can do, even during cross-examination, if we can
19 just try to be as specific, as possible, and keep adjectives
20 out of the testimony. So with that, Ms. Brown, I'll turn it
21 back to you.

22 MS. BROWN: Thank you. Our next witness is Mr.
23 Chuck Heath, Architect for the project, who will focus his
24 testimony on the areas of relief requested.

25 MR. HEATH: Good evening. I'm Chuck Heath, of

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1 Heath Architecture, speaking on behalf of Wisconsin Avenue
2 Baptist Church and Sunrise Senior Living. I am the Design
3 Architect, working with Mosley Architects, as the local
4 architects of record.

5 I've been, principally, in the design of assisted
6 living facilities for the past 28 years. Many of those years
7 spent with Sunrise Senior Living, with various architects,
8 who are the pioneers of senior living, and one of the
9 projects that I count dearly is one of my favorites, Sunrise
10 of Connecticut Avenue, I designed and am very proud of.

11 I'd like to, first, give you an overview of the
12 project and then, go through the areas of zoning relief with
13 you. This is the aerial view, the site of the Wisconsin
14 Avenue Baptist Church, at 3920 Alton Place, is located in the
15 Tenleytown Neighborhood, just east of Tenley Circle. It is
16 zoned R-1B.

17 Wisconsin Avenue, which cuts through Tenley
18 Circle, immediately to the west of the site, is a major
19 thoroughfare with a religious, educational, and retail uses
20 along it and Tenley Circle.

21 American University Washington College of Law,
22 Saint Ann Catholic Church, and the Yuma Study Center, are
23 opposite the site, across Tenley Circle. The site is
24 visually tied to Tenley Circle to the west and the
25 residential neighborhood to the east.

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1 As ideal a transition location as this is, for
2 assisted living, and it is, very ideal, it is just as bad a
3 location for single family type homes. That the context, the
4 texture of the, the fabric of Wisconsin Avenue and Tenley
5 Circle would be a perfect place for this, this particular
6 building.

7 These views of the site show the existing Church
8 facility, which I think you would agree, does not present the
9 best views to its neighbors, particularly seen in the top two
10 images, which are taken from Yuma Street.

11 This is how the site will be transformed. The
12 original church portion of the building is taken from Tenley
13 Circle looking towards Yuma Street. This is a rendering of
14 the Sunrise portion of the building, as viewed from Tenley
15 Circle looking towards Alton Place.

16 The architectural site plan is shown here. The
17 site is bounded on the north by Alton Place and by the east
18 by the residences facing 39th Street, on the south by Yuma
19 Street and on the west, by Tenley Circle and Nebraska Avenue.

20 The site is accessed via a semi-circular drive,
21 which is here. The driveway ramp, which is here, around the
22 east edge of the property, acts as a through drive for the
23 site. It slopes down to the middle, which is here, to allow
24 access to the below grade garage and loading dock. This will
25 become clear in wider drawing.

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1 The Church is accessed through an entrance on Yuma
2 Street, which is here. The building is setback 36 feet from
3 the east property line, up here, and is flush to the property
4 line to the west, adjacent to the National Park Service
5 property, which is here. We are requesting side yard relief
6 to allow that condition, in which I will discuss later in my
7 presentation.

8 Now I would like to walk through the floor plans
9 with you. This is the first floor plan. Wisconsin Avenue
10 Baptist Church areas are shown in light blue, along Yuma
11 Street, and the Sunrise portions are shown in beige, along
12 Nebraska Avenue and Alton Place.

13 A courtyard garden is provided in the center of
14 the building for residents' use. The ramp is noted, as noted
15 earlier, is on the east side of the property, screened with
16 landscaping and a board fence.

17 The Sunrise entrance is off of Alton Place and the
18 first floor is primarily used for common areas. The WABC
19 entrance is on Yuma Street, with a two-story sanctuary at the
20 corner of Yuma and Tenley Circle.

21 The second floor plan is, mostly, for Sunrise's
22 use, in the corner of the building at Tenley and Yuma is the
23 upper portion of the sanctuary. The third floor is solely
24 for Sunrise's use and as is the fourth floor, which is for
25 the Sunrise Signature Memory Care Program.

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1 The roof level is, mostly, for housing mechanical
2 equipment and the roof plaza and garden. The mechanical
3 equipment is all contained inside a screened wall, which will
4 protect the equipment from visibility from the street and
5 will help to reduce the impact of equipment noise.

6 Green roof areas are illustrated here and will be
7 provided, as part of the project's sustainability
8 enhancements. The building will be, at least, a LEED minimum
9 certified project.

10 The first garage level will accommodate, which is
11 on the left, will accommodate spaces for, both, WABC and
12 Sunrise, as well as parking, loading and trash removal. The
13 garage will have a total of 66 spaces, as required by zoning.

14 The trash room will be here, where it says
15 storage. The lower garage will be, primarily, for parking,
16 which is here, as well as a cistern for our, our water, storm
17 water management.

18 The site sections illustrate the relative size of
19 the building and context of its surroundings on, both,
20 longitudinal and latitudinal directions. The sections
21 illustrate how the building is compatible in scale with the
22 neighborhood's buildings. It doesn't look out of place, at
23 all.

24 The building height, which is measured to the top
25 of the roof slab, is 40 feet above the building height

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1 measuring point, as established by the zoning ordinance for
2 non-religious uses.

3 Forty feet is the maximum height for a
4 non-religious use. It is 60 feet for religious use. The
5 proposed building is 40 feet above the BMH, BHMP for, both,
6 the non-religious and religious portions of the building.

7 The section on the right best illustrates how the
8 four stories will be incorporated into the same maximum
9 height that a three-story building would be. No additional
10 height is required for the additional floor.

11 The dash line shows the outline of the 60-foot
12 height, which is what a matter-of-right church could be built
13 on a R-1B district, by right. The mechanical equipment is
14 located behind the mansard roof, which doubles as the screen
15 for the equipment. The mansard roof also is used as an
16 architectural device to reduce the apparent height of the
17 building.

18 CHAIRPERSON HILL: So just so I'm clear, again,
19 can you go back again?

20 MR. HEATH: Yes.

21 CHAIRPERSON HILL: All right, so the maximum
22 height is the, is the, to the roof slab there.

23 MR. HEATH: Correct.

24 CHAIRPERSON HILL: And then that additional, I
25 don't know, is it 12 feet above that?

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1 MR. HEATH: Yes, on the right-hand image, the 12
2 feet above that is the mechanical screen, allowed by code.

3 CHAIRPERSON HILL: Okay.

4 MR. HEATH: On the left, you'll notice a four-foot
5 parapet, which is also allowed by code.

6 CHAIRPERSON HILL: Okay. All right, thank you.
7 Please continue.

8 MR. HEATH: Setbacks. Finally, I'd like to review
9 the setbacks that are provided. The rear yard, and we -- and
10 then the rear, in the corner here, so the rear that's in the
11 front, so it's not the same as the rears in fronts. You had
12 to pick a rear and a front, which we have done.

13 Finally, I'd like to review the side that setbacks
14 are provided. The rear yard, Yuma Street, is 45.4 feet,
15 which exceeds to R-1B Zoning requirement, by 82 percent. The
16 front yard, Alton Place, is compliant and the side yard east
17 39 feet, 39th Street neighbors is 36 feet, which exceeds the
18 requirement by 350 percent.

19 The west walled-in building follows the west lot
20 line to provide the maximum amount of space between the
21 building and the neighbors to the east, thus, the side yard
22 to the west, abutting the National Park Service land is
23 reduced from eight feet to zero and requires a variance
24 relief, which is discussed a little later on.

25 Looking at the elevations, briefly, here, the

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1 Alton Place elevation view, we can see the beauty of the
2 proposed building and its rich and detailed design, which
3 fits so compatibly in its settings.

4 The view of the 39th Street elevation illustrates
5 the way the building is broken down to minimize the impacts
6 the neighbors to east of the property. You'll note, the
7 images that are more saturated are the ones that are closer
8 and the ones that are faded are in the distance, just to
9 illustrate the, the depth there that's hard to see on a flat
10 elevation.

11 The elevation of Yuma Street shows the church
12 building on the left side and the Sunrise building on the
13 right. We can also see the roof garden on the church roof.
14 The strong, strong contrast of the two portions of the
15 building is intentional to make clear to the viewer that the
16 uses are different, though compatible.

17 To be clear, the top two floors of the church
18 building are Sunrise residential units, which are designed
19 into the church facade. The Tenley Circle elevation shows
20 the Sunrise building on the left and the church on the right.
21 Again, to be clear, the two top floors of the church building
22 are Sunrise resident units, which seamlessly blend into the
23 church facade, also visible is the roof garden.

24 The landscape plan of this project is designed to
25 fit into the city's streetscape plan, for the areas adjacent

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1 to the city's streets, to enhance the National Park Service
2 land to better serve the community and to beautify it and
3 provide national settings for the residents' enjoyment.

4 These views illustrate how nice it will be to walk
5 through the new park from the different directions. The
6 details of the plantings, et cetera, are to be worked out,
7 but the general idea of the illustrations are here, are, the
8 general idea is illustrated here.

9 Now, I'd like to review with you the areas of
10 zoning relief. The site is an unusually large parcel for the
11 neighborhood, with approximately 35,433 square feet of land.
12 Most of the other parcels in the R-1B Zone are 5,000 square
13 feet to 5,500 square feet in size, or approximately six to
14 seven times smaller.

15 The site is unusual in this configuration. It was
16 trapezoidal in shape with three frontages on Alton Place to
17 the north, Yuma Street to the south, and the open park land
18 owned by the National Park Service, which allows direct views
19 from the site to Tenley Circle and Wisconsin Avenue.

20 Frontage on a small piece of Nebraska Avenue
21 creates an angle to the property at its northwest corner.
22 Geographical location is in exceptional and extraordinary
23 condition, as well. The site is unusual in its prominence
24 on a Washington, D.C. circle, making its appearance of height
25 into importance.

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1 The only residents in the square are the five
2 houses that are, that are abutting the church property to the
3 east. These existing site conditions, plus the institutional
4 needs of the church, to partner with a mission-compatible
5 use, create practical difficulties in meeting the zoning
6 requirements.

7 Practical difficulties. As, as you have heard
8 from Philip Kroskin, as you will hear, in more detail, from
9 Ms. Katz, in order to be economical feasible, the assisted
10 living facility needs to have a minimum of 85 units. We are
11 proposing 86.

12 To achieve this number of units, we need variances
13 from the lot occupancy and number of stories. We also need
14 a variance from the side yard requirements on the west
15 property line, which is directly related to the peculiar
16 configuration of this lot.

17 The footprint of the building is only large enough
18 to construct adequate facilities for the right size of the
19 Wisconsin Avenue Baptist Church, with 250-seat sanctuary and
20 then 86-unit assisted living facility, 57.5 percent lot
21 occupancy is the result of careful and efficient crafting of
22 the plan and the space needs of these two uses.

23 The church has been designed to fit inside the
24 40-foot height, even though, it can be as high as 60. Our
25 initial design was for, approximately, 100 units, which

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1 resulted in a lot occupancy of 69 percent.

2 Through many iterations, meetings with the
3 community, and the ANC, and financial review by Sunrise, we
4 have been able to reduce the size of the building, so that
5 it occupies only 57.5 percent with four floors.

6 A 40 percent lot occupancy building would net
7 42,532 square feet over three stories, which relates to,
8 roughly, 47 units and no church. We can't increase the size
9 of the courtyard. People ask, otherwise can you do this, can
10 you do that?

11 If we reduce the size of the courtyard, thereby
12 reducing lot occupancy, we're now losing a tier of units.
13 As designed, the building has a double-loaded corridor and
14 the unit sizes are minimum necessary to meet the needs of an
15 assisted living facility.

16 Keep in mind that these are, essentially, sleeping
17 units. They have no kitchens, so they are already much
18 smaller than a typical multi-unit residential building and
19 are equivalent to micro-units.

20 Our Denver unit is only 448 square feet and it is
21 sized for two persons. Our two-bedroom unit is 580 square
22 feet, our studio unit is 336 square feet. So we had to shave
23 off a couple of feet forces one-half of the double-loaded
24 corridor to be illuminated with very, with potentially very
25 little ability to increase lot occupancy.

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1 We have a similar problem, if we eliminate one
2 floor of the CCRC use. We would lose, roughly, 35 units and
3 the project would no longer be viable. On the side yard,
4 similarly, we have had to comply with the side yard area, on
5 the east side of property.

6 We -- if we had to, we'd have to eliminate the
7 landscape buffer and simply have the garage ramp along the
8 property line. This could potentially create objectionable
9 conditions for the only residents abutting the property under
10 the CCRC test.

11 By shifting the building to the west property
12 line, the 39th Street neighbors gain additional breathing
13 room and a wide swath of green space separating the
14 properties.

15 The retaining wall, the wall starts at grade off
16 of Alton Street and proceeds to 13 feet, at the bottom of the
17 ramp, where it begins to diminish to grade again, near the
18 Yuma Street exit.

19 The wall will not be visible from the 39th Street
20 neighbors' rear and side yards and is only partially visible
21 and then obliquely, when one walks, or drives, down either
22 Alton Place, or Yuma Street, and happens to glance over at
23 it. The wall will have safety fencing at the top, along its
24 length, and a board fence along the property line.

25 The area between the two will be landscape with

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1 screening material, such as all variety in consideration with
2 the 39th Street neighbors, some of whom are not screened from
3 the existing church building, which is not a very pleasant
4 site, from their vantage points. There's also a question
5 about slope of the ramp, it is six percent and 12 percent,
6 as shown here. Thank you, very much.

7 MS. BROWN: Thank you. Our next witness, I
8 realize, we're over time, and, but, we'll be --

9 CHAIRPERSON HILL: Thank you very much.

10 MS. BROWN: Thank you, our next witness -- I
11 realize we are over time.

12 CHAIRPERSON HILL: Yes, Ms. Brown it's okay just
13 please go.

14 (Simultaneous speaking.)

15 MS. BROWN: Our next witness is Ms. Alice Katz,
16 on the financial necessity of the 85 units.

17 CHAIRPERSON HILL: Okay, this is, is this your
18 last witness? Who do you have after this?

19 MS. BROWN: We have Traffic and Andy Altman.

20 CHAIRPERSON HILL: Okay. All right.

21 MS. BROWN: And we're going to try to keep it to
22 four minutes each.

23 CHAIRPERSON HILL: Okay. Let's go and just see
24 how we get. You have to push the microphone button there.

25 MS. KATZ: I'm Alice Katz. I'm President of the

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1 Vinca Group. The company has a national practice
2 specializing in senior housing and long-term care. Our work
3 includes development projects and operational and financial
4 restructuring.

5 As a matter of note, I was the Senior Consultant
6 on a project where we asset managed the largest portfolio of
7 the Altera bankruptcy and, most recently, was the Chief
8 Restructuring Officer for a dementia assisted living facility
9 in New Hampshire.

10 My review for this project is independent, as our
11 most recent work for Sunrise Senior Living was in 2006, they
12 are not a current development, or operations client of the
13 Vinca Group.

14 I'm going to focus on two issues, the increasing
15 demand for services that are really needed in this community
16 and the necessity to build, at least, 85 units. Can, can we
17 go up --

18 (Off-microphone comments.)

19 MS. KATZ: Keep going.

20 (Off-microphone comments.)

21 MS. KATZ: The documents that have been uploaded,
22 give you a description of assisted living and the differences
23 between assisted living and other types of house services.
24 The staffing is needs-based and, in this type of property,
25 averages 1FTE per 1.3 residents, to provide the, what we

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1 call, community standard of service.

2 This is a, a graphic of the incremental bed need.
3 Originally, I used a three-mile market area, which is what
4 we would typically use in an urban environment and this map
5 illustrates it. Go to the next one.

6 But then, I saw the opposition filing, with a list
7 of facilities, and we did additional analysis, where we used
8 a defined market area to include those facilities. Some of
9 them are not assisted living facilities, so those would be
10 excluded from our demand.

11 But, what I think is critical in this illustration
12 is the drive times, which are the colored areas. And,
13 typically, in an urban market, people don't drive more than
14 ten or, at most, 15 minutes, to get to a property.

15 So it's really a three-mile demand, but to address
16 the opposition, we did it, both, for a three and a five-mile
17 demand and the incremental needs in the next five to ten
18 years are an excess of 2,000 beds.

19 Go to the next slide. I'm going to skip the
20 current inventory and the occupancy. It's an extremely
21 highly-occupied market. The projections are in excess of 20
22 percent increase in, both, routine assisted living and memory
23 care assisted living in both market areas in the next five
24 years.

25 NIC map, as a national data service from the

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1 National -- the National Investment Service for Senior
2 Housing and Long-term Care and it tracks occupancy, census,
3 and rain information on independent living facilities,
4 skilled nursing facilities, assisted living facilities,
5 memory care facilities, and entrance fee, CCRCs, or life care
6 properties. And also, it tracks --

7 CHAIRPERSON HILL: Can I, can I interrupt -- just
8 one second. Actually, if you can just, kind of, focus on the
9 financial need of the number --

10 MS. KATZ: Okay.

11 CHAIRPERSON HILL: -- of units of each one --

12 MS. KATZ: I'd be happy to.

13 CHAIRPERSON HILL: -- jump to -- thank you.

14 (Simultaneous speaking.)

15 MS. KATZ: All right. Well, let me finish the
16 explanation of the NIC map, because that is part of the --
17 go down to Slide 11. It --

18 (Off-microphone comments.)

19 MS. KATZ: That is part of the analysis that
20 supports the number of units. I have pulled data on all
21 buildings that were constructed, since 2015, and the average
22 size of, of primarily routine assisted living buildings, so
23 it could, either, just be assisted living, or, like the
24 proposed project that would have assisted living and a memory
25 care component, was 93 units, with 63 routine assisted living

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1 units and 25 memory care units.

2 And the reason that that is, is because you need
3 an economic operating model. And just as a, for a point, the
4 memory care average size for newly developed projects was
5 also -- was 53 units. So buildings have had to get bigger,
6 to be able to support the, the cost function to take care of
7 people.

8 We have increasing acuity of residents, requires
9 more highly-skilled staff, higher staffing levels, which
10 means more staff hours per resident, and also more technology
11 to support the building and the whole design of the buildings
12 has to include 50, practically, 50 percent of the area for
13 common areas.

14 There's specialized dining venues and activity
15 areas and technology is really changed, in terms of, what's
16 being developed and implemented in buildings, in the last
17 five years.

18 The, this factors for smaller buildings, include
19 higher effect on census fluctuations on revenue and the
20 ability to appropriately manage costs and income. Smaller
21 census also limits the variety amount of services that can
22 be offered to residents and the ability to track ancillary
23 service providers to bring in services like rehabilitation
24 therapy, or geropsych services in an economic manner that it
25 tracks outside providers.

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1 It's my opinion that, less than 85 units is not
2 an economic variable, in terms of, developing a property.
3 We get calls all the time, when people say that they're
4 thinking about a project and they will suggest sizes, and if
5 it's less than 85 units --

6 CHAIRPERSON HILL: Okay.

7 MS. KATZ: -- per building --

8 CHAIRPERSON HILL: Okay.

9 MS. KATZ: -- we don't see it, as being viable,
10 in terms of, attracting financing, or generating enough
11 income --

12 CHAIRPERSON HILL: Okay.

13 MS. KATZ: -- to support the operations.

14 CHAIRPERSON HILL: Ms. Brown, do we have her
15 testimony, also, correct? And so let's hear next witness.

16 MS. BROWN: You don't have her testimony in the
17 record, this is the only testimony --

18 CHAIRPERSON HILL: Oh, I'm sorry, I meant to say,
19 we just heard her testimony.

20 MS. BROWN: Okay, and we do have her slides that
21 we uploaded.

22 CHAIRPERSON HILL: Okay.

23 MS. BROWN: Okay, so our next witness is the
24 transportation Gorove/Slade.

25 MR. VAN PELT: Good evening, Members of the Board,

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1 I'm Dan Van Pelt, the Principal with the Gorove/Slade
2 Associates. We've been --

3 (Off-microphone comments.)

4 MR. VAN PELT: Yes, the next slide.

5 (Off-microphone comments.)

6 MR. VAN PELT: Yes, just leave it right there.

7 We've been working with the Applicant on the transportation
8 aspects of this project. I'm joined by my colleague, Rob
9 Schiesel, who managed the transportation review.

10 I wanted to start off by saying that this
11 application is not seeking any transportation-related relief.
12 It meets the zoning requirements for parking and loading.
13 However, there is a special exception being sought, so the
14 transportation review needs to demonstrate that the project
15 has no objectionable conditions, due to parking, loading, or
16 traffic, which we believe we have demonstrated.

17 We started our work with meeting with DDOT and
18 there have been several meetings with the Agency. We
19 coordinated with DDOT on the scope of the transportation
20 review, which requires -- which requires no vehicular
21 analysis in this case, because it is below DDOT's threshold
22 for such.

23 We did include some analysis that was requested
24 by the community, to address some concerns that we heard, but
25 it was not required by DDOT. We are pleased to have DDOT's

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1 support.

2 As you can see, from the staff report, they had
3 two conditions, they wanted the agreement of a, an
4 implementation of the transportation and a management plan
5 and a loading management plan, and we agreed to those
6 conditions.

7 We also worked with DDOT on the access plan and
8 the location of the curb cuts, the maneuvering of the
9 vehicles and the shuttle vans and the trucks that we use the
10 driveways and a semi-circular drive were modeled and they
11 will be adequately accommodated by the plan.

12 We've received conceptual approval for the curb
13 cuts, from the Public Space Committee, at their October
14 hearing. And, with that, we have additional slides that goes
15 into the details of our analysis, but I think we're going to
16 skip those.

17 I was going to have Rob walk through those, but
18 he's going to be here for -- and to answer any questions you
19 might have about our transportation review and any of the
20 data that was in it.

21 CHAIRPERSON HILL: Okay.

22 MS. BROWN: And then, our final witness is Mr.
23 Andy Altman, the expert in land planning. He's going to
24 speak to the no-harm to the Zoning Regulations, or Zone Map,
25 under both of the, the CCRC standard for special exception,

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1 under the third prong of the variance test.

2 CHAIRPERSON HILL: Okay, thank you.

3 MR. ALTMAN: Thank you. Thank you, Members of the
4 Board. It's been a long time, since I've been here, I'm just
5 on my own here today as an expert in land planning, I was
6 formerly the Director of Office of Planning, many years ago,
7 under Tony Williams, and so I have not been here in over
8 ten-plus years. I had to leave the country for ten years,
9 but, but I'm, I'm back and happy to be back. I came back
10 four years ago and I am a resident of, of Ward 3. I just
11 want to make one quick comment, which is, this is not my
12 ordinary business to do this, to be an expert witness, it's
13 not what I do day-to-day, which is why you haven't seen me.

14 I've only done this once before. But, when Philip
15 Kroskin approached me and talked to me about what they were
16 doing in this project, I really believed in it. I thought
17 it was a critical need for the District and for the neighbor
18 residents in, of, of the, of the ward, and, and also thought
19 it was the appropriate site.

20 I know the site well. I've walked it many times,
21 drive past it all the time, practically, three to four times
22 a week, and it made logical sense. I'll go through and try
23 to cut through longer testimony, quickly.

24 But I, sort of, asked myself the question, if I
25 were back heading OP, what would I -- would I have supported

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1 this project, so otherwise, I wouldn't have felt comfortable
2 coming before you today, and the answer was, unequivocally,
3 yes, to me and what the, the Planning Offices has presented
4 to you.

5 I felt that the proposed project provides two
6 fundamental public benefits, the development of a new church
7 building for a congregation, with long-commitment to this
8 community, that needed new facilities, as you've heard, and
9 without the financial resources to afford one, and a CCRC
10 residence that's critically needed in our city and our
11 community.

12 Crucially, and to share your point, these
13 essential public benefits are achieved in harmony with the
14 purpose of the Zoning Regulations that I don't believe, would
15 impair the intent, purpose, or integrity, of the Zoning Plan,
16 in fact, just the opposite.

17 I think the variances are quite minor. I think
18 that a much more intensive and larger use could be built on
19 this site. I think that they accomplish this, the project
20 accomplishes this in three, kind of, fundamental ways, in a
21 very sensitive design to ensure that it can fit comfortably
22 within the community.

23 First, the project's situated, as it's pointed out
24 here and it's been pointed out by the architect, along a very
25 busy mixed use corridor. So from a land planning

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1 perspective, in terms of location, it is along Tenley Circle,
2 it is a transitional site, between the high-intensity
3 corridor of Wisconsin Avenue and Tenley Circle and
4 residential neighborhood, it's a perfect transitional use to
5 bridge conditions.

6 It's located within 500 feet or so of a metro, so
7 this is where you want to have these kinds of facilities, so
8 you have access for staff, for visitors, for residents.
9 Along our major corridors in the city.

10 From a site planning perspective, I think is, it
11 was described, is very sensitively done, in terms of,
12 appropriate scale and generous setbacks and then the
13 architectural design of the building, itself, breaks down the
14 scale to fit within the character of the neighborhood.

15 So let me hit on a few of the specific points,
16 because I know we're tight on time. First, was the
17 appropriateness of the special exception for the CCRC use.
18 And I see you counting, I got it.

19 (Laughter.)

20 MR. ALTMAN: CCRC, as you know, is permitted by
21 a special exception, by the Zoning Regulations, the R-1B
22 District, so it's already contemplated to be appropriate for
23 the District, if it can meet the various tests and it's found
24 to have no adverse impacts.

25 I believe that, the CCRC -- CCRC use here is not

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1 likely to become objectionable, because of its quiet nature,
2 which is why, permitted by special exception, in the most
3 restricted residential zones. There are nearby examples of
4 this, such as Seabury at Friendship Terrace.

5 It meets the intent of the Zoning Regs and Zoning
6 Maps, which contemplate a 60-foot tall building and a 60
7 percent lot occupancy for churches, by right. This building
8 will only be 40 feet tall, as you've heard, and 57.5 percent
9 lot occupancy, so it fits within the parameters of the
10 District.

11 It's clearly a critical need in the District, as
12 it's pointed out in the Office of Aging Report and OP's
13 report, in terms of, the demand for this and where we need
14 these facilities and it's very hard to find locations for
15 these facilities that meet these tests.

16 In terms of the variance tests, I mean, the third
17 prong of the variance tests is similar to the special
18 exception test, regarding general conformance with the Zoning
19 Regs and Maps, as pointed out, about the busy thoroughfares
20 and this being a transitional site, I think, the increased
21 lot occupancy to 57 percent is less than what is permitted
22 for a matter of right institution.

23 But, importantly, the difference between, you
24 know, 57 percent and what is allowed, I believe, is really
25 marginal, I don't believe that results in impacts on right,

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1 air, or visual impacts on, that are significant or adverse
2 to the community, or in any way harm the Zoning Regulations.

3 I think that the increase on lot occupancy is done
4 in a sensitive way on the site that I think is appropriate
5 for -- for that level of lot occupancy and is totally what
6 would be a permitted, matter of right for a church facility.

7 The, importantly, just, talk to a couple of the
8 specific aspects. The impact from variances for lot
9 occupancy and side yard relief is limited, due to this
10 location, we're an exceptionally large lot, adjacent to the
11 National Park Service land, which shows an open space between
12 the proposed building and Tenley Circle.

13 In traditional urban planning, lot occupancies and
14 setbacks in residential zones are established to provide
15 adjacent residential neighborhoods with adequate light and
16 air.

17 To the west, the NPS park land will provide an
18 aesthetic and quality of buffer that the regulations desire.
19 The request for variance from the side yard requirements
20 across this parcel, in fact, furthers the public good -- to
21 me it represents very good urban planning.

22 You want a building that fronts a park. It
23 creates a safer park, it creates a strong edge. They're
24 going to upgrade and enhance the Park Service, so essentially
25 going from a cut-through to provide a real neighborhood

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1 amenity, and so to enhance the NPS Park and, frankly, make
2 it into something really beautiful, as we pointed out in the
3 some of the slides.

4 So the eight feet, also, importantly, the eight
5 feet variance allows for the generous buffer of 36 feet to
6 the east, so which, again, furthers the public good,
7 minimizes that impact. So you have a very significant
8 setback, so by allowing, what I think, would be good urban
9 planning, to begin with, the variance that's requested,
10 adjacent on the west side of the Park Service land, gives you
11 the additional benefit of not only a great neighborhood
12 amenity, but 36 feet on the east side. So I think it
13 achieves -- it's entirely in harmony with the intent of the
14 Zoning Regulations and achieves very important purposes.

15 Next point is that, the building has been designed
16 to lessen impacts and to be in harmony with the neighborhood.
17 The architect has presented the design of the building, the
18 architecture of the building, the residential nature of the
19 building, the variance to allow four stories versus three
20 stories, I don't believe, has an adverse impact on the
21 surrounding communities, in terms of, both, light and air,
22 or visual impact, in the way it's designed, the tripartite
23 structure of, of the base, the middle, and -- and top very
24 much breaks down the massing of this.

25 It's intended to really fit, try to fit within the

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1 character of this neighborhood, and it's very much a quiet
2 residential use and, I think, the architecture reflects that
3 quiet residential use and really to, sort of, fits within the
4 character of the neighborhood and can be very much in harmony
5 with the neighborhood and with the intent of the Regulations.

6 And, again, it's within the 40 feet, which is less
7 than matter of right would allow, a 60 feet, for a church,
8 this is 40 feet and, within that 40 feet, it's been broken
9 down very sensitively.

10 So again, I think, when you take the combination
11 of these factors, from a land planning perspective, in terms
12 of, the location, along a very busy -- adjacent to a very
13 busy corridor, Nebraska, Tenley Circle, Wisconsin Avenue,
14 within metro, from the site planning that looked at how, I
15 think, the, you know, the frontage on the park, the setbacks
16 to the east of 36 feet, the design of the building, all of
17 these come together, to me, to be very much, I think, a
18 project that is, should be supported and I, very much,
19 support.

20 So in conclusion, I believe that this is a very
21 important project, from a larger perspective for the District
22 in the neighborhood, we need these kinds of facilities in our
23 community, so that our population can have places, as they
24 age, and don't have to go too far from the suburbs, or places
25 that are inaccessible, being close to a metro, on a major

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1 corridor, in a transitional site. I think we've accomplished
2 that and accomplished that in a sensitive way that does not
3 require significant, I think, impacts -- in fact, only minor
4 variances.

5 I'll make one final point, which is, I think, Phil
6 Kroskin discussed and, and showed a slide of all the
7 community participation, I think that's actually, really,
8 something critical.

9 I think the Regulations are working the way
10 they're supposed to work, which is, if it's a matter of
11 right, a larger facility could be built, taller, more lot
12 occupancy would not have the same level, or any level, of
13 participation and not be required, which is a matter of
14 right.

15 Here, going through the process, the special
16 exception and variance process resulted, in fact, in a
17 smaller building, fewer units, less occupancy, so a lot of
18 community input into design and, I think, those changes have
19 made this project even better and more compatible with the
20 neighborhood and consistent and, I think, in harmony with the
21 Zoning Regulations.

22 And, it's for those reasons that I agreed to do
23 something that I never do, but felt, as a resident of the
24 District and of the Ward that it was important to be a part
25 of this and to support this project and to urge your support.

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1 Thank you.

2 CHAIRPERSON HILL: Okay, great. Thank you.

3 MS. BROWN: That concludes our direct testimony

4 --

5 CHAIRPERSON HILL: Okay.

6 MS. BROWN: -- and I'll dispense with legal
7 argument and --

8 CHAIRPERSON HILL: Okay.

9 MS. BROWN: -- save that for closing.

10 CHAIRPERSON HILL: Okay. So I'm going to, kind
11 of, just ask the Board, here, a little bit about, what I
12 think we may, or may not, want to do. So we can, either,
13 start asking the, the Applicant, now, questions, or -- and
14 I'm not really sure what you all want to do.

15 I think, maybe, we'll, maybe, I'll wait, but like,
16 you know, you can start asking the Applicant questions, let
17 the parties go through cross and, also, their testimony, also
18 go through cross, and then we can, maybe, ask all of our
19 questions.

20 Then, on, during rebuttal, the Applicant, the
21 party status people would, also, have an opportunity to, to
22 cross any of the answers that we asked, during the rebuttal
23 portion. Or, do you guys want to ask questions now?

24 MEMBER MILLER: I think we should do it later --

25 CHAIRPERSON HILL: The first way? Okay.

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1 (Simultaneous speaking.)

2 CHAIRPERSON HILL: Okay. All right, so now then,
3 Ms. Ferster, I'm going to turn it over to you. I know I've
4 -- or, whoever wants to go first, do you want to go first,
5 Ms. Ferster, or you want Ms. Chesser to go first?

6 MS. FERSTER: I'm Ferster.

7 CHAIRPERSON HILL: Oh, Ferster. I'm sorry,
8 Ferster.

9 MS. FERSTER: It's okay. It's okay. And Tenley
10 Neighbors is going to --

11 (Off-microphone comments.)

12 CHAIRPERSON HILL: Okay, Chesser.

13 MS. FERSTER: -- I'm Ferster, but I'm going to go
14 second, okay?

15 (Simultaneous speaking.)

16 CHAIRPERSON HILL: Ferster, thank you so much.
17 That's pretty good. So Ms. Chesser, we -- we're going to do
18 cross-examination first, so if you have any questions --

19 (Off-microphone comments.)

20 CHAIRPERSON HILL: Okay well that's okay -- you
21 have to do it over there. You have to ask your question on
22 microphone.

23 MS. CHESSER: Do we have to have our own laptop
24 to do the PowerPoint, or do you have one that we're supposed
25 to stick the --

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1 CHAIRPERSON HILL: That's -- yes --

2 MS. CHESSER: -- thing into --

3 CHAIRPERSON HILL: -- I think you can share that
4 laptop there. So before you do your presentation --

5 MS. CHESSER: Okay.

6 CHAIRPERSON HILL: -- which is great, because --
7 and I wanted to ask Ms. Ferster, as well as, Ms. Chesser,
8 Chesser?

9 (Off-microphone comments.)

10 CHAIRPERSON HILL: Chesser, thank you. Ferster
11 Chesser. Is that --

12 (Off-microphone comments.)

13 CHAIRPERSON HILL: -- Chesser, Chesser. Thank
14 you, Ms. Chesser. Ms. Ferster, so, so I'm going to do cross
15 here, real quick, and I just want to give you my input, my
16 impressions, or my opinion of cross-examination, much as I
17 know that you did with Mr. Hart. I don't know if anybody's
18 listening to me, yet.

19 (Off-microphone comments.)

20 CHAIRPERSON HILL: Okay, I know you guys are.
21 You're not the ones I'm talking to, just yet. So in terms
22 of asking cross questions, what has been my experience --
23 and, and, Ms. Ferster, I mean, I thought that, you know, your
24 questions were very good. I thought you're very good at your
25 job and are very professional.

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1 And so the cross questions have always been, to
2 me, again, having to clarify what the testimony was and help
3 the Board understand what your position might be, but not
4 actually necessarily giving testimony, because you have an
5 opportunity to give testimony. So that's just my own opinion
6 of cross and we'll see how it goes from there.

7 But, Ms. Chesser, do you have any questions for
8 any of the testimony that was given, at this time, or would
9 you like to give your testimony?

10 (Off-microphone comments.)

11 CHAIRPERSON HILL: Yes, you've got to talk into
12 the microphone.

13 MS. CHESSER: Thank you so much. If I don't ask
14 questions, now, and we give our testimony, will we get to ask
15 them questions, later?

16 CHAIRPERSON HILL: No, unfortunately you have to
17 ask questions now.

18 MS. CHESSER: No, we have to ask now? Okay, then
19 we'll -- then we'll ask questions now.

20 CHAIRPERSON HILL: Okay. So again, the questions
21 that you're going to be asking are those specific to the
22 testimony that was given, in the hopes that it helps clarify
23 something for the Board, not to necessarily give testimony.

24 MS. CHESSER: Okay.

25 MS. GUNNING: I have one question, during this

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1 entire process --

2 CHAIRPERSON HILL: Sure give me one second -- can
3 you give me your name one more time?

4 MS. GUNNING: Oh, my name is Barbara Gunning.

5 CHAIRPERSON HILL: Gunning?

6 MS. GUNNING: Right.

7 CHAIRPERSON HILL: Okay, Ms. Gunning.

8 MS. GUNNING: During this entire process, we had
9 several questions that were not answered that go directly to
10 some jurisdictional questions, for example, height, lot
11 occupancy, it's based, mostly, on schematic and it was
12 alluded to, by the witness, in the sense that they say the
13 height is et cetera. But, inasmuch as we were never able to
14 get this basic information, during this proceeding, we have
15 a few factual questions that we would like to ask of the
16 architect.

17 CHAIRPERSON HILL: Okay. Let's go ahead and see
18 how this goes.

19 MS. GUNNING: Okay.

20 CHAIRPERSON HILL: So go ahead and ask your
21 factual questions of the architect. The other possibility
22 is that those might be questions that you'd be asking of the
23 Office of Planning, and so the Office of Planning is going
24 to get to give testimony, as well, as to where -- and they're
25 looking at me funny. I don't know, maybe, you'll have some

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1 questions, maybe, they'll have some questions for you, okay?

2 (Off-microphone comments.)

3 CHAIRPERSON HILL: So we'll see whether -- we'll
4 see whether or not you get your answers --

5 MS. CHESSER: Okay.

6 CHAIRPERSON HILL: -- from the architect, or the
7 Applicant, or the Office of Planning --

8 MS. CHESSER: Okay.

9 CHAIRPERSON HILL: -- but go ahead and ask your
10 question.

11 (Simultaneous speaking.)

12 MS. CHESSER: Okay, one thing is that, we've,
13 we've never been given the height of the steeple.

14 (Off-microphone comments.)

15 MR. HEATH: Seventy feet.

16 MS. CHESSER: Okay. It's only allowed to be 60
17 feet, so you'll need another variance for that.

18 (Simultaneous speaking.)

19 MS. CHESSER: Just thought I'd mention it.

20 CHAIRPERSON HILL: All right, wait, wait, hold on
21 -- that's good, that's good. That's a good question. So
22 your question -- I'm just going to answer -- and I feel like
23 I'm on Jeopardy. So in a question --

24 (Simultaneous speaking.)

25 (Laughter.)

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1 CHAIRPERSON HILL: So as a question, you're
2 asking, whether you need a variance for the extra ten feet
3 for the steeple?

4 MS. CHESSER: They do.

5 CHAIRPERSON HILL: I'm -- just let them answer the
6 question.

7 MS. BROWN: Under the Height Act, under the
8 Section 207.2, I believe it is, of subsection, subtitle D,
9 spires, minarets, domes, other architecture embellishments,
10 may exceed the height limit.

11 CHAIRPERSON HILL: Okay, so according to the
12 Regulations, they can make the steeple higher than the seven
13 -- than the 60 feet.

14 MS. CHESSER: That Zoning allows?

15 CHAIRPERSON HILL: Yes. So --

16 MS. CHESSER: Zoning only allows 60 feet --

17 CHAIRPERSON HILL: They just -- they just quoted
18 --

19 MS. CHESSER: -- the Height Act trumps that?

20 CHAIRPERSON HILL: They just quoted -- I'm, I'm
21 just -- she's just answering your question --

22 MS. CHESSER: Okay, we'll just do the --

23 (Simultaneous speaking.)

24 CHAIRPERSON HILL: So what's your next question?

25 MS. CHESSER: My next question is, there used to

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1 be two doors going out into the Federal Park land. They seem
2 to be gone, but there are still indentations, so what are
3 those for?

4 (Off-microphone comments.)

5 CHAIRPERSON HILL: Oh, it's got to computer -- you
6 guys got --

7 MS. CHESSER: Okay.

8 CHAIRPERSON HILL: -- oh, the D.C. Government can
9 only afford one computer.

10 MS. CHESSER: Yes, they -- exactly.

11 (Laughter.)

12 (Off-microphone comments.)

13 MR. HEATH: Per a very clear direction from the
14 Park Service, there will be no doors that exit on to the Park
15 land. And there are no longer any doors that exit directly
16 onto the park land. There is a door --

17 CHAIRPERSON HILL: That's okay. So you got your
18 answer. So the park land -- the Park Service asked them to
19 remove the doors.

20 MS. CHESSER: Okay, my next question is, and
21 that's why the building now cantilevers so the top two
22 stories go out over the window that's behind the altar?

23 MR. HEATH: Yes.

24 MS. CHESSER: How far does that cantilever go out?

25 (No response.)

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1 MS. CHESSER: It seems like there won't be any sun
2 on the alter window. But, it's just a question.

3 MR. HEATH: I would have to get you an exact --

4 MS. CHESSER: Okay.

5 MR. HEATH: -- answer. It's somewhere --

6 MS. CHESSER: Okay.

7 MR. HEATH: -- around six, eight feet.

8 MS. CHESSER: Okay. The lift, is the lift the
9 equivalent of the loading platform?

10 MR. HEATH: Yes.

11 MS. CHESSER: So it qualifies by 100 square feet
12 and all that?

13 MR. HEATH: 100 square feet.

14 MS. CHESSER: And horizontal?

15 MR. HEATH: Certain minimum dimension, yes.

16 MS. CHESSER: Okay. The, the roll-off, where will
17 the roll-offs be located? Every Sunrise, there's a big
18 roll-off outside, where will that be located?

19 MR. HEATH: Not every Sunrise has a big roll-off.
20 There are a lot of communities that we use custom trash
21 solutions, in order not to avoid roll-offs, in places where
22 we don't have access to, or because of sensitivity to the
23 neighborhood, we don't have roll-offs, we will not have
24 roll-offs here.

25 The trash is going to be collected in a room,

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1 which Philip just circled, it will be collected in large,
2 basically, large totes like you use in your house, just maybe
3 a little bit bigger than you would normally have. It'll be
4 collected there, hauled out to that ramp and, or lift, raised
5 up to the, to the level of the loading dock and then it will
6 be removed by a trash truck.

7 MS. CHESSER: Which you have at the other
8 Sunrises, too, and up to 121 people, so you're going to get
9 all of it into those little blue squares?

10 MR. HEATH: We just opened a --

11 MS. CHESSER: Okay.

12 MR. HEATH: -- facility in Burke, Virginia and
13 we're doing --

14 MS. CHESSER: Okay.

15 MR. HEATH: -- exactly the same thing. Yes.

16 MS. CHESSER: But, how high is the garage opening,
17 the door? Like, it's 6'11" out at Brighton Gardens.

18 MR. HEATH: The garage is required to have an 8'2"
19 clear to that rear area, where the deliveries are, and the,
20 you know, our Sunrise van space, apart from that, it'll be,
21 the garage will be seven feet, typically, as required. But
22 that particular area will be 8'2" as necessary.

23 MS. CHESSER: So inside the garage will be seven
24 feet?

25 MR. HEATH: It can be. Now, we haven't gotten to

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1 that level of design. It may be higher than that. It all
2 depends on how it works out. But, we'll have, at least,
3 8'2", to the van accessible space, and we will have high
4 enough --

5 MS. CHESSER: All right.

6 MR. HEATH: -- to accommodate the Sunrise van and
7 deliveries to that space that's inside the garage.

8 MS. CHESSER: Okay, so the service delivery space
9 requires, under the Regs, that it has to have a ten-foot
10 clearance all the way from outdoors to the service delivery,
11 so you're, you're only going to be seven.

12 MR. HEATH: We're going to have enough -- we'll
13 have adequate height for a delivery truck to get down and
14 into that space and out.

15 MS. CHESSER: Well specify, it's ten -- so you'll
16 make it ten.

17 MR. HEATH: If that's correct, then we will --

18 MS. CHESSER: We're redesigning them right here
19 at the table. Okay.

20 MR. HEATH: Yes.

21 (Laughter.)

22 CHAIRPERSON HILL: Ms. Chesser, I'm just, also,
23 trying to -- I'm just trying to figure out, again, you, you
24 seem to be asking a lot of different questions about the
25 design elements and, and so --

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1 MS. CHESSER: These are required by Regs.

2 MR. HEATH: But one thing to remember is that the
3 Office of Zoning is going to look at these drawings, the
4 Building Department is going to look at these drawings and
5 every one of these Regs we'll -- they'll make sure we comply.

6 MS. CHESSER: Okay, how about the slope? The
7 bottom of the truck ramp has a flat area, how long is that?

8 (Off-microphone comments.)

9 CHAIRPERSON HILL: And you're asking the question,
10 why?

11 MS. CHESSER: Because, there's a 12-foot, 12
12 percent drop, maximum, for a ramp. And, it's hard to imagine
13 that this complies with that. It's a 13-foot drop for the
14 retaining wall. It's a 220-foot-wide lot, so you're -- if
15 you -- if the bottom, which over, already has, for loading
16 berth in there, for 30 feet, you kind of run out of the
17 number of feet across the lot, you have to manage to get
18 dropped 13 feet and have a 12-foot drop for the slope that's
19 allowed under the Regs.

20 MR. HEATH: You are correct that slopes are
21 important and you don't want cars and trucks bottoming out.
22 We have designed the ramp so that it meets the requirements
23 for not bottoming out.

24 So you'll notice that, as you come off of Yuma and
25 Alton that, you know, go flat, go down a six percent ramp

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1 for ten feet, and then you'll go to a 12 percent ramp, and
2 then you'll have another six percent ramp for ten feet and
3 then you'll be at flat. And it goes back up the same way.
4 So we have blend slopes that manage the bottoming out.

5 CHAIRPERSON HILL: Okay, what -- what's your next
6 question, Ms. Chesser?

7 MS. CHESSER: My next question is, to Mr. --

8 CHAIRPERSON HILL: And how many questions do you
9 have?

10 MS. CHESSER: I have 15, I'm on number 10.

11 CHAIRPERSON HILL: Okay.

12 MS. CHESSER: To Mr. Van Pelt, the traffic, the
13 parking, your table says that, Sunrise uses 43 spaces, during
14 the week, but only 25 on Sunday, how come that dropped so
15 much for Sunrise? You'd think Sunday would be a big
16 visitor's day.

17 (Off-microphone comments.)

18 MR. SCHIESEL: Hello, this is Rob Schiesel, from
19 Gorove/Slade. Our parking counts are based at a count of a
20 comparable facility and we noticed that change. And in
21 talking to Philip, he related to us that, that it's mostly
22 staff parking and there's actually fewer staff on a Sunday,
23 because they work Monday through Friday, the administration
24 staff that's not there every day tends to have a Monday
25 through Friday schedule, so there's just a fewer demand, less

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1 demand to add on a Sunday morning.

2 CHAIRPERSON HILL: Okay.

3 MS. CHESSER: Okay, the 30-foot trucks, which you
4 did a whole diagram about the shuttle, the seven-time shuttle
5 driven in on the Alton side, but the 30-foot trucks going
6 down Alton and turning seems like a much greater challenge
7 and you have -- we haven't seen anything about the turning
8 of the trucks, or the like.

9 MR. VAN PELT: Yes. I mean, we've done, we've
10 done a whole complete modeling. We use the software tool
11 called Auto Turn, which models the turning of the, of the
12 trucks. And that's all been reviewed by DDOT and it was
13 reviewed by DDOT, as part of our public space application,
14 so it, the geometry accommodates those trucks.

15 MS. CHESSER: Okay, could you put that in the
16 record?

17 MR. VAN PELT: Yes, I --

18 MS. BROWN: If we -- if the Board wants it in the
19 record and we think it is helpful to do --

20 CHAIRPERSON HILL: Yes, hold -- Ms. Chesser, hold
21 -- hold on a second. We'll ask for what gets put in the
22 record, but -- I guess, you know, DDOT has already gone over
23 the plans and DDOT has no objection to the plans, so go ahead
24 and continue to ask your questions, please.

25 MS. CHESSER: As much as I love DDOT, I'm the one

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1 living next to this. But I - But I digress.

2 CHAIRPERSON HILL: Well as much as I like DDOT, or
3 not, I don't really have an opportunity to, you know,
4 question their expertise.

5 MS. CHESSER: Okay.

6 CHAIRPERSON HILL: So go on.

7 MS. CHESSER: Childcare center. There seems to
8 be a misreading of the 2009 order that the BZA issued, for
9 this same lot, and --

10 CHAIRPERSON HILL: Just go ahead and ask your
11 question, I'm sorry.

12 MS. CHESSER: The order dealt with a childcare
13 center and it said the childcare center was fine, as long as
14 it wasn't a for-profit, and that was fine with the neighbors.

15 There seems to be a misreading of that, in which,
16 now, people are promising to never have a childcare center
17 and they're acting like it has something to do with the
18 neighbors and the 2009 order, which it doesn't.

19 CHAIRPERSON HILL: Okay, hold on -- slow down --

20 MS. CHESSER: We'd be happy with a childcare
21 center.

22 (Simultaneous speaking.)

23 CHAIRPERSON HILL: I don't even understand the
24 question, can you ask your question, again? A childcare --

25 MS. CHESSER: Will there be a childcare center at

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1 the WABC, in the future? The neighbors would like it.

2 MS. DUEHOLM: I think this is addressed in the
3 Memorandum of Understanding, with the ANC, and so we would
4 not anticipate that.

5 MS. CHESSER: Well, the ANC said that you were
6 prohibited from having one, but they acted like we didn't
7 want one. We're cool with it, I'm just trying to get a
8 childcare center. If there's a misunderstanding of who
9 doesn't want this, who doesn't want it? I don't know who
10 doesn't want it.

11 CHAIRPERSON HILL: Okay, wait, wait, wait. So
12 you're questioning --

13 MS. DUEHOLM: I don't think this is relevant,
14 really.

15 CHAIRPERSON HILL: No, but what was -- I didn't
16 understand the question. You were asked, you asked, whether
17 or not --

18 MS. CHESSER: Will there be a childcare center?

19 CHAIRPERSON HILL: -- and there was something
20 about the Memorandum of Understanding and, at this point,
21 there's not going to be --

22 MS. CHESSER: From ANC.

23 CHAIRPERSON HILL: -- and, at this point, there's
24 not going to be a childcare center --

25 MS. CHESSER: They're prohibiting it.

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1 CHAIRPERSON HILL: That was the answer, correct?
2 So okay, so we got the answer. What's your next question?

3 MS. CHESSER: Okay, sorry, I didn't know. We
4 didn't, sort of, think about these things. Okay. The --

5 CHAIRPERSON HILL: And, by the way, I think, you
6 said you had two more.

7 MS. CHESSER: The ANC Sunrise Memorandum, also,
8 has Mr. Kroskin, or Sunrise, giving the ANC \$10,000, can you
9 tell me, who's idea that was?

10 MR. CARRERA: That's easy. I got a call from
11 Jonathan McHugh and asked, would we be willing to help out
12 the community, on an annual basis, and discussed it, for a
13 while, wasn't happy about it --

14 CHAIRPERSON HILL: Okay.

15 MR. CARRERA: -- and so yes --

16 CHAIRPERSON HILL: That's fine. Okay. Last
17 question.

18 MS. CHESSER: Okay, the MOU on Vibration says
19 you're no longer using, using any pile-driving, is that true?
20 It actually says that.

21 MR. CARRERA: Yes, in the final ANC meeting, some
22 of the neighbors requested that we use less
23 vibration-creating construction techniques and, in that case,
24 we said we would not use a pile-driver.

25 CHAIRPERSON HILL: Okay. All right, thank you.

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1 All right, thank you, Ms. Chesser. So, okay. Ms. Ferster.
2 I don't know why I was, I always have trouble with that and
3 I know you've been here, before, in front of us.

4 MS. FERSTER: No, no worries.

5 CHAIRPERSON HILL: Again, and I appreciate that
6 you're, you know, you do this more often and the Tenleytown
7 Neighborhood Association doesn't do it, as much, but I
8 thought that they did a good in asking their questions, at
9 least, I'm trying to understand, I guess, more of what the
10 questions are doing for us, in terms of clarification for the
11 Board? But, could you please go ahead and ask your
12 questions?

13 MS. FERSTER: Yes. And I, I will try to be as
14 efficient, as possible, and I will just say that, if you have
15 an objection to my question, I just ask that you, you know,
16 over, overrule the question, for the record, so that I can
17 just move on, instead of having a discussion about that and
18 that'll, that'll just move, move it quickly. I, I have to
19 --

20 (Simultaneous speaking.)

21 CHAIRPERSON HILL: I don't even know, whether
22 overruling it, for the record, is something that I've ever
23 done before, or do, so you're kind of -- so what you're
24 asking me to do, makes me a little uncomfortable, because I
25 don't understand it, okay? I'm just -- if I ask a question,

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1 it's not to stop you from asking a question, it's that I
2 don't understand, why you're asking it, okay? So I won't,
3 I won't -- I'm just letting you, I won't say I'm overruling
4 it, for the record, because I don't know what that's going
5 to mean, later. So I will just, if you get any push back
6 from me, it means I'm confused, okay? So please go ahead and
7 ask your question.

8 MS. FERSTER: Okay, great. So I'm going to start
9 with Mr. Schiesel. Schiesel, is that -- is that correct?

10 MR. SCHIESEL: Schiesel.

11 MS. FERSTER: Schiesel. I'm -- I apologize. And
12 I'm going to be very quick, because the only question I
13 really had, had to do with Mary Cheh's letter, dated November
14 7th, 2018, and that asked DDOT, who is not, not here, a
15 number of questions about the traffic and the parking for
16 the, this site.

17 And my question is, would you be willing to
18 provide, would the Board be willing to, you know, suggest
19 that, either, DDOT, or the traffic expert, provide answers
20 to those questions, so that I don't have to ask them, right
21 now?

22 MS. BROWN: And I have a, an objection, because
23 we didn't testify to Mary Cheh's letter on direct and it was,
24 the letter was addressed to DDOT.

25 CHAIRPERSON HILL: Okay. That's okay, hold on.

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1 I know, I know, Counsel, Mary Cheh's letter's in the record.
2 So you are trying to get clarification -- you -- and, I
3 think, in the last hearing that, there was a similar issue,
4 in terms of, there was a letter and the letter hadn't been
5 responded to, and the Board wanted to also hear the
6 information that DDOT was supposed to have supplied from that
7 letter.

8 So I would imagine that we will get that
9 information and I doubt, very seriously, because, probably,
10 we're all going to be -- I'm -- well, I, you have been here
11 much -- well, I shouldn't say that.

12 You have been much more intensely dealing with
13 this day, than I have, Ms. Ferster, and I do really
14 appreciate it and thank you -- I'm amazed, myself, to be
15 quite honest.

16 And so -- but I'm letting, probably, everyone know
17 here, I know that my other Board Members -- oh my God,
18 somebody's going to try to say something -- I know my other
19 Board Members are, probably, going to be a little burnt, by
20 the end of this, so I doubt we're going to be making a
21 decision today.

22 CHAIRPERSON HILL: So we probably are going to ask
23 for some things, so probably, you're going to get the answers
24 that you need.

25 MS. FERSTER: Okay.

1 CHAIRPERSON HILL: So what's your next question?

2 MS. FERSTER: Okay so --

3 CHAIRPERSON HILL: I'm sorry, Ms. White, I mean,
4 Ms. John has a question?

5 (Off-microphone comments.)

6 CHAIRPERSON HILL: Sure, of course, you need to
7 push your button.

8 MEMBER JOHN: Oh, sorry. In the last hearing, we
9 asked OP, to talk with DDOT and try to get --

10 MS. BROWN-ROBERTS: In this case, I did speak to
11 the transportation representative, at, at DDOT, and they are
12 reviewing the letter and we'll get you a, a response, later.

13 CHAIRPERSON HILL: Okay. Ms. Ferster.

14 MS. FERSTER: Then I won't ask these questions.
15 And so my next question is, a couple of questions for Mr.
16 Altman.

17 CHAIRPERSON HILL: Okay, actually, I'm going to
18 ask one question. In terms of how much time you think you
19 need for this, do you know how much time you might need?

20 MS. FERSTER: You know, I, I did not, I waited
21 until I heard the testimony, and then I wrote my questions
22 down, so I don't know, I don't know how many questions I
23 have.

24 CHAIRPERSON HILL: Okay, go ahead.

25 MS. FERSTER: So I have, about, three questions,

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1 for Mr. Altman. So, I guess, the first question has to do
2 with your testimony about, you felt that the, the shape, or
3 the configuration of the lot was relevant to the variance
4 standard, under the third prong, you had some discussions
5 about, about the, that the lot was unusual.

6 MR. ALTMAN: That wasn't in my testimony that was
7 in the architect's testimony.

8 MS. FERSTER: Oh, okay.

9 MR. ALTMAN: It was about the lot. No.

10 MS. FERSTER: Okay.

11 MR. ALTMAN: About the shape of the lot, I just
12 testified to the third --

13 MS. FERSTER: Okay. So you talked about the mega-
14 church issue and that you felt that, as a, that a matter of
15 right, you, as a mega-church, would be much more burdensome,
16 in terms of, the land use than the, the current use.

17 And I, I just wanted to ask you this one question
18 about that, is it -- and this is based on, you know, your
19 experiences. Do you know of any mega-churches that are
20 seeking to locate in the District of Columbia?

21 MR. ALTMAN: I -- it is not a market that I'm in.
22 I think the question is, comparing it to what could be a
23 matter of right intensity of that use and that intensity of
24 that use could be, both, taller and more lot occupancy and,
25 potentially more intensive, so I was saying that, relative

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1 to that, I thought that this would not have more significant
2 impacts and naturally fit.

3 But, but that's not a market I'm in. And I don't
4 know that that's particularly relevant, because of, you know,
5 it could --

6 CHAIRPERSON HILL: That's good. The answer is no,
7 you don't know. Okay.

8 MS. FERSTER: Okay, my last question for you, and
9 I, I don't, normally, ask this question of the Applicant's
10 witnesses, because I understand that they are, you know, in
11 this business for a living, as am I, and that we all get paid
12 for our services, but you did testify how personally strongly
13 you felt about this particular facility, so I do want to ask,
14 for the record, are you being paid by the Applicant?

15 MR. ALTMAN: No, in fairness, yes. But my point
16 was that I don't accept -- this isn't something I seek to do,
17 it's not part of -- I have a consulting business.

18 MS. FERSTER: Understood.

19 MR. ALTMAN: I only agreed to do this, because I
20 felt that the project made sense, but also was consistent.
21 Truthfully, as an urban planner, I would never testify on
22 something I didn't believe actually met the --

23 CHAIRPERSON HILL: Okay that's good. And I think
24 it's a fair question. But, in all honesty, I think everybody
25 down there is being paid, in some way or another.

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1 (Off-microphone comments.)

2 (Laughter.)

3 MS. FERSTER: Yes. And I, I did have one, one
4 last question. No, this has to do -- did -- I'm going to ask
5 this question of the architect, because he talked, you were
6 the one, you were the person, who talked about -- and that's
7 all. Thank you, Mr. Altman.

8 You were, you talked about the, the configuration
9 of the lot and how you felt that it was unusual and created
10 some practical difficulties. So are you familiar with the
11 definition of a substandard lot, under the Zoning
12 Regulations, or this was lay testimony, in terms of, the
13 unusual configuration of the lot?

14 MR. HEATH: I was speaking about experience and
15 the difficulty of getting a building to fit on this
16 particular piece of land.

17 MS. FERSTER: Okay. So that's my only question
18 for you. I do have a question for, and this could be either
19 for Ms. Katz, or, or for -- I'm sorry. Mr. Kroskin?

20 MR. KROSKIN: Kroskin.

21 MS. FERSTER: Okay. So either, either one of you
22 can answer that, because it goes to, I think, what this core,
23 core issue here and that, that's the question of
24 alternatives.

25 And, you'll, you'll have to forgive me, you know,

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1 because I did -- I was here for a very lengthy hearing,
2 earlier, but one of the experts on providing memory care
3 facility did provide sworn, testimony in that case that, in
4 fact that, it, a memory care facility for, between 22 and 44
5 units, would be financially viable. And, do you, you know,
6 I, I'd ask you, first, do you disagree with that testimony?

7 MS. KATZ: I have, I have not seen, nor reviewed,
8 their financial projections, so I do not know what their
9 projected rates are. I have asset managed, at least, 12
10 small memory care buildings and I, most recently, had to do
11 a major restructuring, take a building through bankruptcy.

12 In my experience, a 22-bed building, a 32-bed
13 building, particularly, in a high-cost area, is not
14 economically viable. Twenty-five years ago --

15 CHAIRPERSON HILL: Wait a minute. And I, and I
16 appreciate the question, because it is something that we're
17 going to start, I think, discussing with the Office of
18 Planning, when we get to that point, as well, but your
19 question, again, is on the testimony from the previous case.
20 I just want to ask, is, are you, are you asking, why that one
21 is not financially viable and why this one is?

22 MS. FERSTER: No.

23 CHAIRPERSON HILL: Oh.

24 MS. FERSTER: No. I'm just asking, why she thinks
25 that a smaller testimony is, a smaller facility is not

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1 viable?

2 MS. KATZ: Okay. All right, one of the areas that
3 I was negligent and not in my quick summary, about cost,
4 addressing is the construction cost and the specialty needs
5 of the building, in terms of, the level of construction,
6 safety systems, elevators, bathroom usage that is much higher
7 than in a multi-family, the need for more bathrooms, special
8 access, special safety systems, so the basic construction
9 costs of the building are very expensive.

10 The operating costs to provide safe, high-quality
11 services are expensive. It -- staffing is a major issue,
12 across the country, we've seen dramatic increases in the
13 costs, appropriately, to pay people. We have higher skilled
14 needs. It takes a certain economy of scale to cover the
15 administrative and operating costs that you need to take care
16 of people. If you have --

17 CHAIRPERSON HILL: Okay, I understand the answer.
18 Okay, is there --

19 MS. FERSTER: And just to follow -- follow up on
20 that, would those same construction-related consideration,
21 like safety, code, all that kind of stuff that applies to
22 your facility, also apply to a facility that was exclusively
23 a memory care facility?

24 MS. KATZ: It should.

25 MS. BROWN: Relevancy? I, I thought we're dealing

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1 with --

2 CHAIRPERSON HILL: Yes, you're --

3 MS. KATZ: It's a combination.

4 (Simultaneous speaking.)

5 CHAIRPERSON HILL: That's okay, the only reason
6 why -- I just wasn't here for the, I mean, I was watching the
7 first one, and so I just, I think you got your first question
8 answered. And, I think, the second question is related to
9 the first case, and so I don't see how it's connected. Or,
10 you can try to explain it to me, how it's connected.

11 MS. FERSTER: I'd be happy to try to explain and,
12 I mean, I'm just using this case, as an example, I could be
13 hypothetical about this. But, they have the burden of
14 showing that they have no -- that they don't have
15 alternatives that, that could be matter of right, or, at
16 least, within the special exception, without a zoning
17 variance.

18 That's their burden, under the variance test, is
19 they have to show that there are no financially -- which is
20 why we have the testimony that we're having here, is they're
21 trying, their argument is, there are no other financially
22 viable use, other than the Sunrise facility, so I have a
23 series of questions that go to, whether a smaller facility
24 could be built on this, this lot, and I --

25 CHAIRPERSON HILL: Okay.

1 MS. FERSTER: -- think that's a, a very important
2 part of their burden of proof in this case.

3 CHAIRPERSON HILL: Yes, okay. So, so you can
4 answer that question.

5 MR. HEATH: The two buildings should be built very
6 similarly. They both have very high levels of acuity and
7 they both need to have very safe and secure buildings of both
8 the I1 or I2, they both have very sophisticated life safety
9 systems and they'll be very-well monitored. So the cost in
10 construction shouldn't be that much different, except in a
11 matter of scale. This building's more expensive, because it
12 has a garage. They're not building a garage. That's a huge,
13 huge cost difference.

14 So when you start looking at what it costs to
15 build this, I mean, this building has everything that, as an
16 architect, practically, everything I can think of, as an
17 architect, to make it more expensive.

18 It's got a garage, you're building right up to the
19 property lines, you're -- you got two levels of garage,
20 actually, you're building an I2 facility. I mean, it's all
21 concrete construction, because you have a limited floor-floor
22 heights.

23 Everything about this building is going to be as
24 expensive. It's in an upscale and important place, where a
25 building out of some kind of siding would be very

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1 inappropriate.

2 CHAIRPERSON HILL: Ms. Katz, could you turn off
3 your microphone, I'm getting feedback. Thank you.

4 MR. HEATH: So it's, it's a building that's going
5 to be very high-quality. The windows, the, the skin of the
6 building, everything about it, the roof, all of it, is just
7 --

8 CHAIRPERSON HILL: Okay. I think we understand
9 your answer.

10 MS. FERSTER: Okay. And --

11 (Off-microphone comments.)

12 MS. FERSTER: Sure. No, I appreciate that. For
13 Mr. Kroskin, as well, you're with Sunrise, correct? Okay,
14 so just to be clear, Sunrise is a for-profit enterprise,
15 that's correct?

16 (Off-microphone comments.)

17 MS. FERSTER: You don't know?

18 MR. KROSKIN: Yes, we are a for-profit entity.

19 MS. FERSTER: Okay, and the relevance is --

20 MR. KROSKIN: Yes, I'd just like --

21 MS. FERSTER: -- you understand the --

22 MR. KROSKIN: -- to understand the relevance, I,
23 I --

24 CHAIRPERSON HILL: That's okay, you don't have to
25 understand the relevance.

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1 MS. FERSTER: Okay.

2 CHAIRPERSON HILL: I'm just trying to get
3 questions answered and I'm asking, he knows, I know, I could
4 answer the question, so --

5 MS. FERSTER: - you're right.

6 CHAIRPERSON HILL: -- Ms. Ferster --

7 MS. FERSTER: I need to get it on the record,
8 because, obviously, the Applicant is asking for leniency --

9 MR. KROSKIN: It's written on our website, it's
10 on the record.

11 CHAIRPERSON HILL: That's okay. It's okay. As
12 far as the record goes and everything, just to let everybody
13 -- and, God, I just don't -- you know, we are here -- we are
14 here, we're up here on the Board, we're listening, we're
15 paying attention and we're trying to get -- and I, that's why
16 I just don't find cross very helpful for us. I really don't.
17 And I don't think it serves the Applicant very -- I'm sorry,
18 I don't serve, I don't think it serves -- I don't think it
19 serves anybody, okay, but, you know, it's, it's in the
20 Regulations, this is the way we're supposed to do it. I want
21 to hear your testimony. I know this is the exact same thing
22 that -- Carlton said the last time, right? And, and so, you
23 know, please go ahead -- I mean, I'm just trying to figure
24 out, how many questions we got to get through, before we
25 finally get to hear your testimony?

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1 MS. FERSTER: And understood. And I just wanted
2 to get that one fact on the record --

3 CHAIRPERSON HILL: Okay.

4 MS. FERSTER: -- and I thank you for being patient
5 about it.

6 CHAIRPERSON HILL: Okay. Sure.

7 MS. FERSTER: And, then, I guess, my last series
8 of questions are for Ms. Dueholm, and I do have a number of
9 questions --

10 MS. DUEHOLM: Dueholm.

11 MS. FERSTER: Dueholm, my apologies.

12 MS. DUEHOLM: Yes that's okay.

13 MS. FERSTER: I, I totally relate to that. I need
14 to get your nickname right here. So my series of questions
15 are really going to go to the, you know, your consideration
16 of alternatives, other than, you know, this mixed use
17 project. So I understand that, that you want to stay in this
18 location.

19 MS. DUEHOLM: Absolutely. We have never, ever
20 thought, or considered that we would move.

21 MS. FERSTER: Right. Yes that's not my question.
22 So my, my question is, so -- well that's a -- so as a result,
23 I don't -- there are a number of churches in the District of
24 Columbia that have, you know, shared facilities, you just
25 didn't consider that alternative?

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1 MS. DUEHOLM: This is our home and we want to stay
2 where we are. We're a good church. We have a unique
3 mission. We have a very diverse congregation. And, no, we
4 want to be our own church.

5 MS. FERSTER: Okay. That, that, and that was the
6 only question I have. Okay, so you had a, a number of
7 statements about this, the size of your congregation and
8 that, and that many of your, your members are in the
9 Tenleytown area, how many of your, your permanent members
10 reside in the Tenleytown neighborhood?

11 MS. DUEHOLM: I don't know the answer to that.

12 MS. FERSTER: Okay, can you guess, or not?

13 MS. BROWN: She's -- asked and -- she's answered
14 the question.

15 CHAIRPERSON HILL: Okay that's okay. And I, I,
16 I've read the testimony in this part that you guys are
17 getting to and I heard the testimony from the Applicant.
18 They believe they are a church, they believe they have
19 members, they believe they're significant.

20 So if you're just going to, now, pepper that whole
21 situation, as to, whether or not they have enough people and,
22 you know, so, so you could go ahead and, and go down that
23 line, if that's what you'd like to do?

24 MS. FERSTER: I, I actually don't have that many
25 more questions.

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1 CHAIRPERSON HILL: Okay.

2 MS. FERSTER: Okay. So how are -- what's the
3 total size of your congregation?

4 MS. DUEHOLM: I don't have the exact number of
5 that --

6 CHAIRPERSON HILL: And I don't necessarily think
7 it's relevant to the zoning issues in front of us.

8 MS. DUEHOLM: I was going to say that, too, it's
9 not relevant.

10 CHAIRPERSON HILL: What's your next question, Ms.
11 Ferster?

12 MS. FERSTER: So one of the alternatives that we
13 thought might be a viable alternative would be an alternative
14 that you mentioned that your -- that you felt wasn't
15 feasible, which is subdividing your very large site and
16 building single-family homes, and I'm wondering, if you could
17 explain, why you felt that a subdivision option wasn't
18 feasible and what sorts of subdivisions you did consider?

19 MS. DUEHOLM: We --

20 CHAIRPERSON HILL: I don't, I don't think that
21 that's relevant, either.

22 MS. FERSTER: Okay.

23 CHAIRPERSON HILL: I don't think that's relevant
24 towards what they have in front of us. So they chose not to
25 do that and so we don't have to go down that road. So what's

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1 your next question?

2 MS. FERSTER: Well, my, my question has to do with
3 what my questions all have to do with the several other
4 questions, but if you'd rather I not ask them, I'll just --

5 CHAIRPERSON HILL: I don't think they're relevant.
6 It's not whether, I think, you should ask them or not.

7 MS. FERSTER: Understood, understood -- that, you
8 know, they have the burden of proving that there are no other
9 alternatives to do a matter of right.

10 CHAIRPERSON HILL: Okay, all right so unless you
11 have anything else, I think we're going to move on now, okay?

12 MS. FERSTER: That's fine.

13 CHAIRPERSON HILL: All right.

14 MS. FERSTER: That's fine.

15 CHAIRPERSON HILL: So we're going to go ahead and
16 take a break and when we come back, we're going to hear the
17 testimony from -- let's see, you guys can do it either way
18 you want to do it, whoever wants to go first, okay? And
19 then, we'll go ahead and do cross, after that. Actually, a
20 Board Member did have a question, is there anyone from the
21 ANC here?

22 (Off-microphone comments.)

23 CHAIRPERSON HILL: Okay, all right, that's
24 helpful.

25 (Whereupon, the above-entitled matter went off the

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1 record at 7:26 p.m. and resumed at 7:42 p.m.)

2 CHAIRPERSON HILL: Before we do actually, before
3 you guys -- I'm sorry, Ms. Ferster, your mic is on. I was
4 just told that Office of Planning is also on a time clock,
5 so what I think we should do and if the Applicant also wants
6 to come up, just to sit up here, we're going to take
7 testimony from the Office of Planning. And then let everyone
8 have an opportunity to ask questions of the Office of
9 Planning, so that we make sure that everyone has an
10 opportunity to do that.

11 So with that, I'm going to go ahead and turn to
12 the Office of Planning.

13 MS. BROWN-ROBERTS: Good night, Mr. Chairman and
14 members of the Board. Maxine Brown-Roberts for the Office
15 of Planning. And I'm going to stand on the record for our
16 report and say that the Office of Planning recommends
17 approval of the requested special exception and variances and
18 that we recommended there were two conditions that we
19 recommended, one, regarding that all lighting on the building
20 should be downlit and then the restriction on amplified music
21 on the roof deck.

22 And with that, I will entertain any questions you
23 may have.

24 CHAIRPERSON HILL: So we're going to turn to the
25 Applicant. You are aware of the conditions set forth by the

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1 Office of Planning and you're in agreement with those?

2 MS. BROWN: Yes, we are.

3 CHAIRPERSON HILL: I'm going to start with --
4 well, I guess I'm going to start with the Applicant. Do you
5 have any questions for the Office of Planning?

6 MS. BROWN: We have no questions.

7 CHAIRPERSON HILL: Okay, Ms. Chesser, do you have
8 any questions for the Office of Planning?

9 MS. CHESSER: I just have a couple.

10 CHAIRPERSON HILL: Sure.

11 MS. CHESSER: The first is the Office of Planning
12 noted that Sunrise needs to address why a smaller facility
13 would not be financially viable, correct?

14 MS. BROWN-ROBERTS: Yes, that was in the
15 recommendation.

16 MS. CHESSER: It was your recommendation that this
17 be accomplished. And in that vein, I would like to say if
18 it could be accomplished.

19 CHAIRPERSON HILL: I'm sorry, what was your
20 question for the Office of Planning?

21 MS. CHESSER: No. The Office of Planning noted
22 that Sunrise needs to address why a smaller facility --

23 CHAIRPERSON HILL: I understand. She's trying to
24 answer the question.

25 MS. BROWN-ROBERTS: I'd just like to clarify.

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1 CHAIRPERSON HILL: Sure, sure.

2 MS. BROWN-ROBERTS: We knew that -- we knew about
3 the other application that came earlier today and so one of
4 the questions that, you know -- because the numbers that they
5 were asking for was different from the other and so we just
6 wanted to have on the record that we would like the Applicant
7 to state on the record, you know, what's the difference
8 between the two and just demonstrate to us that that's a
9 different facility from this one and just go into more detail
10 than we were able to do on that.

11 CHAIRPERSON HILL: Okay, so that was more a
12 question that you were hoping to get clarification from via
13 the Board's testimony or in this process, I suppose. So it
14 really isn't -- and you can -- I'll let you kind of think
15 about that for a second, Ms. Brown. You've seen that within
16 the Office of Planning's report and they'd like you to, and
17 you kind of, I guess -- Ms. Ferster was also asking something
18 to that regard which I believe was starting to get answered
19 during the cross, but if you could speak to that, the Office
20 of Planning's comment?

21 MS. BROWN: Do you want us to answer -- I'm kind
22 of confused.

23 CHAIRPERSON HILL: Okay, the Office of Planning
24 had a little bit more specificity in that area in their
25 report. So could you just go ahead and answer that part for

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1 us?

2 MS. BROWN: Yes. As the testimony of Ms. Alice
3 Katz demonstrated and the testimony of Mr. Kroskin, it is not
4 financially or economically feasible to do fewer than 85
5 units. And we're proposing 86. We can back into that.

6 CHAIRPERSON HILL: That's fine. I know. So I'm
7 just saying you're now going back to that
8 testimony that was given supporting that line of reasoning.
9 The testimony that you gave as to why your -- you can't do
10 a smaller project. That answers what the Office of Planning
11 wanted to know.

12 MS. BROWN: We believe and we can obviously cover
13 it again in rebuttal if it's still unclear.

14 CHAIRPERSON HILL: Okay. Your next question?

15 MS. GUNNING: With regard to the side yard, you
16 state it's on page 9 at the bottom on side yard. And you
17 state that the practical difficulty to the Applicant, it
18 needs a larger footprint and space needs to adequately
19 satisfy programmatic requirements. What are these? What's
20 that refer to, programmatic requirements?

21 MS. BROWN-ROBERTS: Yes, in the submission, the
22 Applicant had issues regarding uses or services that they
23 provide on site, like the dining room. That's necessary and
24 other things like that, that they provide to the residents.

25 MS. GUNNING: Okay, is this peculiar to the

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1 business of running a CCRC or it is peculiar to the property?

2 MS. BROWN-ROBERTS: It's peculiar to the business.

3 MS. GUNNING: Okay.

4 MS. BROWN-ROBERTS: Because what I was trying to
5 say is that there are these things that go into why they were
6 not able to provide the -- well, actually, it's really the
7 lot occupancy section.

8 MS. GUNNING: So much of this, if not all, does
9 not discuss practical difficulties resulting from a condition
10 of the property, but rather the situation of the CCRC. Is
11 that correct?

12 MS. BROWN-ROBERTS: Well, the standard for the
13 variance test doesn't have to rest solely with the property,
14 with the shape of the property.

15 MS. GUNNING: Okay, and that goes to my next
16 question. We have raised throughout this proceeding that in
17 order for a variance to be granted, it must be an owner who
18 pursues the variance for its own ends and that any practical
19 difficulty, as specified by the regulations and the case law,
20 is that it is practical difficulties to the owner. And in
21 this case, WABC is the owner. Sunrise is not the owner.

22 MS. BROWN-ROBERTS: Yes, and that's an
23 interpretation and we leave to OAG to address. They're not
24 here right now. But that's something that I think we would
25 prefer to have them address.

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1 CHAIRMAN HILL: Could you make a note of that and
2 just ask OAG to address that and we can get that back when
3 we -- for deliberations.

4 MS. BROWN-ROBERTS: Okay.

5 MS. GUNNING: One follow up on that in light of
6 your answer, you've also discussed the needs of Sunrise and
7 I'm trying to determine if you're relying on the public
8 service organization doctrine in assessing those needs.

9 MS. BROWN-ROBERTS: I don't know what a public
10 service doctrine is.

11 MS. GUNNING: Pubic service organization doctrine?
12 The Monaco doctrine?

13 MS. BROWN-ROBERTS: I don't. I don't. I'm not
14 familiar enough to answer that.

15 MS. GUNNING: Just briefly, in the Monaco
16 decision, it gave greater flexibility for variance relief to
17 a nonprofit public service organization. And you're not
18 familiar with that.

19 MS. BROWN-ROBERTS: I'm familiar with it, but I'm
20 not familiar enough to argue that case.

21 MS. GUNNING: Okay. Thank you.

22 CHAIRMAN HILL: Okay. Thank you.

23 MS. GUNNING: So just one quick -- so that was not
24 considered as part of your opinion?

25 MS. BROWN-ROBERTS: No.

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1 MS. GUNNING: Thank you.

2 CHAIRMAN HILL: Okay. Thank you. Ms. Ferster?
3 Ms. Ferster. I really apologize. It's been a long --
4 Ferster.

5 MS. FERSTER: I don't have any questions.

6 CHAIRMAN HILL: Okay. Do you have any questions
7 for the Office of Planning?

8 MS. BROWN: No.

9 CHAIRMAN HILL: And since while you're up here
10 again, I just -- I wanted to clarify, Ms. Ferster, again, in
11 terms of like the questions that you were giving on rebuttal
12 and everything, I didn't mean to try to shut you down too
13 much. If there are further questions that -- I mean, again,
14 it was the relevancy that I didn't understand. And so if
15 there are any other questions that you think that you wanted
16 to pursue, we can continue to do that. Because what I always
17 -- and I guess what I'm trying to get at, I'm just trying to
18 be conscious of time also and try to make sure we can get
19 through this to the point that we can get all the information
20 it wants. At times, I feel like I might get -- not with you,
21 necessarily, but at times I feel like I'm going to get
22 tricked or something like on appeal, there's something that
23 I didn't do correctly in like letting somebody ask a question
24 or something like that or saying that I thought that it was
25 whatever the word was that you used about me not letting you

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1 answer a question.

2 So do you have any more further questions on
3 cross?

4 MS. FERSTER: You know, I respect your ruling on
5 that and in fact, frankly, it would -- I could ask a series
6 questions of Ms. Dueholm regarding her consideration of
7 alternatives, but at this point my opinion is they haven't
8 met their burden of proof showing that they considered
9 alternatives and she -- I'm fine.

10 MS. BROWN: I have to object because we're
11 prepared to answer those questions and I encourage Ms.
12 Ferster to ask those questions.

13 MS. FERSTER: I got enough from the questions I
14 asked, so I'm fine. Thank you very much.

15 CHAIRMAN HILL: Okay, and again I just want to
16 continue to clarify for everyone here and for myself on the
17 record that the questions that we're trying to get from
18 everybody and the questions that everybody is asking everyone
19 is supposed to help the Board try to figure out what
20 everyone's position is and as it relates to the standards of
21 review.

22 So that being the case, nobody has any more
23 questions for the Office of Planning. Does the Board have
24 any questions for the Office of Planning? I forgot to ask
25 the Board.

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1 Okay. So there's that one item. If you could
2 come back, please and ask OAG. And I don't know who had to
3 leave, but if you all can stay as long as you can, that would
4 be great. Mr. Lawson, you had a question or comment? Okay.
5 All right. So with that, now, I forgot now, Ms. Chesser,
6 you're going to go first?

7 MS. FERSTER: If I could address that briefly?
8 We're splitting out time and the Tenley neighbors generously
9 agreed to allow Joe Mehra to go first. He has a time issue
10 as well and a car that needs to be liberated.

11 Counsel has also agreed, if it's acceptable from
12 your point of view, for Mr. Mehra to go first and then to
13 cross examine him and any questions from you so that he can
14 then retrieve his automobile.

15 CHAIRMAN HILL: Sure, sure. No, that's great.
16 So as far as the whole allotted time that you guys have, I'm
17 going to put 50 minutes on the clock because that's what
18 basically happened with more or less during the presentation
19 with the Applicant.

20 So Ms. Ferster, I'll let you kind of delegate all
21 that if that's okay and then go ahead and however you want
22 the gentleman to provide testimony. Sir, did you get sworn
23 in earlier? You have to just say yes in the microphone.

24 MR. MEHRA: Yes.

25 CHAIRMAN HILL: Okay. And could you introduce

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1 yourself again, sir?

2 MR. MEHRA: Yes, I'm Joe Mehra with the MCV
3 Associates, Inc. Address is 4605 --

4 CHAIRMAN HILL: Could you spell your last name for
5 me?

6 MR. MEHRA: M-E-H-R-A.

7 CHAIRMAN HILL: M-E-H-R-A.

8 MS. FERSTER: And Mr. Mehra was previously
9 qualified as an expert in transportation and so I assume that
10 you will consider his testimony as expert testimony for this
11 proceeding.

12 CHAIRMAN HILL: Okay, yes, if you were considered
13 as an expert at the last one, now you're officially in the
14 book, so we'll take you as an expert. So Mr. Mehra, you can
15 go ahead and begin whenever you like.

16 MR. MEHRA: Thank you. I have testified many,
17 many times here, so I want to respond to the Gorove/Slade's
18 traffic report and the Gorove-Slade's report is designed to
19 provide the proposed development's impact on the local
20 transportation network. Gorove/Slade sites in their report
21 and I quote: "This report accomplishes this by identifying
22 the potential trips generated by the proposed development
23 above the baseline condition, above the baseline existing
24 condition on all major modes of transportation."

25 Gorove/Slade fails to accomplish this purpose and

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1 I'll go through the process of why they did so. Gorove/Slade
2 utilized the Institute of Transportation Engineers Trip
3 Generation report to estimate trips for the existing church
4 and the existing daycare center. They then applied an
5 employment base that is trips from home to work, with the
6 assumption to estimate vehicle trips to and from the church
7 for the weekday and Sunday. So basically, you are assuming
8 the church congregants are actually going to work on Sunday.
9 In other words, the daycare vehicle trips were similarly
10 applied and arbitrarily picked to estimate vehicle trips to
11 daycare. This methodology is flawed and does not meet the
12 transportation industry standard.

13 The industry standard I have been practicing for
14 over 40 years is to observe on survey the existing vehicle
15 trip generation for an existing development and not use ID
16 trip rates. So therefore, this should have been done for the
17 existing church and the existing daycare center. We observed
18 also the trip rates should then be used to compute vehicle
19 trips for the proposed development.

20 Ironically, Gorove/Slade used observed data for
21 the Sunrise Assisted Living project which is a proposed
22 development, which is not an existing development. They went
23 and surveyed two of the sites to come up with trip generation
24 rates. In this particular case they did not use the ID trend
25 or generation rates.

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1 The ID report shows that the -- I have to assume
2 85 units because that's what the traffic report said, not 86.
3 So the ID report shows that the 85 units at Sunrise will
4 generate a total of 16, 22, and 24 vehicle trips during the
5 a.m., p.m., and Sunday peak hours. The ID trip rates are as
6 much as 50 percent higher than the Gorove/Slade estimates
7 from the observations of the two locations that they did.

8 So Gorove/Slade activity survey of the existing
9 church and daycare center and use the existing data and not
10 assume that the church congregants are driving to work on
11 Sunday and use that rate to come up with the vehicle trips.

12 The Board of Trustees of WABC have expressed the
13 intention to expand their congregational and nonreligious
14 community's service activities in their joint Sunrise
15 facility. These activities could entail several hundred of
16 separate visitor trips per day as indicated by a filing
17 submitted to the BZA back in 2008.

18 The estimated additional activity varies from an
19 estimated 522 to 780 person trips to the church daily. This
20 activity is in addition to the regular church activity.
21 These 522 to 780 person trips were not included in the future
22 trip estimation by Gorove/Slade. This additional activity
23 could add approximately 680 to 1,000 vehicle trips daily to
24 and from the church. This additional activity could add 126
25 vehicle trips during the a.m. peak hour and 87 vehicle trips

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1 during the peak hour on a typical week day.

2 Section 3.2.3 of the DR guidelines for all
3 comprehensive transportation review, the requirement states
4 that CTR is expected to include further analysis of vehicle
5 impacts if the proposed site generates 25 vehicle trips in
6 the peak direction for either peak period in p.m. or weekend.

7 As shown earlier, the site is projected to
8 generated more than 25 vehicle trips during the peak hours.
9 Therefore, the requirements of Section 3.2.3 have not been
10 met. Comprehensive traveling impact should be conducted and
11 submitted to DDOT for review.

12 In terms of the shared parking analysis,
13 Gorove/Slade showed in Table 2 of their report that the
14 church has a maximum demand of 23 parking spaces on Sunday
15 including the demand for the Sunrise Assisted Living they
16 come up with a total of less than 66 spaces which they say
17 meets the demand. However, if you look at Table 4 of
18 Gorove/Slade's report, it shows that the church is estimated
19 to generate 24 vehicle trips in one hour. That means 24
20 vehicles are coming into the church in one hour. So the 24
21 vehicle trips and 23 parking spaces maximum demand does not
22 really match. So there is a conflict in there in terms of
23 23 and 34. The shared parking analysis needs to be revised
24 and to correct for this discrepancy.

25 Finally, the report also does not address how some

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1 of the larger trucks will be able to turn into the facility's
2 driveway or exit on Yuma. Alton Place and Yuma both have
3 parking and they're narrow streets and maybe travel way of
4 approximately eight feet available for the trucks to turn in
5 and turn out. So I understand that earlier on there was some
6 discussion that they were going to provide the Alton results
7 so we would like to see that, too. Thank you.

8 CHAIRMAN HILL: Okay. Does the Board have any
9 questions for Mr. Mehra?

10 MEMBER JOHN: Mr. Mehra, I just have a question
11 concerning paragraph 5. And I am wondering why your -- oh,
12 I'm sorry. I tend to do that. So on page 2 of your
13 testimony, I noticed that you're using figures provided in
14 2008. And I'm wondering why you're using ten-year-old
15 figures?

16 MR. MEHRA: Because I was told that these are some
17 of the plans for the future.

18 MEMBER JOHN: Thank you.

19 CHAIRMAN HILL: Okay. Sure go ahead,
20 Commissioner.

21 MEMBER MILLER: One quick question, Mr. Mehra, you
22 were saying that -- on page 2 of your testimony --

23 CHAIRMAN HILL: Okay. Usually, I treat it like
24 soccer, I just kind of remember that you've gone over, but
25 that's okay. Mr. Commissioner, could you please ask your

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1 question again?

2 MEMBER MILLER: Quick question was you said that
3 additional church-related activity would generate an
4 estimated 522 to 888 person trips to the church daily. What
5 additional activities are you talking about? You referenced
6 an earlier zoning case. I'm not sure that's part of this
7 application. That's a lot of trips. There must be a lot of
8 activity.

9 MR. MEHRA: I guess it's --

10 CHAIRMAN HILL: Mr. Commissioner, I'm sorry, could
11 you repeat your question again?

12 MEMBER MILLER: My question was simple. You said
13 that additional activities that the church was having would
14 generate hundreds and hundreds -- what are the additional
15 activities --

16 MR. MEHRA: There were trips, real life meeting,
17 there are a whole bunch of them and they are sort of split
18 up into different hours of the day.

19 CHAIRMAN HILL: What are you looking at --

20 MS. FERSTER: For the record, this is not in the
21 record. This appears to be a calendar of the Wisconsin
22 Avenue Baptist Church summary of future daily occupancy.

23 CHAIRMAN HILL: You can submit that into the
24 record.

25 MS. FERSTER: Yes, we'll submit that into the

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1 record.

2 CHAIRMAN HILL: Provide the Applicant with a copy.
3 You said that's from 2008? I don't know how relevant that
4 is now. I mean it's ten years ago. I don't even think --

5 MEMBER MILLER: I think I got the answer to my
6 question.

7 CHAIRMAN HILL: Okay. All right. Ms. Brown, what
8 I'd like to do before you go ahead and ask your questions is
9 there was again the kind of auto turn thing that got brought
10 up again. So just remember, I think we'll probably want to
11 take a look at the auto turn and so I'm just trying to keep
12 track. So there's the auto turn thing and then there was the
13 one thing that we asked of the Office of Planning, it was to
14 ask DDOT -- was it DDOT? Thank you so much. If I could
15 remember it for Office of Planning, but to ask that of OAG.

16 All right, so Ms. Brown, do you have any
17 questions?

18 MS. BROWN: I'm turning it over to ask questions.

19 CHAIRMAN HILL: Okay, sure.

20 MS. KATZ: Thank you, Mr. Chairman. Just very --

21 CHAIRMAN HILL: You need to speak right into that
22 microphone.

23 MS. KATZ: Very briefly. Mr. Mehra, I understand
24 that you prepared a report that has some criticisms of
25 Gorove/Slade's work. My question to you, sir, is simply

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1 whether you prepared your own analysis or are you just
2 criticizing what Gorove/Slade did?

3 MR. MEHRA: Well, when I'm criticizing, I'm also
4 coming up with different numbers. And no, I did not prepare
5 a full traffic study, no.

6 MS. KATZ: You didn't do any independent analysis?

7 MR. MEHRA: No, absolutely not.

8 MS. KATZ: Okay. And then second, are you aware
9 -- one of the things you talked about was the CTR methodology
10 that Gorove/Slade used. Are you aware that DDOT scoped and
11 approved that methodology?

12 MR. MEHRA: Well, they may have approved it, but
13 I think there is a problem with it, so I'm bringing up the
14 issues that when there's an existing church and an existing
15 daycare, you do not go to ID and get the data. You actually
16 go and count the trips.

17 MS. KATZ: My question was really whether you were
18 aware in preparing your report that they approved it, DDOT
19 approved it?

20 MR. MEHRA: Yes. Approved the scope, yes.

21 MS. KATZ: Approved the scope and the methodology.

22 MR. MEHRA: Yes.

23 MS. KATZ: Okay. Thank you. Nothing further.

24 CHAIRMAN HILL: Okay. I think that's it. Mr.
25 Mehra, I hope you save your car.

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1 MR. MEHRA: Thank you very much.

2 CHAIRMAN HILL: Bye. Okay, Secretary Moy, will
3 you start the clock again?

4 MEMBER MILLER: You know, I used to do that at
5 council.

6 CHAIRMAN HILL: We'll get you. I gave you all a
7 little bit extra.

8 MS. CHESSER: My name is Judy Chesser. I'm
9 appearing with Barbara Gunning. We represent Tenley
10 neighbors and over 200 of the neighbors are part of our
11 group, many of whom are in the 200-foot range.

12 This first picture is a picture of what the
13 Sunrise would look like behind the existing houses on 39th
14 Street which are in the front. The issue is overview, we are
15 in an R-1-D low density neighborhood conservation area. The
16 question is not whether any CCRC can be on this lot, it's
17 whether this CCRC should be on this lot.

18 We realize that in 2016 they ordered a special
19 exception for CCRCs, but they did not make it a matter of
20 right and there's a reason for that. We're supposed to look
21 at volume of use and is the volume too high for this
22 particular lot that makes it objectionable? Sunrise keeps
23 saying we really need an acre and a half, yet they chose a
24 lot that's half that size.

25 The combined impact of the three area variances

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1 and the two special exceptions results in a dramatic
2 rewriting of the -- of the scale of the surroundings and it
3 makes it -- a rewrite of the zoning. This isn't zoning
4 adjustment. This is zoning elimination.

5 If Sunrise needs an acre and a half, why not go
6 find an acre and a half? They say they have 86 units and 900
7 square feet per unit and they cannot do with anything less.
8 So they came to the table knowing that.

9 And by the way, I want to make a little footnote
10 here. We care about the number of people in the building, 120
11 rooms, a lot less than we care about the units. We don't
12 care who is rooming with who. You can have 70 units and 130
13 people. You can have 86 units and 121 people. We actually
14 don't care about the units. That's the floor plan. We care
15 about the number of people because that is what drives the
16 volume of use.

17 You see here a nice little chart that tells you
18 all the things they're asking for. And by the way, people
19 keep saying that a church is allowed 60 foot height. The
20 church is allowed 60 foot height for a steeple. But a church
21 is only allowed three stories. So just to keep in mind, 60
22 feet for the steeple or the sanctuary, but three stories for
23 the church, just like everybody else.

24 The lot occupancy goes from 40 percent for non-
25 church up to 58 percent here. It goes from 4 feet for a

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1 retaining wall to 13 feet for a retaining wall, and 8 foot
2 side yard to no side yard setback. And remember, it goes
3 from three stories to four stories.

4 You can see here this is a close up. I know
5 they've slightly moved the courtyard here, but this is the
6 best picture I could find to show you how close this is to
7 the houses. We're cheek by jowl. Pulling back a bit you can
8 look on that road that shows you where the church is. It's
9 all single family detached homes with two stories. This is
10 pulling back yet further. That's Wilson's football field up
11 there on the top. It's all greenery. It's trees. It's
12 single family homes.

13 This is the Tenley Circle that does not need any
14 landscaping and we're really happy with it the way it is.
15 This is the federal park land. You can see the church just
16 under the trees there in the background. This is looking
17 from Wisconsin Avenue. We're quite a long ways from
18 Wisconsin Avenue. We're by the park land. These are the
19 pre-Civil War homes within 200 feet on Grant Road. You can
20 see how close they are if you look through these people's
21 front patio. You can see the church through them.

22 This is the church. I should say this is Sunrise.
23 Only the yellow is the church. And the top of that is the
24 air space over the sanctuary. All the rest of it is Sunrise
25 including everything up above that with the cross in front

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1 of it. That's all Sunrise.

2 This is the Union Street house that shows the
3 property line with WABC. This is Union -- going down Union
4 Street on the side, several homes there. This is what the
5 Union people look at -- the top here for the second story is
6 church, but the church, for most of it is only the first
7 story. And most of the first story is actually Sunrise. The
8 church is less than 13 percent of the building.

9 Going around to the Alton side, you can see how
10 close we are to the church. More Alton Place. This is
11 homes, actually, my home, right across from the church. All
12 these homes are in the 3900 block of these -- so they're
13 right next to the church.

14 This is the 39th Street homes. They're facing 39th
15 and the back property line is -- they share with WABC. They
16 have their signs out. This is what those homes would be
17 looking at. Their homes are about the same size as those
18 trees in the front. This home is in the corner of 3920
19 Alton, sort of shares the property line with the church. And
20 this is from their baby's room. You can see how close they
21 are to the church. And more from the room, this is currently
22 28 feet. It would be 52 feet. There's been no shadow
23 studies.

24 This is again, this is their back patio and the
25 church -- this is the current church, but this will go

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1 further back across the entire lot. It's only 28 feet there.

2 The truck ramp will be at the bottom of this
3 picture which is where the driveway is now and that's looking
4 through that fence at their patio.

5 The FLUM, as rezoning people like to call it, and
6 the policy maps, we're low density R-1-B as is 3920 Alton
7 Place. That's a neighborhood conservation area. We're not
8 in a transit zone.

9 Volume of use. Two hundred people, 21 residents,
10 70 FTEs, actually more than that. If this were seven single
11 family lots, as it started, give or take 28 people there, 172
12 less than what is proposed. And that's not even counting the
13 people coming to the church. That's just the Sunrise people.
14 Two hundred fifty seat church. The Sunrise people tend to
15 hire private aides. They have deliveries. There's 20 trucks
16 a week even in the low numbers in a no through truck zone.
17 Thirty-five of staff driving, actually the Sunrise on
18 Connecticut says a lot more than half drive. There's 30-foot
19 long trucks, 28-ton trucks, 7-ton shuttle multiple times a
20 day. This is what used to be a seven-lot divided. This is
21 now what the church sits on.

22 We went through this before, 58 percent instead
23 of 44 instead of 3.

24 MS. GUNNING: This is my portion of the
25 presentation and I look at this through the prism of the

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1 language of the zoning regulations. Applicant seeks 58
2 percent lot occupancy instead of 40; 4 stories, instead of
3 3 stories. Total elimination of the eight-foot side yard
4 setback.

5 Let's start with lot occupancy variance. In R-1-B
6 single family detached, a church is allowed 60 percent lot
7 occupancy and a non-church only 40 percent. Sunrise asks for
8 58 percent lot occupancy, but note, WABC occupies less than
9 15 percent of the building.

10 If granted, this increase in lot occupancy would
11 allow an additional 20,000 square feet and that translates
12 to 121 residents versus 81. Sunrise insinuates that it is
13 entitled to 60 percent lot occupancy because of the church.
14 We disagree.

15 In R-1-B, businesses are limited to 40 percent.
16 It is not appropriate to take the average because the church
17 occupies only 13 percent of the building. Sunrise's
18 schematic shows how this building goes right to the property
19 line. It fills the entire lot. The building sits 4.8 inches
20 from the property line on the Yuma Street side. It sits on
21 the property line of National Park Service. It sits ten feet
22 from the Alton Place property line and that includes the drop
23 off and pick up entrance to the truck ramp.

24 On the fourth side, which is shared with the five
25 single homes, there is a truck ramp dropping 13 feet, a

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1 loading berth and platform and open roll off trash container.

2 Sunrise wants four stories, when three stories are
3 allowed. If granted, the variance for the fourth story would
4 mean 35 to 50 more residents plus additional staff for a
5 total of 80 additional people, plus visitors, plus aides,
6 plus associated trash, truck deliveries, and noise.

7 Sunrise argues that the fourth floor does not
8 matter because they can build to 40 feet. It does matter.
9 It's a specious argument. The development standard goes to
10 the issues of volume of use.

11 Now we are going to flip through the steeple
12 variance.

13 ADMIN. JUDGE MASON: Until we do more legal
14 research.

15 MS. GUNNING: Right. We respectfully, for the
16 record, want to preserve that variance.

17 The side yard setback elimination. Eliminating
18 the side yard allows an approximate ten percent increase in
19 occupancy, density, and volume of use. Thus, this
20 elimination adds 11 more people. The elimination of the 8-
21 foot setback would be a loss of 1,832 square feet of green
22 space.

23 Now we turn to the question of whether an
24 Applicant for a variance must be an owner. The WABC and
25 Sunrise collectively are the Applicants. Both state they are

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1 separate legal entities. WABC is the current owner of the
2 property and Sunrise is not the owner. They own no property
3 in Tenleytown.

4 We have recently learned that Sunrise is
5 characterizing itself as a contract purchaser. This does not
6 suffice to meet the definition of an owner. I emphasize that
7 this is not just a mere technicality. The regulations don't
8 require an applicant for a special exception to be an owner,
9 but it states specifically in clear and unambiguous language
10 that the variance applicant must be the owner and that any
11 practical difficulty must be to the owner.

12 The Court of Appeals and the zoning rules provide
13 a three-prong test. First is exceptional condition. That
14 usually pertains to physical or topographical conditions.
15 The exceptional condition must result in practical
16 difficulties to the owner, the second prong. The third prong
17 is substantial detriment to the public good and whether or
18 not it's detrimental to the zone plan.

19 This 1941 survey shows the lot as originally
20 configured for R-1-B lots. The lot at issue here is not
21 unique. It does not meet the first prong of the variance
22 test. It is not exceptionally narrow, shallow shaped, and
23 contrary to Sunrise's insinuation, the lot is not on
24 Wisconsin Avenue or Tenley Circle. That lot is close to
25 rectangular and the size of the lot is not unique. It is

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1 ideal for subdividing in conforming with zoning.

2 Being near a busy street does not in and of itself
3 make for a variance, otherwise virtually every house in R-1-B
4 in Washington, D.C. would qualify.

5 As part of the exceptional condition, the Court
6 of Appeals has recognized a confluence of factors. In this
7 case, WABC has no unique institutional or religious needs
8 requiring expansion. The church will no longer identify as
9 Baptist and has little, if any, nexus to Tenleytown. It is
10 our contention that Sunrise cannot substitute its needs,
11 including financial viability for needs of WABC to constitute
12 an exceptional condition under the regulations.

13 Sunrise, as part of the question of whether there
14 is an exceptional condition invokes the public service
15 doctrine which originated in the Monaco decision. It gives
16 greater flexibility to public service organizations for
17 variance relief. Clearly, that is not noted here. Sunrise
18 is a for-profit business. It is not a public service
19 organization. The public service organization doctrine has
20 never been extended to a for-profit business. Sunrise claims
21 all the variances for its own needs and that is to satisfy
22 its corporate board and to build a church with a prominent
23 endowment.

24 Here, the specific design does not constitute an
25 institutional necessity and meet the requirements. There are

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1 no practical difficulties -- pardon me. Maybe a little
2 water.

3 Sunrise's alleged difficulties are not unique to
4 the property. Rather, the variances sought are to be build
5 a larger, more profitable, enterprise by amending the zoning
6 regs. All of the testimony you have heard pertains to the
7 alleged problems of Sunrise as a business. It doesn't
8 pertain to the property and Sunrise is not a public service
9 organization. WABC does not need variances for its own
10 needs. They can sell lots in compliance with zoning and
11 raise sufficient funds to update its church building.
12 Therefore, no undue hardship is demonstrated.

13 Here we show a compliant alternative option for
14 WABC modernization. They could sell two lots to raise \$1.7
15 million for renovation. It's a win-win for all and there's
16 no undue hardship under the terms of the regulation.

17 I'll briefly mention the severity of the variances
18 and self-created hardship. The variances are severe, 58
19 versus 40; 4 versus 3; elimination of the side yard setback.
20 There's a self-created hardship. Sunrise knew they need 1.5
21 acres. Instead, they come to you seeking enormous zoning
22 relief because they're shoe horning this on to a .8 acre lot.

23 I'll briefly mention there has been some lack of
24 maintenance on the part of the church and that is self-
25 imposed hardship.

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1 MS. CHESSER: Let me say one quick thing. Exhibit
2 77 gives you the D.C. Government clearing this facility like
3 6 weeks ago for moving in a daycare center of 53 children and
4 they cleared for the physical structure that there was heat,
5 air, etcetera, etcetera. I merely say that is worthy of
6 consideration vis-a-vis their version of how the building is
7 falling down earlier.

8 MS. GUNNING: And finally, we reach prong three,
9 harm to public good. There's harm to nearby homes,
10 elimination of green space, interference with light and air.

11 Homes on the edge of R-1-B deserve the same
12 protection as the homes in the core. The comp. plan
13 recognizes this when it speaks to transition at the edge of
14 commercial in order to protect the edge of residential.

15 The extensive zoning relief and additional issues
16 raised including lot occupancy, number of stories, side yard
17 elimination, steeple height, CCRC definition, insufficient
18 parking, likely to become objectionable, too close to another
19 healthcare facility, 13-foot retaining wall, slope could be
20 dangerously steep begs the question what is left of zoning?

21 MS. CHESSER: These are all the comp. plan
22 sections which we won't read to you. To conclude.

23 MS. GUNNING: I'll wrap it up quickly. The
24 property does not suffer from an exceptional or unique
25 physical characteristic or topographic condition. There are

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1 no exceptional conditions or situation resulting in peculiar
2 and exceptional practical difficulties to the owner.

3 The church can raise the funds to renovate the
4 church by subdividing the lot in compliance with existing R-
5 1-B zoning. The church is not expanding.

6 Sunrise is not an owner and cannot request
7 variances. If Sunrise were considered for a variance, it
8 gets no flexibility as it is not a public service
9 organization and they cannot argue hardship because they came
10 to the lot knowing they needed a much larger lot. The
11 severity in number of variances equate to a rewrite of zoning
12 in an R-1-B single family detached low density neighborhood
13 conservation area.

14 Finally, relief would create substantial detriment
15 to the public good and the integrity of the zone plan as
16 embodied in the regs and map. Thank you.

17 MS. CHESSER: The chart that you've already seen,
18 there's two special exceptions requested, a truck ramp and
19 retaining wall in the CCRC. The truck ramp and retaining
20 wall will be under the regs at 4 feet in residential and
21 they're asking for 13. The CCRC was discussed quite a bit
22 here today. For special exceptions, there's general
23 conditions for special exceptions which are in harmony with
24 the general purpose and intent of the zoning regulations and
25 zoning maps. And they will not tend to affect adversely the

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1 use of neighboring property in accordance with zoning regs
2 and maps.

3 What you see here is three houses that have sold
4 in the block in the last year. This is very quick turnaround
5 in that neighborhood and also after they knew this project
6 was coming in. Truck ramp, retaining wall, I think we've
7 sort of covered most of that. This is what a 13-foot wall
8 looks like. This is actually 12 foot 2 inches. This would
9 be right next to this home. Here's where the child lives.

10 This goes across the lot, down 13 feet and it's
11 right next to these homes as you can see. Environmental
12 concerns, increased pollution, inadequate air flow, exterior
13 commercial lighting, accumulative effect, fumes.

14 This current driveway is 12 feet wide. The truck
15 ramp will be 12 feet wide, just to give you an idea. The
16 retaining wall drops down to 13 feet and the truck ramp is
17 12-feet wide, but 13 feet deep. This happens to be a truck
18 that was coming out of the current driveway. It's right next
19 to a child in this house. And CCRC definition of a change
20 over to CCRC. The definition says that you have to provide
21 a continuity of residential occupancy and healthcare. That's
22 the definition. Later on, it has -- gives you some things
23 off of a menu, but that is the definition of CCRC.

24 Sunrises do not provide healthcare, yet the D.C.
25 Health Department audit of Sunrise on Connecticut talks about

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1 registered nurses. They license the facility at 3120.
2 Sunrise on its website says they're creating 65 to 75
3 healthcare jobs. And the Office of Planning said that they
4 were providing healthcare. If they do provide healthcare,
5 they run afoul of their regulation that says they can't be
6 within a thousand feet of another healthcare facility and the
7 Psychiatric Institute of Washington is -- which happens to
8 be on Wisconsin Avenue is within less than a thousand feet.

9 There's been a lot of discussion here about the
10 long term of senior facilities. These are also facilities
11 that serve Ward 3. I would suggest to you that we're the
12 best served ward in the entire city. There are 16 of them
13 here. Most of them are within spitting distance of
14 Tenleytown. I can go down eight blocks down Nebraska and to
15 my left to Sunrise on Connecticut and to my right is Forest
16 Hills. I can go four blocks over and I'm at Friendship
17 Terrace. We're an oasis and we put something -- Exhibit 83A,
18 we wrote a very substantial prehearing statement and we
19 discuss in there how Ward 3 seems to be hoarding all of the
20 senior facilities.

21 In residential areas, the question is not whether
22 CCR can receive it. Obviously, it came through -- but with
23 this volume of use is right on this lot.

24 There's six conditions. Among them are sufficient
25 off-street parking for employees, residents, and visitors and

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1 it has to be located and designed to not likely to become
2 objectionable to neighboring properties because of noise,
3 traffic, or other objectionable conditions. Parking needs
4 to be independently examined. They wouldn't have put
5 sufficient parking in CCRC regs, if all you were going to do
6 is go look at the table and say oh, here it is, 66 spaces.
7 It seems to me like you have to actually have an independent
8 assessment. Is this parking in this many spaces going to
9 address the needs of this CCRC?

10 And there's lot of problems with that. They don't
11 have any plan for drop off and pick up on Yuma. Yet, that's
12 where the church's entrance is.

13 Brighton Gardens. I know the gentleman said
14 earlier the new garage opening was going to be much bigger
15 than this one. But Bright Gardens -- Sunrise, the van can't
16 get in. The park is basically full of trash. There are
17 various ways to become objectionable under the zoning regs
18 and you can read them there yourself, dangerous conditions,
19 et cetera, et cetera.

20 Volume of the truck traffic. They already said,
21 first of all, this is a no-through truck at every street
22 surrounding this building. There's no-through truck signs and
23 we're on a truck-restricted route. And yet, they're going
24 to bring to us through our no-through truck zone 30-foot 28-
25 ton trucks on a street that is 30 feet wide, only 30 feet

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1 wide. They park on both sides, you get the middle 14 feet
2 or whatever for traffic. There isn't even a yellow stripe
3 down the middle because they can't really go past each other
4 in both directions.

5 And the DDOT report fails to truly address whether
6 66 is sufficient. This is what Alton looks like. It's a
7 small, residential street. Think of the trucks that you're
8 going to see later rolling down this street. This is a tiny
9 little residential street. No through truck signs.

10 The bollards that DDOT has graciously put up to
11 keep people from going on 39th Street. And you get lots of
12 trucks that service Sunrise and many other Sunrises never use
13 the garage. I know past is prologue and they can tell me all
14 these trucks are going to pull into this garage, but there
15 are a lot of other Sunrises.

16 This is the van. This is a 30-foot truck coming
17 out of a Sunrise. We took all these pictures at Sunrises.
18 That is what a 30-foot truck looks like, so when that truck
19 comes down Alton and takes a right onto the truck ramp and
20 comes back up and goes down Yuma, think about that, like 15
21 feet from the little kid's house. More trucks, more trucks,
22 they're all at Sunrise. Every one of them.

23 Okay, the ambulances. A lot of these ambulances
24 don't come from D.C. Government. They keep saying oh, the
25 D.C. Government says here's the stats. A lot of them don't

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1 come from D.C. Government. So it's more than that.

2 This is the open trash that they tell me won't
3 happen at the current -- at the new Sunrise that they're
4 proposing. It's at every other Sunrise around here, Brighton
5 Gardens, Sunrise on Connecticut. That's what it looks like.
6 These are maybe for wet trash and maybe they're going to use
7 this type of thing, 129 people, all the trash in those little
8 boxes.

9 To conclude, I don't want to waste your time
10 concluding here. We can sort of see what the deal is. We
11 did some additional issues that we thought might be -- need
12 to be addressed, the slope, the platform, the service
13 delivery space.

14 In conclusion, this is way too much volume in an
15 area that's a bunch of little houses, two story, single
16 family houses in R-1-B neighborhood conservation area.

17 One person said to me, Judy, maybe you should just
18 go find another place in Washington to live. And I said what
19 would I look for? I'm sitting next to federal park land,
20 neighborhood conservation, R-1-B. What am I supposed to look
21 for for this not to happen next to my house?

22 We thank you for your time and your consideration.

23 MS. FERSTER: If we could briefly stop the clock
24 so that I can qualify Mr. Hawkins and he can put his thumb
25 drive in the -- so Mr. Hawkins' resume is in the record. He

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1 has previously been qualified as an expert in architecture,
2 appeared numerous times before this Board as an expert in
3 architecture and we ask that he be accepted as an expert in
4 this proceeding.

5 CHAIRMAN HILL: Can you tell me again which
6 exhibit is your resume? I think you just referred us to an
7 exhibit, correct? Thank you.

8 I don't have any issues with Mr. Hawkins. I think
9 he's actually in the book already. He's in the book already.

10 MS. BROWN: I have no objection, but I did have
11 a question on whether or not TNA could provide us with their
12 slides that they just showed.

13 CHAIRMAN HILL: Sure. I'm sure you guys can give
14 -- you have to talk in the microphone.

15 MS. CHESSER: I'm sorry, I thought that you got
16 some of the 12.

17 CHAIRMAN HILL: Okay.

18 MS. CHESSER: I think they're uploading because
19 I gave them another thumb drive. I think they're uploading
20 them into the record.

21 CHAIRMAN HILL: Okay. Hi, Mr. Hawkins. Whenever
22 you're ready, we'll start the clock here.

23 MR. HAWKINS: Thank you very much. I'd like to
24 emphasize that I'm here to talk about the physical reality
25 that we're dealing with in the shape of the lot, as they have

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1 been and the shape of the lot as they could be and in part,
2 why they are what they are.

3 Under the practical difficulties test, the bid for
4 relief from the strict application of the zoning regulation
5 must be as a result of the attributes of a specific piece of
6 property as described above.

7 CHAIRMAN HILL: I'm going to ask to turn off the
8 microphones on either side of you. It's kicking up --
9 thanks.

10 MR. HAWKINS: The descriptions that we've just
11 heard of the requirements are quite clear. Here, the lot at
12 issue, more than 35,000 square feet which is 7 times the
13 minimum lot area applicable in an R-1-B zone district does
14 not demonstrate that the lot in question is substandard and
15 thus presents no practical difficulty due to a smaller size
16 or lesser frontage than the minimum.

17 A substandard lot is defined as a record lot
18 existing prior to the effective date of this title that does
19 not conform with the lot dimension and lot area requirements
20 of the zoning in which it is located maybe be considered a
21 conforming lot for the purposes of building permits and uses.
22 And you will see that there are a number of nonconforming
23 lots on this square.

24 A necessary element of proof of hardship is
25 evidence showing the inability of the Applicant to make a

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1 reasonable disposition of the property for a permitted use.
2 And the practical difficulties, as we've just heard, are
3 difficult to find on this really pretty substantial R-1-B
4 property.

5 I'd like to start with again an overview of
6 Wisconsin Avenue, of the Tenley Circle area and the distinct
7 difference between the west side of Wisconsin Avenue and the
8 east side. And you can see -- I thought they might need to
9 highlight square 1779, but it shows up easily when you see
10 the inconsistency of its western edge with the pattern of
11 development around it and behind it to the east.

12 This is the subdivision pattern that existed just
13 after Nebraska Avenue was laid out. This comes from the base
14 of 1937 and you can see that there were nine properties that
15 had been reduced from -- I think there may have been 13 in
16 the original square before Nebraska Avenue in 1937, and at
17 the time that the Wisconsin Avenue Baptist Church acquired
18 the property. This is the pattern.

19 How do I get to the other one? Here we go. It
20 jumps around. Sorry.

21 (Pause.)

22 I'm very sorry for this.

23 CHAIRMAN HILL: That's all right. I have trouble
24 with this stuff all the time. So I don't know how to help
25 you.

1 MR. HAWKINS: I'm sure I messed it up.

2 CHAIRMAN HILL: Now we're back at the beginning.

3 MS. CHESSER: Maybe the gentleman can come back
4 and help.

5 CHAIRMAN HILL: Mr. Moy, can you pause the clock
6 for a second and then we'll see. Is Paul out there? I hear
7 a door slam.

8 MS. BROWN: Mr. Chairman, while we're waiting, I
9 do have a slight objection. I didn't object to Mr. Hawkins
10 being qualified as an expert in architecture and I still
11 think that he's qualified in architecture, but we haven't
12 heard one word about architecture so far in his testimony.
13 So to the extent that we are not dealing with architecture,
14 his area of expertise, it should not be credited as expert
15 testimony.

16 MS. FERSTER: Just to clarify, Mr. Hawkins hasn't
17 gotten to his architectural depiction of what could be. He
18 just was laying the relevance for why he is going into detail
19 about alternatives.

20 MS. BROWN: And that's fine. I think when we
21 start hearing about architecture, then I believe it would be
22 credited as expert testimony at that point.

23 CHAIRMAN HILL: Okay. Well, first of all, we're
24 going to get through this presentation and I know that -- I
25 think where we're going with this again as far as the lots

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1 is different options that supposedly they're making an
2 argument in terms of -- and so we did kind of talk about this
3 at some point, but I'm not going to interrupt anyone from
4 doing their presentation.

5 And as far as the expert testimony, again, what
6 I get reminded every now, we're just a quasi-judicial body.
7 Like everybody gives their opinion, whatever they think most
8 of the time and I don't really understand exactly -- I know
9 OAG is not here right now for me to clarify what exactly the
10 expert testimony means in terms of us, but I do understand
11 your point. And we'll just keep cruising along here. Thank
12 you.

13 Mr. Hawkins?

14 MR. HAWKINS: The image that's up right now is the
15 slide of the layout of the properties --

16 CHAIRMAN HILL: Mr. Moy, can you start that clock
17 again? Thanks.

18 MR. HAWKINS: After -- this is the subdivision
19 that was done. I've not studied the history, but I just
20 looked at the pattern of changes and this appears to be the
21 development that was done by the Baptist Church. When the
22 congregation wanted to build the church, they asked for a
23 subdivision of the square and produced a 33,640 square foot
24 lot for themselves and changed what had been to 5500 square
25 foot lots into five 3520 square foot lots. These are

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1 substandard lots. So in order to get the amount of space
2 that they wanted for their church which I'm sure they
3 believed was going to last for a very long time and it's nice
4 to see that it has so far, they looked into the future and
5 said we need 33,640 square feet for our church. These other
6 people don't need quite as much space as most people in this
7 neighborhood do, but they can do with what they've got.
8 We've got what we need.

9 I think it's important that a decision was made
10 by essentially the predecessors of the present pair of
11 developers that -- and what they are dealing with is a
12 property they knew they were getting.

13 This is a ray that the property of the church
14 could be subdivided. I didn't go into and speculate what we
15 might be able to fit in here with the church. The church has
16 its own programs. I just wanted to show that there is a
17 value there. I subdivided it into five properties. Five is
18 the most of the properties that seemed to be able to fit and
19 they have a value.

20 Whether the church wanted to cash in some of that
21 value, it's for them to determine. But, of course, what
22 we're looking at here the value that they could have and that
23 they may determine to use in one way or another. There is
24 nothing on this property physically that would prevent this
25 development at a fairly high level of design and pretty large

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1 amount of development even R-1-B.

2 These are the values of the -- I should go back
3 and say that in that last slide you saw the space that I, as
4 an architect, would be able to fill -- put a house into in
5 each of those five properties. And I did not go to the point
6 of designing a house for each one so that it could be seen.
7 But I believe that the numbers and the diagrams show that.

8 And here is the amount of money that could be
9 derived from this property or one could say a portion of this
10 property if it wanted to be used. It would be -- it's for
11 the church to design how it wants to use this property. But
12 I think it is important the church made a decision a long
13 time ago and if affected the neighborhood when it did it.
14 It downgraded a little bit of the neighborhood when it did
15 it. And now we're at the point where another -- what some
16 of us see as a downgrade would be installed on the property.
17 I thank you for listening.

18 CHAIRMAN HILL: Ms. John. Do you have a question?

19 MEMBER JOHN: Just a quick question. In this
20 diagram with the five lots, where is the church located now?

21 MR. HAWKINS: The church is on basically on one
22 and two and spreads into three and four a little bit.

23 MEMBER JOHN: So it's -- as it exists now, it
24 occupies one, two, three and four?

25 MR. HAWKINS: That's right.

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1 MEMBER JOHN: Okay. Thank you.

2 CHAIRMAN HILL: Okay.

3 MS. FERSTER: Two more witnesses, is that it? Two
4 more witnesses.

5 CHAIRMAN HILL: Can you introduce yourselves for
6 the record. Have you been sworn in?

7 MR. EVANS: I have not been.

8 CHAIRMAN HILL: You were not sworn in?

9 MR. EVANS: I have not been.

10 CHAIRMAN HILL: You were not here first thing this
11 morning?

12 MR. EVANS: I was here at 12:30.

13 CHAIRMAN HILL: Did you get sworn in at 12:30?
14 I don't know if you haven't been here since 9 o'clock we
15 should let you talk.

16 (Laughter.)

17 Mr. Moy, will you swear the gentleman here who
18 just arrived at 12:30?

19 MR. MOY: Stand, please. Is there anyone else?

20 CHAIRMAN HILL: Is there anyone else? Oh, please,
21 great, fantastic. There you go.

22 MR. MOY: Do you solemnly or affirm that the
23 testimony you're about the present in this proceeding is the
24 truth, the whole truth and nothing but the truth? Thank you,
25 you may be seated.

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1 (Witnesses sworn.)

2 CHAIRMAN HILL: Okay, great. If you could please
3 both introduce yourselves for the record.

4 MR. EVANS: Good evening, my name is Richard
5 Evans.

6 MR. HOYLE: My name is Henry Hoyle.

7 CHAIRMAN HILL: Okay, great. I guess, I don't
8 know, Ms. Ferster, you want to tell us what they're going to
9 be testifying about or you just want them to start?

10 MS. FERSTER: I think they're testifying about
11 objectionable impacts.

12 CHAIRMAN HILL: Oh, okay. And I don't want the
13 clock started, but I mean -- so just so I understand. So are
14 they part of your nine? They are part of your nine.

15 MS. FERSTER: Well, they are our last witnesses.

16 CHAIRMAN HILL: I understand. I'm just trying to
17 understand what they're speaking about.

18 MS. FERSTER: Yes, they are parties, individual,
19 they're part of the individual parties, yes.

20 CHAIRMAN HILL: Got it. Okay, you can go ahead
21 and begin.

22 MR. EVANS: Thank you. My name is Richard Evans
23 and I own the house at 3906 Yuma Street right across the
24 street from the site. It's within 50 feet of the property.
25 I'm testifying on behalf, along with my fellow homeowner,

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1 Henry Hoyle, as to -- in representing the homeowners I think
2 that are most affected or are going to be most affected,
3 given our proximity to the site.

4 We are opposed to the Sunrise/Wisconsin Avenue
5 Baptist Church request for variances and special exceptions
6 for a number of reasons and I'll touch on those briefly, at
7 least some of them and Henry will cover the rest.

8 Our primary objection to this proposed project and
9 the requested variances and special exceptions is the
10 fundamental change to the nature of the -- the character of
11 the neighborhood.

12 I've lived in this neighborhood for almost 20
13 years now, the first seven over on Albemarle, moved all of
14 five blocks over to Yuma about 12 and a half years ago. We
15 did so because it was a larger house, but it was still a
16 residential neighborhood. And the fellow homeowners, my
17 fellow homeowners are represented here tonight by Ms.
18 Ferster. Many of them have lived in this neighborhood for
19 a long time. We love our neighborhood. We love the
20 residential character of the neighborhood. It has many of
21 the amenities of city life within a short walk, but it's
22 still a residential neighborhood.

23 As you've seen from all of the slides, it's
24 bounded, this property is bounded on all three sides by
25 single-family homes. And putting a large commercial

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1 operation into an area zoned for residential use will
2 fundamentally and irrevocably change the character of the
3 neighborhood and diminish the quality of life for those of
4 us living there.

5 One of the things I enjoy most about our house is
6 we have a front porch and that's one of the reasons why we
7 moved because we loved the idea of a front porch. We could
8 sit out on the front porch and enjoy the view, the sunset to
9 the west, but if this project were to go forward, I would be
10 staring out at a 52-foot building between the church and
11 between the Sunrise facility itself. They like to say it's
12 only a 40 foot tall building. Well, when you add the buffer
13 and so forth, it goes up to 52 feet. So we're talking about
14 a structure that would dwarf all the surrounding homes.

15 And again, as you've seen from the presentation,
16 this is not just the church, but the CCRC Sunrise will be
17 stacked two stories on top of the church and literally
18 piggyback on the church itself. As this Board is aware, a
19 CCRC like this would normally be allowed to have 40 percent
20 lot occupancy. They're asking for 58 percent.

21 Now Mr. Altman testified earlier that the church
22 could put in a much larger project as of right and we're
23 talking a difference. I'm not sure we're against that
24 because we're already talking at 52 feet. They could only
25 go up to 60 and they're talking lot occupancy 58 percent.

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1 By max, they could go up to 60. So this is pretty much
2 stretching what could go in there even under color of right
3 for the church itself.

4 One of the things -- I've been at many of the ANC
5 meetings myself and I was there last week when the ANC took
6 up this matter. And it was actually opposed by the chairman
7 of the ANC, Chairman Bender. And he voted against the
8 project because he was troubled by I think this main point,
9 the fact that Sunrise, he felt that a facility like this
10 should not exceed 50 percent lot occupancy and this one goes
11 well beyond that.

12 Sunrise claims that they can't build a
13 financially-viable facility that's smaller than the 58
14 percent which they proposed. The residents of that
15 neighborhood, my fellow homeowners, we should not be held
16 hostage to Sunrise's profit model. They charge a lot for
17 their facilities. It's in excess of \$10,000 a month. And
18 I think it sometimes can even be much higher than that. And
19 we should not have to pay the price for their profit model.

20 In terms of the increased traffic, I appreciate
21 the traffic study that was done and it focuses on peak
22 periods and so forth, but it's inconceivable to think that
23 there's going to be fewer trips to that site with this
24 facility with over 100 residents with dozens of staff members
25 with people visiting the site, visiting the residence and so

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1 forth, as well as all the trucks coming to the site. There's
2 going to be a lot more traffic there.

3 And the way it's designed with the driveway coming
4 on to -- from Alton straight on to Yuma, it's as if there's
5 going to 39th and a half street because all of the vehicle
6 traffic that's going to access that site is going to enter
7 on Alton and exit on Yuma and that's going to have a huge
8 impact for those of us who live right there at the head of
9 where that curb cut is going to come out.

10 And for those reasons and ones by a fellow
11 homeowner who is going to touch on, we believe that this
12 Board should deny the requested relief that Sunrise and WABC
13 is asking for.

14 MEMBER JOHN: Mr. Evans, is it?

15 MR. EVANS: Yes.

16 MEMBER JOHN: Can you show me where your house is
17 on this? You can just mark it.

18 MR. EVANS: It is right there.

19 MEMBER JOHN: Can you mark it?

20 MR. EVANS: It's right there at the bottom looking
21 on Yuma.

22 MEMBER JOHN: Oh, okay, okay. And so can you show
23 me the traffic pattern again you were talking about? Just
24 draw it on the map.

25 MR. EVANS: My understanding is the traffic

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1 pattern is going to come right from entering on Alton and
2 coming straight down the sides in between the houses on 39th
3 and the site there and exiting on Yuma. There's a
4 significant amount of traffic that comes off of Tenley Circle
5 because you have a lot of people exiting Tenley Circle and
6 heading down to Reno Road or to Connecticut. And if you've
7 got trucks that are supposedly not allowed to then go left
8 down into -- down that way down Yuma toward Connecticut and
9 have to come out, there's going to be a lot of traffic. It's
10 already difficult to park on this street. Most of the
11 homeowners actually park on the street because there may be
12 garages or things in the back, but you want to park on the
13 street because it's more convenient.

14 We're a block and a half from the Metro, so
15 oftentimes that parking is already parked up by people who
16 come and want to be close to the Metro. And what this
17 project envisions, I think, is going to really drive up the
18 amount of traffic to the site and the amount of people that
19 are parking on the street regardless of whether or not there
20 are parking spots in the garage below the facility which I
21 think are inadequate to account for all the people that are
22 going to be at the sanctuary, the church on the weekends, all
23 the people who are going to be visiting the people who live
24 there and so forth.

25 MEMBER JOHN: Thank you.

1 CHAIRMAN HILL: Mr. Hoyle?

2 MR. HOYLE: Thank you very much. Good evening.
3 My name is Henry Hoyle. My wife and I own the house at 3901
4 Yuma Street which abuts the proposed facility at its
5 southwest corner. We are also opposed to the relief
6 requested by the Sunrise Wisconsin Baptist Church,
7 particularly for the 40 percent lot usage limitation.

8 First of all, the noise and traffic the Rich just
9 noted and that others have noted so far will pass about 15
10 feet from our favorite patio space and about 30 feet from our
11 home's walls. This effectively means our property will be
12 adjacent to three streets instead of two.

13 We will also be exposed to the impact of a
14 construction project that is of an unreasonably large scale
15 and complexity for an R-1-B residential neighborhood. My
16 neighbors and I anticipate significant disruption and harm
17 in terms of sound, air quality and of the pollutants as the
18 proposal involves a two-level, 66 car underground parking
19 garage, as well as a four-story building. We expect these
20 harms will far exceed what would come with construction of
21 a church of comparable size, let alone construction of an R-1
22 or R-3-B house.

23 For the same reason, our property's exposure to
24 vibration damage will also significantly exceed what we'd
25 face if this variance were not granted. Our houses were

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1 built between 1913 and 1942 collectively. While Sunrise has
2 proposed mitigation strategy, we worry about the hypothetical
3 basement foundation crack that is caused by construction, but
4 not immediately discovered. If Sunrise contests our claim,
5 it may be difficult or uneconomical to challenge them in
6 court.

7 Rich has largely spoken to most of the parking
8 issues, but I would also highlight that we have spoken with
9 some of the people who live next to the Butterworth Place
10 street, the Friendship Terrace site and those neighbors
11 specifically complain to us about how the employees and
12 visitors regularly use street parking spaces to park in
13 violation of the facility's rules.

14 Our houses, which are zoned within an R-1-B
15 neighborhood will now border what will be in all but zoning
16 at large commercial mixed use property with all the related
17 traffic, congestion, and parking problems. This encroachment
18 of commercial development will affect property values. Since
19 the announcement of the Sunrise proposal, multiple homes'
20 sales have already fallen through or sold at the low
21 estimated value.

22 In addition, the proposed development will be the
23 deepest commercial intrusion into the residential
24 neighborhood east of Wisconsin Avenue for the seven blocks
25 between Albemarle Street on the north and Upton Street on the

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1 south which will set a negative precedent for the
2 neighborhood's ability to defend against other inappropriate
3 commercial developments.

4 As neighbors, we support the Wisconsin Avenue
5 Baptist Church and its mission and would gladly see the
6 church property improve in ways that are consistent with
7 current zoning. However, we believe that WABC has not
8 sufficiently explored alternatives that would fulfill its
9 needs as a congregation while minimizing negative impact in
10 the surrounding community. Despite their many claims to be
11 a part of the community, they never sought our feedback on
12 their development options until after settling on Sunrise.
13 They have failed to demonstrate necessity that the
14 partnership with Sunrise is the only viable option for them.
15 We've spoken to some of those options in our other testimony.

16 Also, the Applicant said the project should be
17 conveyed favorably to the alternative of the megachurch that
18 is maximizing its lot usage in height. We respectfully
19 request that the BZA reject this comparison. Setting aside
20 that a megachurch is unlikely to choose Northwest D.C. to
21 build a new church, we feel that a church of Sunrise's lot
22 usage would be very different and to our minds preferable to
23 the proposed development.

24 As church activity is primarily on Sunday
25 mornings, the amount of use for a given facility size is much

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1 less than for a commercial facility, and therefore in keeping
2 with the residential neighborhood. The proposed development
3 will have all the use intensity of a church, plus that of a
4 large densely populated continuing care facility. The
5 combination will be far larger than a church structure of the
6 same size.

7 To conclude, the proposed project will change the
8 character if the neighborhood for the worse. Once the
9 variance is granted, the neighborhood's residential character
10 will be changed permanently, even if WABC's financial
11 hardships continue and force it to vacate the new site.
12 Moreover, the loose precedent for variances for lot usage
13 will be set to the detriment of residential communities
14 around the District. For these reasons, we ask that the BZA
15 deny the relief sought.

16 CHAIRMAN HILL: Okay, great. Thank you. So Ms.
17 Ferster, we've gone over your time. I guess are you kind of
18 done?

19 MS. FERSTER: We are more than kind of done. We
20 are done.

21 CHAIRMAN HILL: I wanted to make sure you're
22 really done. Let's see --

23 MS. FERSTER: In so many ways.

24 CHAIRMAN HILL: Yes, I'm sorry. It's a long day
25 for you. Let's see, I'm going to ask is there anybody here

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1 wishing to speak in support? Okay.

2 And so how many people are here wishing to speak
3 in opposition?

4 (Laughter.)

5 Okay all right, I got it. That's fine. I've been
6 here since 9 a.m., too. Actually, I've been here since 8:30
7 in the morning and I'm here every Wednesday at 8:30 in the
8 morning.

9 So let's see, I know cross is coming up, my
10 favorite part. We're going to take a five-minute break
11 before cross, okay, or do you want to do cross and then take
12 a break before public testimony?

13 MS. FERSTER: Do cross.

14 CHAIRMAN HILL: Okay, I know we said that, but
15 that's pretty funny. All right, let's go ahead and do cross,
16 Ms. Brown, okay?

17 So I'm still going to give the same little speech
18 that I gave before which is that cross is only to try to help
19 us get to better understand what you think the point is in
20 the testimony that you've heard. I know you've heard my
21 speech before and I'm just going to do it because I don't
22 want you to feel cheated in hearing my speech, okay?

23 So please go ahead and ask your questions.

24 MS. BAUM: I'm going to be very brief. My first
25 question is for Mr. Hoyle.

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1 Mr. Hoyle, am I correct that you bought your house
2 in January of this year?

3 MR. HOYLE: December of last year, but yes.

4 MS. BAUM: Okay, and you understood when you
5 bought it that the ANC was having meetings with Sunrise and
6 Wisconsin Avenue Baptist Church about this project, correct?

7 MR. HOYLE: Correct.

8 MS. BAUM: So you bought your house --

9 CHAIRMAN HILL: I understand, he can still object,
10 but he bought in -- I got you.

11 MR. HOYLE: For a variety of reasons we bought.

12 CHAIRMAN HILL: Well, I don't know about that.
13 But go ahead, we're here to decide what the zoning is, okay,
14 so you then didn't really understand the process, I suppose.
15 So your next question.

16 MS. BAUM: So when you say that the church never
17 sought your input prior to partnering with Sunrise, they had
18 partnered with Sunrise before you ever bought your house in
19 the understand, correct?

20 MR. HOYLE: Correct. I was speaking on behalf of
21 our group. I should have made that clear.

22 MS. BAUM: Okay. So next question for Ms. Chesser
23 who talked about the setbacks being eliminated, I believe,
24 in the overview presentation, you indicated that an 8-foot
25 setback that been completely eliminated.

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1 MS. CHESSER: That is correct.

2 MS. BAUM: And what you're talking about is the
3 setback on -- that abuts the federal park?

4 MS. CHESSER: Correct. Regulations require an 8-
5 foot setback on that side.

6 MS. BAUM: And I want to just ask --

7 CHAIRMAN HILL: Hold on. We're not having
8 conversations. So go ahead and ask your question and the
9 answer was yes, the 8-foot setback and yes the 8-foot setback
10 on the park land side. The next question is.

11 MS. KATZ: The next question is you do understand,
12 don't you, that the setback on the opposite side along 39th
13 Street, behind the 39th Street houses has been increased to
14 approximately 36 feet.

15 CHAIRMAN HILL: Okay, go ahead, Ms. Chesser.

16 MS. CHESSER: Do I understand that --

17 CHAIRMAN HILL: Just answer no.

18 MS. CHESSER: Okay, I'll say no. It's not because
19 I'm stupid but because I know you moved the building back and
20 forth, but you never changed the size of the building. We
21 kept guessing the size of the building. So you kept moving
22 the building back and forth and you said well, if you have
23 the 8-foot setback as is required by the regs, we'll move the
24 building over here and eliminate the tree box. I'm like, I
25 get it, but you've also got a truck ramp --

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1 CHAIRMAN HILL: Wait, wait, wait, wait, wait,
2 wait, wait. Repeat your question again, just so I remember?

3 MS. BAUM: Do you understand that while the
4 building is proposed for along the property line on the park
5 land that along the 39th Street side the setback is increased
6 from 8 feet to 36 feet.

7 CHAIRMAN HILL: Okay, the answer is no.

8 MS. CHESSER: And the answer is also that the 36
9 feet includes the truck ramp. Just so we understand that's
10 in the 36 feet.

11 CHAIRMAN HILL: I understand what's in the 36
12 feet. So the answer --

13 MS. CHESSER: -- and what I'm saying, what I'm
14 saying is if the building were smaller as we kept asking them
15 to, it wouldn't be a choice between 36 feet and zero setback
16 or --

17 CHAIRMAN HILL: -- okay. All right. I understand
18 your answer. What's your next question?

19 MS. BAUM: My next question is is it your position
20 that the building should be moved closer to the 39th Street?

21 MS. CHESSER: No, it's my position that the
22 building should be smaller.

23 MS. BAUM: Okay. So another question, has your
24 group done any analysis of the differing impact between this
25 proposed application and a megachurch that's 60 feet tall on

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1 60 percent of the lot?

2 CHAIRMAN HILL: Wait, wait, wait, wait, wait. I
3 have to understand the question before you try to answer it.
4 So can you say your question again?

5 MS. BAUM: Sure. Has your group done any analysis
6 comparing the potential impact on the neighborhood of this
7 proposed use as opposed to the by right use of a megachurch,
8 if you will, that's 60 feet tall on 60 percent of the lot?

9 MS. CHESSER: Yes. And let me give you a couple
10 of points. First of all, a church is allowed 60 feet for the
11 steeple or the sanctuary. The church otherwise has to be
12 three stories. You're asking for four. A church has to be
13 three stories. Yes, a church can have 60 percent lot
14 occupancy, but a church is rarely 24 hours a day and a church
15 does not have 121 people living there with 70 staff --

16 CHAIRMAN HILL: The answer is yes. Okay?

17 MS. BAUM: Okay. Thank you.

18 CHAIRMAN HILL: This is very enlightening.

19 MS. BAUM: All right, this question is for Ms.
20 Gunning. You testified that the sale of two lots would have
21 raised sufficient funds for the church to fund renovations.
22 Did you take into account when you said -- when you testified
23 about \$1.7 million being sufficient, did you ask the church
24 what the budget was for those renovations?

25 MS. GUNNING: I did not.

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1 MS. BAUM: Did you ask the church what amount of
2 money it needed to maintain a church building going forward?

3 MS. GUNNING: I did not.

4 MS. BAUM: Did you take into account the tax on
5 the church as a result of a theoretical sale of two lots,
6 possibly?

7 MS. GUNNING: Yes, I probably factored that in.
8 Going back though, it is my burden of proof. It is the
9 church's burden of proof to establish --

10 CHAIRMAN HILL: This conversation again, right,
11 is whether or not we're back to the whole selling the lots
12 and money and everything. Okay. So your next question?

13 MS. BAUM: Next question. You also testified that
14 there was insufficient parking. My question is did your
15 groups and this is for either Ms. Chesser or Ms. Gunning, do
16 you -- have you done any analysis to ascertain how many
17 spaces you think they need if the 66 are insufficient? Do
18 you have the --

19 MS. GUNNING: The burden is on you for that also
20 and you may think the neighbors are like well in the money
21 like Sunrise is, we can't -- we can do that of study, but 66
22 spaces is what they picked off of the tables. You know, so
23 many for the church, 25 for the church, whatever for Sunrise,
24 which is interesting, but I don't see any analysis there
25 about how many people come and go. No one has ever given us

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1 a good number about how many visitors come and go. And
2 Sunrise runs 300 and what odd facilities here. I would think
3 they would have access to those numbers.

4 MS. KATZ: The question is simply whether you all
5 have a number that you think is the right number if 66 is the
6 wrong number?

7 MS. GUNNING: I do not. I would like to base my
8 answer on something where there's facts involved.

9 MS. KATZ: Nothing else. Thank you.

10 CHAIRMAN HILL: Okay, so people are talking to me.
11 Let's see, what was I going to say? All right, so we're
12 going to take a break and then we're going to take public
13 testimony. But there's someone who is trying to tell me
14 about public testimony. Do you have to leave or something?
15 Why don't you talk to the secretary, right over there, if you
16 have -- okay. All right.

17 So we are going to take public testimony. So
18 you'll have an opportunity to speak during the public, right
19 after this and we're back in five minutes.

20 (Whereupon, the above-entitled matter went off the
21 record at 9:11 p.m. and resumed at 9:21 p.m.)

22 CHAIRPERSON HILL: We're back in session.

23 The people that are speaking in -- I know this
24 witness was interested in -- there was something that you
25 needed to, I don't know -- and you wanted to go now, which

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1 is fine. May I ask you, were you speaking in opposition?

2 MS. SIX: Yes.

3 CHAIRPERSON HILL: Okay. Then could everybody
4 who's speaking in opposition that would like to just fill up
5 the rest of the chairs? We're going to start with this young
6 lady here and then we're going to allow you to leave, if you
7 like. And then if you just turn off the microphone for one
8 second for me, so I can just kind of outline how this thing
9 is going to all work.

10 (Pause)

11 CHAIRPERSON HILL: We'll keep rotating through
12 them until all the chairs are -- so just pick a chair for
13 now, and then we'll do another shift. And I think there was
14 one person in support. Right? We're going to wait for the
15 end for you. You're the only person there, so we'll do it
16 in the end and they're all going to know your name.

17 So let's see. Everyone is going to get three
18 minutes and, if you could, just introduce yourself, give us
19 your address, and then the clock will begin. And the clocks
20 are in the top corners there. Okay?

21 MS. SIX: Good evening. My name is Juliet Six and
22 I live in the 3800 block of Alton Place, and I've lived there
23 for 29 years.

24 I urge the BZA to reject the exceptions to the
25 zoning rules demanded by Sunrise. We love our neighborhood

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1 and justifiably so. Sunrise should be obliged to comply with
2 the laws governing the R-1-B zoning. We, the residents,
3 would like to maintain the quiet residential nature of the
4 street that caters to many young children, and to those of
5 us who bought into this location many years ago.

6 I am familiar with what is required for those with
7 Alzheimer's. My mother died of it. The number of people,
8 logistics for this are not suited to this neighborhood.
9 Sunrise has other sites available to them and Judy Chesser
10 enumerated those for you.

11 I thank you for the opportunity to testify before
12 you today.

13 CHAIRPERSON HILL: Okay, thank you, Ms. Six.
14 You're welcome to stay. I just noted that you wanted to go
15 first.

16 MS. SIX: Thank you.

17 CHAIRPERSON HILL: Does the Board have any
18 questions for Ms. Six in case she leaves?

19 (No audible response)

20 CHAIRPERSON HILL: Okay. So just to let everybody
21 know, just in case you do leave, how this is probably going
22 to end up working for the rest of the night, we're going to
23 go ahead and take testimony. Everyone is going to get three
24 minutes, in either opposition or support. Then probably
25 we're going to, we'll see whether we take a break or not, and

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1 then we're going to have the Applicant and the party status
2 people come back up again.

3 The Board is going to ask a bunch of questions and
4 then we're going to ask questions of whoever it is, and then
5 we're going to have rebuttal. The rebuttal, then we'll have
6 the party -- I'm sorry, the party in opposition will have an
7 opportunity to cross that rebuttal. Then we'll probably have
8 a brief conclusion from both sides because we just want to
9 have a brief conclusion.

10 And then probably, I don't know, we'll probably
11 have, I don't know what's going to happen with the Board,
12 but we might have findings of fact and conclusions of law if
13 they ask for it. And then we'll set a date for a decision,
14 that's if we get through this. I know that the Metro closes
15 at 11:00. That's not an issue for me because I get to walk
16 from here. But I just wanted to get that out.

17 The other thing is that as you guys are going to
18 go through your testimony, I mean, I know you guys have been
19 here all day, and so I know there's a lot of things you have
20 to say. Again, just to kind of, and I know it's hard to do,
21 if we can just kind of keep it as cordial as possible, and
22 we just want to hear what you have to say; that would be
23 helpful. But I know you've been here all day and it's only
24 three minutes, and so you can give it to us any way you want
25 to.

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1 But if you could please state your name, sir, your
2 address, and then your three minutes will begin.

3 MR. MOY: Excuse me, Mr. Chairperson.

4 CHAIRPERSON HILL: Sure.

5 MR. MOY: If you don't mind, if I may, since there
6 are so many people testifying, I just want to be sure that
7 everyone filled out a witness card to record my full right.

8 CHAIRPERSON HILL: Okay. Great, perfect.

9 MR. KOCZELA: Yes, I did.

10 My name is Jeff Koczela. I live at 4404 49th
11 Street, with my wife and my sons. That address is one of the
12 five houses that's directly abutting the Baptist church
13 property right now. My back fence shares the property line
14 with the Baptist church.

15 I don't object to church expansion. I don't
16 particularly have a problem with proper CCRCs if they're
17 within the zoning. And I just would probably echo everything
18 that's been said by the other two residential testifiers.
19 But I would add that, for me, the hardship is trucks coming
20 down, backing up right behind my house, beep-beep-beep-beep,
21 okay, and then revving up the ramp to get out to Yuma Street.

22 So right now I enjoy my backyard. It's quiet and
23 I have a good time out there sitting in the sun or whatever.
24 Plus a weather issue, the sun; the afternoon sun is going to
25 be blocked. So I'll leave it at that. I thank you all for

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1 your patience and your public service. Thank you.

2 CHAIRPERSON HILL: I just want to add that I thank
3 you for your patience. I thank you all for your patience.
4 You've been here, as I said, all day. But we may have some
5 questions for you, so you might as well stay right there.

6 Sir, if you could please introduce yourself, with
7 your address and then your testimony?

8 MR. CRENSHAW: Yes. My name is David Crenshaw.
9 I live at 3912 Yuma Street, directly across from the proposed
10 facility. My house will be right across from the new
11 entrance to the church.

12 I just wanted to say that, like many of my
13 neighbors, I have no problem living near the church and I'm
14 sympathetic to the church's current situation, as they have
15 described it in need of financial infusion. I would
16 certainly have no objection, and I think many of my neighbors
17 wouldn't, to alternative plans, including seeing this or a
18 successor church expanding within the full scope allowed by
19 the current zoning regulations.

20 Alternatives have been discussed here. I would
21 obviously support those as well. I also have no objection
22 to seeing more senior living facilities in our city, where
23 they can be appropriately built in accordance with the
24 current zoning guidelines and the Comprehensive Plan and
25 without undue impact on existing residential neighborhoods.

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1 I think that the proponents of this facility
2 haven't demonstrated that that's achievable on this site.
3 So I just really believe this is the wrong facility for this
4 location. And while I could question the need for such
5 facilities in our ward, which already has access to more such
6 facilities than any other ward in the city, I would support
7 Sunrise if they would scale the project appropriately and
8 forego the exceptions and variances necessary to enable the
9 massive scaling and density of use that this facility will
10 entail.

11 I'll skip over some of the rest of this.
12 Basically, this lot, it's very clear it's zoned for single-
13 family, R-1-B use in a neighborhood that's a conservation
14 area, low density. I just feel like the intent of the zoning
15 in the plan could not be any clearer and, therefore, I would
16 ask the Board to reject the variances and exceptions
17 requested to allow this massive-scaled and dense-use
18 proposal. Thank you.

19 CHAIRPERSON HILL: Okay, thank you. Next?

20 MS. LEE: Good evening. My name is Tania Lee.
21 My family and I live at 4426 Grant Road in the Grant Road
22 Historic District, as designated by the National Trust for
23 Historic Preservation. We face the Wisconsin Avenue Baptist
24 Church from the northwest, across Nebraska Avenue, at a
25 distance of less than 150 feet. The houses on this block

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1 were built prior to the Civil War. Outside Georgetown, they
2 are among the oldest residential structures in the city.

3 The owner of our house in the last decades of the
4 nineteenth century was, in fact, the stonemason responsible
5 for many of the distinctive stone retaining walls that
6 characterize Tenleytown, and the house, in fact, functioned
7 as a showcase of his work. It is distinguished by slender
8 stone pillars that support its second story along two sides.
9 The family bedrooms and a bathroom rest atop this system of
10 delicate masonry.

11 Our nineteenth century builders were not
12 anticipating that these houses would have to withstand the
13 intense demolition, excavation, and construction involved in
14 a massive project with a two-story underground parking
15 garage, such as the one now proposed for this site. The
16 developer's assurance that precautions will be taken and
17 damages covered is completely inadequate. This proposed
18 project puts our houses at serious risk.

19 We are not opposed to rational development, nor
20 to senior care facilities, nor to churches. We are strongly
21 opposed to a commercial enterprise using a religious
22 institution to ride roughshod over zoning regulations. The
23 proposed development is simply too big for the site. And we
24 are grateful for your consideration of our position. Thank
25 you very much.

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1 CHAIRPERSON HILL: Thank you. Please introduce
2 yourself.

3 MS. McDONALD: I'd say good morning, but it's good
4 evening.

5 CHAIRPERSON HILL: Yes, good evening. No, that's
6 all right. Congratulations on making it this long again, as
7 well.

8 MS. McDONALD: Honestly, I have a cold, so I have
9 a hoarse voice.

10 My name is Genet, G-E-N-E-T, it's an Ethiopian
11 name, McDonald. Tom, my husband and I with our 15-year-old
12 son, John, live at 4419 39th Street in D.C. for the last 20
13 years. Our house is very historic, having been built in
14 1891. We love our beautiful house and it represents a very
15 significant investment by our family. The 86-unit, outsized
16 Sunrise development will be just across the street from our
17 old home, with its original foundation.

18 We are most concerned that the pile driving, the
19 structural steel, and pouring of lots of concrete will
20 seriously damage our hundred-thirty-years-old house,
21 especially the foundation from 1891. We are a giving family.
22 I am retired from the Peacekeeping Department of the United
23 Nations after more than 20 years of service with many
24 difficult assignments, including during the war in Kosovo and
25 Liberia.

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1 Tom, my husband, unfortunately he's traveling, was
2 a U.S. ambassador to Zimbabwe from 1997 to 2001. He served
3 during the embassy bombing in Africa as well. Now he's a law
4 firm partner in D.C. with Vorys, LLP but continues to
5 undertake a significant amount of humanitarian work,
6 including prosecuting as a pro bono civil rights case in
7 federal court in Washington -- in Wilmington who seeks to
8 close a segregated public school in the Indian River School
9 District, Sussex County, Delaware. This public school has
10 been a dumping ground for African American boys. My husband
11 is also assisting Somalian Americans seeking to enroll at the
12 University of Minnesota Law School, where he graduated.

13 Simply put, if approved, the outsized, 86-unit
14 Sunrise development will ruin our nice and quiet residential
15 neighborhood. It's zoned R-1-B and should remain that way
16 with other residential developments, townhouses. Cut into
17 the small parcel in question would advance commercial
18 development like Sunrise. Approval of this project will
19 render the D.C. zoning laws a joke. Please follow the D.C.
20 zoning laws and disapprove the Sunrise proposal.
21 Respectfully, Tom McDonald.

22 CHAIRPERSON HILL: Thank you. Sir?

23 MR. VIVANCO: Thank you. Good evening. My name
24 is Jose Miguel Vivanco. I live at 3903 Alton Place, N.W.,
25 for 20 years, directly across from the main door of the

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1 Wisconsin Avenue Baptist Church. I bought my home knowing
2 that the church would be my neighbor. I'm very sad to see
3 what is happening to the church. I was an altar boy as a
4 child. I was very happy to move into the neighborhood that
5 had a Catholic church on one side of Tenley Circle and a
6 Baptist church on the other side. It has been a great place
7 to raise my family.

8 I am a director of Human Rights Watch, a human
9 rights organization. I have dedicated my whole life to
10 working with poor people, to promote and defend religious
11 freedoms, to people who have suffered violations of
12 fundamental freedoms and rights. My organization does not
13 receive any government money. All our funding is private.
14 I work with immigrants, the disenfranchised, with minorities,
15 and not just in the U.S. but also all over the world. As a
16 matter of fact, I just landed this morning from Brazil, after
17 14 hours flying from that country to attend this meeting
18 which is extremely important for us.

19 After looking at the development plans and
20 attending as many ANC meetings as I could, I see now that the
21 church is getting a very bad deal. It will be a small part
22 of this big development which really benefits a business
23 called Sunrise, not the Baptist church which owns the
24 property. The reverend also qualified in an ANC meeting that
25 to accommodate Sunrise it will likely no longer identify as

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1 a Baptist church. So they're having to give up their faith
2 as well?

3 I would like to see the Baptist church developed,
4 even expand as a matter of right. I'm not scared about
5 having a big church in front of my own house. I am scared
6 of having a big business in front of my house. The church
7 could play an important role, for example, with the law
8 school students at nearby American University. I know these
9 students because in addition to working in human rights I
10 also teach. I know that the students are under a lot of
11 stress, they're away from their families, some are dealing
12 with issues of even depression.

13 There is also another practical benefit to having
14 a large church. I know that if the church expands, as a
15 matter of right, with the students' counseling and childcare
16 facility, facilities, we will not be looking at a building
17 with the lights on 24 hours a day beaming straight into my
18 bedroom. We would not have that massive increase in traffic
19 resulting from delivering trucks coming and going. We will
20 not face the repeat turnover of residents, and ambulances on
21 a frequent basis, nor with commercial-size garbage dumpsters
22 that are likely to attract even rats.

23 As you listen to neighbors, I ask you to focus on
24 those who will be 200 feet that the BZA send letters to, like
25 me. Those who live 200 feet oppose this proposal strongly

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1 because we will be impacted dramatically. Given that the
2 number of variances and exceptions being requested are really
3 intended to benefit Sunrise, a for-profit business, and not
4 my neighbor, the church, I am asking the BZA to reject this
5 proposal. Thank you.

6 CHAIRPERSON HILL: Thank you, sir. I hope you
7 flew business-class. No? God, Jesus Christ. You really are
8 suffering.

9 All right, sir.

10 MR. DONOVAN: Thank you. Honorable Members of the
11 Board, my name is Michael Donovan, and I live with my wife
12 and our 2-year-old toddler at 3900 Alton Place, N.W., which
13 is just a few feet from Wisconsin Avenue Baptist Church. We
14 live in one of the five homes on 39th Street. We share a
15 property line with the church, and some of the pictures that
16 you saw in the presentations of Ms. Chesser were taken from
17 my home, including the pictures of my toddler's playroom.

18 My property is the closest to the proposed
19 development. Beyond the increased noise, my family and I
20 would feel the increased vibrations from the vehicles. Every
21 truck and every car that would visit the proposed development
22 on its private driveway would pass within 11 feet, nine
23 inches of my family's property. I believe that the zoning
24 rules were intended to preserve the residential character of
25 our neighborhood and the proposed development would bring a

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1 large-scale, 24-hour commercial operation which is
2 incompatible with the residential character and zoning.

3 The minimal eight-foot-wide screen of one line of
4 trees and shrubbery will not, even after the many years it
5 will take for a few trees to grown, significantly reduce the
6 noise and vibrations that will be generated from the 20-plus
7 trucks and an unknown number of vehicles that would use the
8 private driveway each week. As I mention, my family's
9 property line would be located 11 feet, nine inches from the
10 13-foot retaining wall, and we're concerned about the safety
11 of our child and the many children in the neighborhood.

12 This proposed facility would transform Alton
13 Place, N.W., a residential street with only 16 feet for car
14 traffic in two lanes, into an artery for a gigantic complex
15 that would accommodate more than 400 people. The project is
16 simply too big for the lot, which is clear in the request
17 to receive 58 percent more occupancy, but only 40 percent
18 would be allowed for Sunrise.

19 In closing, I note that throughout its history the
20 BZA has sided with residents who have opposed issuing
21 variances. Indeed, out of the 2,140 variance decisions made
22 by the BZA from 1980 to 2009, the Board agreed with the
23 communities which opposed variance requests one out of three
24 times. I hope that, as with these cases, the Board will side
25 with the more than 200 residents of the community that oppose

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1 this project.

2 Granting this proposal four variances and two
3 exceptions sends the wrong message and questions the
4 relevance of zoning. I respectfully request that zoning be
5 honored and that no variances be granted. I strongly oppose
6 this project as proposed, and thank you for your time and
7 consideration of my concerns.

8 CHAIRPERSON HILL: Thank you. Next?

9 MS. BHANSALI: Thank you very much. Good evening.
10 My name is Lisa Bhansali, and I'm a homeowner directly across
11 the street at 3903 Alton Place, opposite the Wisconsin Avenue
12 Baptist Church, which is not on Wisconsin Avenue. I think
13 oftentimes people hear that name and they automatically
14 assume the church is on Wisconsin. It's not; it's on Alton
15 Place directly across from my home, which is within the 200-
16 feet limit.

17 I, with my husband, bought this home knowing that
18 there was a church across the street. I'd like to speak to
19 you today about elder care. Since serving as a patient
20 advocate for my 89-year-old father who suffered from
21 glaucoma, advanced diabetes and some mental impairment, I got
22 to understand different options for taking care of an elderly
23 person by looking at different assisted living and elder care
24 options.

25 My dad was a medical doctor who practiced for 60

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1 years, so I had a pretty high standard to meet. Like many
2 elderly people today, he wanted to stay in his home, so I had
3 to convert his home, with a very helpful handyman, to include
4 handrails and electric lift chairs. I held his hand as he
5 passed away and I promised I would look after my mother.

6 Now my 88-year-old mother has moved to Washington,
7 D.C., to be closer to the family, and we looked at all sorts
8 of assisted living facilities here in Ward 3, looking at
9 Sunrise on Connecticut and Ingleside, the Lisner Home, Senior
10 Living, et cetera. You've already heard about the many
11 different options.

12 Like my father, when it came down to it, my mother
13 said she wanted to stay in her apartment, her own home, with
14 caregivers 24 hours a day, seven days a week. I thought this
15 was going to be financially impossible. But when she did the
16 numbers herself, and mom is a mathematician, she showed me
17 that it was financially, actually, more attractive to stay
18 in her own apartment with professional caregivers who were
19 even qualified nurses.

20 She, like all of us, will eventually deteriorate
21 in her health, but I know that she will have all of the
22 support systems in place that she needs, including
23 healthcare, which is not something offered by Sunrise or
24 could even be comparably affordable. She's in an apartment
25 building with lots of activities that involve both young and

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1 elderly people, and she's happy and now I believe more
2 financially secure.

3 Today, nobody is against elder care or assisted
4 living. What we oppose and what we ask you to apply in the
5 law and the regulations is this monstrous size or dimension
6 of this facility on a small lot size. This is not for the
7 community. This is for money. It's not even for the church.
8 It's for Sunrise.

9 My elder parents and my neighbors and I would like
10 to stay in our homes. Many of them have also retrofitted
11 their homes to allow for that to happen now. If Sunrise's
12 commercial enterprise moves into our block, many of my
13 neighbors may be forced to sell and need a residential
14 setting elsewhere, and probably not in D.C.

15 The enjoyment of their homes would be negatively
16 impacted by the sheer volume of trucks and density, which
17 you've also heard about, the hours of operation and the
18 volume of people on the lot and, of course, the staff.
19 WMATA, the Metrosystem, has already expressed concerns about
20 the Red Line tunnel regarding potentials for leaks, causing
21 damage and electrical problems, and there will be permanent
22 damage to homes like mine, that was built in 1926.

23 Sunrise recognizes that the variations -- sorry,
24 that the vibrations will cause harm to our homes and that
25 they'll give us monitors. But to what end? If they decide

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1 that they've caused damage, then their workers would end up
2 entering my home to try and fix problems only to their
3 satisfaction. The garbage generated by 121 people, plus
4 their 70 staff, seven days a week, every day will also impact
5 the environment and make efforts for any clean growth pretty
6 much futile.

7 This proposal is just too big for this lot. Just
8 like our ANC Chair Bender, who opposed this Sunrise proposal,
9 which is really not for the church, we ask you to also deny
10 these exceptions and variances because they're not for the
11 church. They're for Sunrise. Thank you.

12 CHAIRPERSON HILL: Thank you. Mr. Murphy, if you
13 would start that clock again? Thank you.

14 Thank you, sir.

15 MR. ALLEN-GIFFORD: Good evening. My name is John
16 Allen-Gifford. My wife and I live at 4412 39th Street, N.W.
17 We share our property line with the church. My house is
18 immediately next to Mr. Donovan's. Our living room and
19 master bedroom are immediately across from the church, along
20 its driveway from Alton Place to the parking lot. If the
21 fourth-story variance were to be granted, instead of looking
22 across at the top story of the church building, our master
23 bedroom would look across at the lower half of a four-story
24 building with 86 units housing well over a hundred people on
25 land zoned R-1-B for single-family homes that was originally

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1 only seven single-family lots.

2 At the edge of our backyard would be a thin eight-
3 foot strip of trees, then a 13-foot drop to concrete. The
4 business end of the building would be at my backyard, the
5 delivery trucks, the trash and garbage trucks and rats, the
6 staff turnover early in the morning and late at night, the
7 visitors to residents, and so on. The staff who smoke may
8 well do so in this area. The church's playground and green
9 spaces, which are traditionally shared with the neighborhood,
10 would be gone if the lot occupancy variance were to be
11 approved.

12 I don't think it's a good deal for the church.
13 I think they're short-sighted in selling their land to the
14 developer. I ask that -- there was a meeting that the church
15 held with the community. I asked the pastor what about a
16 land-lease agreement. He said that conversation only lasted
17 five seconds, and I wonder if they shouldn't have pushed
18 harder for some better arrangement.

19 I'm worried that their financial viability,
20 notwithstanding the endowment, will still be at risk after
21 this. I wonder how they pay the condo fees for the new
22 enterprise. They're going to have to relocate for 20 months
23 while it's being built. At that meeting I asked the trustee
24 what they would do for that period of time. She said, no
25 problem, there's lots of places around here where we could

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1 meet. Their stories don't match up to me as to their true
2 need.

3 And they talk, they don't want to share the space,
4 but they've spoken well of other congregations using their
5 building in the past. I think the neighborhood and the city
6 at large has a greater need for a preschool at this location
7 rather than a senior facility. Seniors aren't going to be
8 moving around. Parents with nursery school age children have
9 few options and they would need somewhere close enough to
10 drop them up and get back to pick them up in time.

11 I'm running out of time, so I thank you very much.

12 CHAIRPERSON HILL: Okay. Thank you. Can I get a
13 show of hands again, how many people are still here
14 testifying in the opposition? No; still haven't spoken yet.

15 (Show of hands)

16 CHAIRPERSON HILL: Okay, thank you. So does the
17 Board have any questions? Sure, go ahead.

18 MEMBER JOHN: For the folks who testified, how
19 many of you would be okay with a smaller facility on the same
20 lot, a smaller -- yes, within the zoning parameters? Okay.
21 So everybody else objects to any kind of development on the
22 site.

23 Let's say the Applicant reduced the number of
24 rooms and the facility would then -- you know, the zoning
25 regulations and developed it as a matter of right, how many

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1 people would be okay with that? Because they could -- right,
2 okay. No, I just wanted to know.

3 MS. KATZ: We've had that discussion with them,
4 but they keep insisting that it be 85. So we have tried to
5 have that discussion with them to scale it down, yes. So
6 we're not opposed to development. We tried to have a
7 discussion about scaling it down with them, and they've
8 insisted on the 85.

9 MEMBER JOHN: Okay.

10 CHAIRPERSON HILL: Okay. Of the people that are
11 here testifying in opposition, how many actually made it to
12 the ANC meetings?

13 (Show of hands)

14 And you all testified at the ANC meetings in
15 opposition? Okay. If you do respond, you have responded to
16 them. And so --

17 PARTICIPANT: No, we're not allowed to testify.

18 CHAIRPERSON HILL: Okay. So we can have that
19 asked about in a second go. All right, great. Thank you all
20 so much, and let's get the next group up here. So if you
21 could go ahead and state your name and address? And then
22 there's three minutes again on the clock, and as soon as you
23 begin, the clock will start.

24 MS. LEVINE: Thank you. My name is Mary Alice
25 Levine. I have lived on Alton Place, 3804 Alton Place, about

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1 one block from the Wisconsin Avenue Baptist Church, for 34
2 years. My husband and I raised our family in this quiet
3 community. Contrary to Mr. Kroskin's testimony, our
4 neighborhood has become closer as a result of our troubles
5 with this developer, and contrary to Mr. Kroskin's testimony,
6 we neighbors tell the truth.

7 The church has always been a quiet neighbor,
8 occupying a green piece of land between our homes. The
9 church is not on Tenley Circle, not on Wisconsin Avenue, and
10 not even on Nebraska Avenue. At other times, earlier times,
11 OP has told us that Nebraska Avenue would be the border
12 between our neighborhood and commercial development.

13 Now the church wants to give away its zoning
14 rights to a developer who would build an enormous commercial
15 complex and destroy the character of our stable, 100-year-old
16 subdivision. The R-1-B zoning on the site was created to
17 encourage and preserve the character and history of this
18 neighborhood. It is unjust for Sunrise to use this church
19 zoning to erect an enormous facility.

20 The construction and subsequent use of the
21 building will most likely cause widespread effects on
22 surrounding homes, including cracking basement walls and
23 foundation damage. There's every possibility that some of
24 this area's many underground streams would be diverted and
25 that we would see water in our homes where we've never seen

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1 it before. Such events happened in Tenleytown during the
2 construction of the Wilson pool and the Metro in the
3 eighties.

4 Our Tenleytown neighborhood has middle-class
5 families, but Sunrise caters to wealthy individuals and
6 families who can afford high rents at a senior facility.
7 Most of us cannot afford to live at this Sunrise facility.
8 Many of us had hoped to age in place, but it seems
9 gentrification is coming to Ward 3, as it has to so many
10 other places in D.C.

11 Please do not grant any zoning exceptions or
12 variances to the Sunrise project at 3920 Alton Place.
13 Preserving zoning is the best way to preserve the
14 neighborhood.

15 CHAIRPERSON HILL: Thank you. Next, please? Turn
16 off your microphone also, just for the feedback. Thank you.

17 MS. KOCZELA: Yes. My name is Marie Koczela and
18 I live at 4404 39th Street, and I'm one of the houses that
19 border -- behind my fence is the property and it will be with
20 a buffer that they're proposing, and then the driveway. And
21 I'd like to do something right now because it's a church, if
22 we could have a moment of silence because our community is
23 one that welcomes the church, and just a few moments to
24 appreciate that they have been a member of our community.
25 I think it's in line with a religious institution and the

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1 harmony that we come about. Just two, three seconds.

2 (Moment of silence)

3 MS. KOCZELA: Thank you. And I do that, I think
4 all of you probably needed to close your eyes, as many of us
5 have been here early this morning. We're neighbors who want
6 to live in harmony with our community. There's not a great
7 deal of animosity --

8 CHAIRPERSON HILL: Excuse me, ma'am. I'm sorry.
9 You just have to give that testimony to the Board. That's
10 all.

11 MS. KOCZELA: Okay. There's not animosity to the
12 neighbors for each other or for the church and for Sunrise.
13 And I was very happy that Commissioner John asked that
14 question about would we go for a smaller scaling. I think
15 many, many of us are willing to have development, and we
16 recognize the pictures put up by the church about needing to
17 fix the peeling paint or the rusting or making it more
18 handicapped accessible.

19 We're not, you know, not hearing that. We know
20 the church has needs and as a community we would like to
21 honor that. But the community, our houses, we would also
22 like to be honored. You've all heard, and I'm not going to
23 repeat it, you know, the density of 57 percent that they're
24 asking in a commercial would only be 40, and I trust that you
25 know all those regs much more than I would ever know.

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1 The height, I will speak personally to that as
2 some other people have spoken personally. I do live a lot
3 in the back of my house, which is going to be affected. I'm
4 going to feel that impact of my privacy, with all the windows
5 on the third and fourth floor. Right now the building, the
6 church building does not jut into my house, so I have this
7 wonderful expansive view where I can actually this time of
8 year see all the way across Wisconsin Avenue to see St.
9 Ann's. I'm not going to have those views, I'm not going to
10 have those sunsets that I enjoy right now.

11 My husband spoke to our backyard life, and in my
12 written testimony I mention my personal health issue, which
13 I do have a vitamin D deficiency and I am encouraged by my
14 doctor to spend as much outdoor time as possible. There's
15 been no study impact about how I'm going to have -- how much
16 reduced light I'm going to have. So, personally, I'm going
17 to have a great deal of hardship, and I introduce that.
18 You've heard all the other stuff before, but the sunlight and
19 the negative D impact, I don't think Vitamin D impact, nobody
20 has mentioned that.

21 The retaining wall and the noise, I just don't
22 know if you all have lived next to a hospital ever. And
23 there's some point that you do get immune to the beep-beep-
24 beeps, possibly. But it's very annoying, and if they're
25 projecting 20 trucks going up that ramp and straining,

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1 there's going to be a lot of strain right on the other side
2 of my backyard.

3 CHAIRPERSON HILL: Ms. Koczela, I just interrupt
4 you because you've gone over.

5 MS. KOCZELA: Thank you.

6 CHAIRPERSON HILL: Okay. Thank you.

7 MS. KOCZELA: Well, I hope you all disapprove it.
8 You got that point.

9 CHAIRPERSON HILL: Yes; that one I got.

10 MS. KOCZELA: Okay, thank you.

11 CHAIRPERSON HILL: Next, please?

12 MS. HOYLE: Hi. My name is Laura. My husband,
13 Henry Hoyle, who previously testified, and I live in a house
14 that shares the property line at the proposed property's
15 southeast corner. We're at 3901 Yuma Street. I'd like to
16 reference the crosses question to Henry, and wanted to make
17 a point about our buying our home in December of 2017.

18 While we were aware at the time of a purchase --
19 I'm sorry. While we were aware at the time of purchase of
20 a proposal by Sunrise and WABC, it was our understanding that
21 we were entitled to rely on existing zoning. Our
22 understanding is that a variance is not permitted except
23 under extraordinary circumstances, and were entitled to not
24 assume that those regulations won't be bent. In a similar
25 way, we assumed then that our next-door neighbor, Lee,

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1 wouldn't build an underground parking garage or a third-story
2 to tower over us.

3 When we were contemplating whether to purchase our
4 home, we knew the neighborhood was organized against it. We
5 specifically wanted to live in the neighborhood and feel
6 very fortunate that we were able to find a home here. We
7 knew it was a residential neighborhood with low density and
8 relied on that when we made the decision to buy. We hope
9 that it will remain a residential rather than a commercial
10 neighborhood.

11 Thank you for giving my neighbors and me an
12 opportunity to speak in opposition to this development.

13 CHAIRPERSON HILL: Thank you.

14 MS. KRAUT: My name is Nina Kraut. I live at 3815
15 Yuma Street, N.W. I've lived there for almost 31 years. I
16 have a couple of procedural issues that I want to raise just
17 for the record.

18 One, I move to dismiss in relation to the
19 variances that Sunrise is applying for and I move to dismiss,
20 or ask this Board, to deny those variances out of hand
21 because, in fact, Sunrise is not the owner of that property.
22 Under the Rules, I think as Ms. Gunning testified to, you
23 have to be an owner in order to apply for a variance. They
24 don't own the property; therefore, the variances can't stand
25 under any circumstances. And I'm asking the Board to

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1 dismiss, or to deny those requests for variances.

2 Secondly, as to the ANC, first, I made a FOIA
3 request in October of 2017, asking the ANC to produce all
4 documents dealing with communications, emails, texts, phone
5 messages, whatever, all documents dealing with their
6 communications with Sunrise or Sunrise representatives. They
7 produced a little bit, about maybe half-an-inch, an inch
8 stack of material. They have yet to produce anything beyond
9 that, and I know there's other stuff there.

10 Why is this relevant? Because, A, we the
11 neighbors ought to be able to have an idea of what kind of
12 communications went to a body that is supposed to be a
13 neutral body, representing supposedly the best interests of
14 the neighborhood, but we have not had access to that
15 material. Secondly, this Board has not had access to that
16 material. I have no idea what's in those communications that
17 we have not received, but it may, and I'm quite sure, it may
18 be very relevant to your determination as to whether or not
19 this application out to be granted. So that's number one.

20 Secondly, the ANC, my understanding is, I can't
21 remember exactly what the regulation is, but under one of the
22 ANC regulations, either 401 or 104, something like that,
23 they're supposed to give you the file, their report, their
24 recommendation or whatever their opposition one way or the
25 other, to this Board within seven days of the hearing. They

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1 did not do that. My understanding is that it was at least
2 six or five days that they filed. Therefore, that should not
3 be even -- their written testimony should not even, report,
4 should not even be considered by this Board. That's the end
5 of the process part of it, the procedural part of it.

6 As a neighbor, somebody who's lived there, raised
7 a family there for 30, 31 years, my son and my dog played on
8 the National Park Service land that is completely open; it's
9 great for tennis, great for frisbee, great for all that
10 stuff. And the fact that the -- I'm going to go a little bit
11 over. I'm asking if I can just extend it a little bit. It
12 is a great open space. It is the only green open space where
13 we, as parents, don't have to get into a car and go to a park
14 or go to the Forest Hills playground. Our kids can walk
15 across one street and get to a play area where it's free,
16 open, and absolutely wonderful.

17 The fact that Sunrise wants to put in trees, all
18 they really want to do is build up what it looks like, make
19 their front yard look nice. But what it does is deprive us
20 of green space, and we need that green space, and I think
21 everybody understands that and how important that is.

22 Secondly, with parking, our neighborhood, it's a
23 Zone 3 listed. A lot of the areas are zoned Residential 3
24 with those little stickers, residential parking stickers.
25 People from all over the ward come and park there because

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1 they want to use the Metro. They park on our -- it's fine,
2 we're used to it. They park there, and so on.

3 Sunrise employees coming in, my understanding is
4 that the Sunrise, for example, on Connecticut, the employees
5 have told us that they're not permitted to park inside the
6 Sunrise facility --

7 CHAIRPERSON HILL: I want to -- excuse me, you're
8 allotted three minutes, and you're coming up on five, and so
9 --

10 MS. KRAUT: I am --

11 CHAIRPERSON HILL: Go ahead. I'm just letting you
12 know I'm going to stop you at five.

13 MS. KRAUT: Okay. Deal. I thank you. Anyway,
14 the area is already pretty well parked up. What Sunrise has
15 not informed you or us of, us being the neighbors, is how
16 many part-time employees are they going to have. I have had
17 -- my mother was at Chevy House for seven years. I know how
18 these places operate, at least 50 percent, at least ten years
19 ago, 50 percent of the working population at Chevy Chase
20 House were part-timers. I'm not just talking about private
21 aides.

22 CHAIRPERSON HILL: Okay.

23 MS. KRAUT: I'm talking about the part-time
24 employees --

25 CHAIRPERSON HILL: Okay.

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1 MS. KRAUT: -- in addition to their full-timers.
2 Okay? So there are things that perhaps this Board can get
3 the information, how many part-time employees --

4 CHAIRPERSON HILL: Okay.

5 MS. KRAUT: -- are going to be coming there. The
6 Board may be in a better position to get that kind of
7 information than we are. Clearly, I oppose this --

8 CHAIRPERSON HILL: Okay.

9 MS. KRAUT: -- a hundred percent.

10 CHAIRPERSON HILL: Thank you.

11 MS. KRAUT: Thank you very much.

12 MS. WISS: Good evening. My name is Cathy Wiss.
13 I live at 3810 Albemarle Street. It's about 500 feet away.
14 This application asks you to approve far too much on a small
15 lot without the setbacks, screening or open space used by
16 other assisted living facilities to make them compatible with
17 low-density neighborhoods.

18 As you saw in some slides, there are 11
19 institutional assisted living facilities within a two-mile
20 radius, a majority of those type of facilities in the city.
21 We also have smaller in-home facilities, like one that's
22 around the corner on Albemarle Street, and all but one of the
23 employees drive to work. And I gave you a picture showing
24 their cars. Six of the institutional large facilities are
25 located in low-density residential zones, four in apartment

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1 zones and one in a split zone.

2 Facilities in low-density zones are much larger
3 properties ranging from 1.3 acres to 16 acres. Applicant has
4 only eight-tenths of an acre. Other facilities in low-
5 density zones show design elements to make them compatible
6 with the zone district. Most have two or three stories and
7 are less than 40 feet high, or higher setbacks are used as
8 allowed by the regulations. None has requested a variance
9 for stories or height. All have lot occupancy lower than 40
10 percent, many much lower, such as 21, 25 percent. These
11 other facilities have substantial setbacks from streets and
12 surrounding properties to reduce the effects of noise, light,
13 and activity on neighbors.

14 Other use berms and dense plantings to screen
15 their buildings, parking lots, and loading docks. None of
16 these are being offered here. Several provide park-like open
17 space, as Nina just talked about, which is not even in their
18 property, but some of them use their own properties to
19 provide park-like open space for residents and neighbors to
20 enjoy.

21 Most have entrances on arterial roads, not local
22 streets like these. They have long driveways into the
23 interior of their properties so as not to burden neighbors
24 or impede traffic with drop-off or emergency vehicles. I
25 have provided you a picture of emergency vehicles at Sunrise

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1 on Connecticut, showing that they do not fit in the small way
2 by on that facility, nor will they be able to fit into the
3 small way by on Alton Place. They would end up parking on
4 Alton if there were ever an emergency, and they seem to be
5 frequent, and blocking traffic.

6 Elsewhere wide, vegetated buffers separate the
7 service driveways from homes to protect neighbors from noise,
8 odors and lights. Applicant's driveway, just eight feet from
9 adjacent homes, is screened only by a hedge, will block views
10 of only the lower story and fail to dampen noise from the
11 driveway. The hedge will be elevated 13 feet over the
12 driveway and impossible to maintain.

13 For these reasons, I ask you to deny this
14 application. Thank you.

15 CHAIRPERSON HILL: Thank you. Ma'am?

16 MS. SINGER: My name is Virginia Singer and I live
17 on Albemarle, which is about a block away. I agree with just
18 about everything everybody has said, and they've said it far
19 more eloquently than I can. And I, too, want you to deny the
20 variances to Sunrise.

21 I'm a retired kindergarten teacher and I did for
22 a year work in Sunrise in a Baptist church with their English
23 as a second language program, and I would still work there
24 except for some reason it ended, very abruptly, in fact. But
25 I'm very much in favor of the things the church does in the

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1 community, and I do think they're being taken advantage of.

2 They're being denied the right to have a nursery
3 school, which you've heard is really one of the things the
4 neighborhood could use. The ESL program was a wonderful
5 addition to the community as a whole. There have been other
6 things that they have done with the church that we would
7 really like to see them bring back again.

8 The other problem I have with any more huge amount
9 of people moving into that small area is that I live on
10 Albemarle, it is a much wider street than either Alton or
11 Yuma, but it has in the past six months, there have been
12 several occasions when it has been so crowded that emergency
13 vehicles could not get through, even with their sirens on.
14 It's that congested.

15 The intersection where Nebraska and Albemarle and
16 39th Street come almost together has a huge number of
17 accidents or near accidents which cannot be helped by more
18 traffic on that street. Wisconsin and Albemarle, there was
19 a hit-and-run there just a couple of months ago. There have
20 been innumerable accidents at that intersection. It's an
21 intersection that is slated for change, as is the Fort Drive-
22 41st Street intersection onto Albemarle. And now we're
23 talking about adding even more traffic.

24 Please don't let these people build this huge
25 looming monstrosity on this piece of property.

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1 CHAIRPERSON HILL: Okay, great. Thank you.

2 Does the Board have any questions for any of the
3 witnesses? Okay.

4 So just a couple of items. So for whatever it's
5 worth and since everybody has been here so long, everybody
6 up here on the Board, we're volunteers, primarily, and we all
7 live here. We've all lived in the city. You know, my age
8 real quick, I graduated in '86, but I've been around this
9 whole time. So I remember what D.C. was like. My sister,
10 with two kids, lived on Albemarle actually, so I know that
11 area as well.

12 What I'm trying to say is what we do here and have
13 done here, at least I've done here, and Mr. Miller has done
14 it for a lot longer than I have, for the past, you know,
15 three years, is we review the standards that are in front of
16 us as well as the different testimony, such as yourselves,
17 as well as information that we take turns hearing.

18 Exhibit 90 in the record is where the Office of
19 Planning's report is, and so that's where it really outlines
20 very specifically the criteria in which we're supposed to
21 look at whatever is being presented, as well as their opinion
22 as to how those standards are or aren't being met. So I'm
23 just kind of putting - - that's not saying that we agree
24 with the Office of Planning. I'm saying that's where you can
25 see, where the report is.

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1 And the other, again, is the ANC that we get
2 information from, they're in Exhibit 119, and then they have
3 a Memorandum of Understanding, I guess, and is also Exhibit
4 119A. I'm just kind of hitting the highlights in terms of
5 the record. And what's probably going to happen here is that
6 we're going to get findings of facts and conclusions of law,
7 which is going to outline the discussion from either party,
8 and then that's all the information that we're going to have
9 on the record. And then we're going to make a decision. So
10 I'm just kind of throwing all of that out there so you know
11 where to look. And then the DDOT report is at Exhibit 53.

12 And I guess that's it. And, Mr. Crenshaw, I
13 thought we were get your more famous counterpart there coming
14 up, though, but it didn't seem like it, sir. I haven't
15 forgotten about support. I'm just getting rid of opposition
16 real quick here.

17 So thank you very much. I believe there's one
18 person here wishing to speak in support. And please, sir,
19 if you can come on up, you'll get your three minutes like
20 everybody else. If you could please state your name for the
21 record and where you live. There's also, obviously, three
22 minutes on either side. And it does happen, it's rare, but
23 it does actually take somebody, what's the word --
24 congratulations, all day to give us three minutes, with 30
25 people against you.

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1 MR. JACOBS: Well, thank you for your patience and
2 sticktoitiveness as well. Unfortunately, they do all know
3 exactly where I live, so I may face repercussions for this
4 later. But my name is Jeff Jacobs. I live at 4411 39th
5 Street, which is one of four houses on the east side of 39th,
6 facing the site. So you've heard from folks on the west side
7 of 39th, we're on the east side. There are four homes. And
8 I'll get into this a little bit, but I'm somewhere in the
9 middle there and I don't have a map anymore to show you, but
10 I also have been asked to speak on behalf of my immediate
11 neighbors to the north and side, 4409 and 4413.

12 CHAIRPERSON HILL: Do you have anything on the
13 record that says that they've given you --

14 MR. JACOBS: They have submitted -- I don't have
15 anything on the record. I'm sorry, I'm not familiar enough
16 with the procedure. They have submitted letters of support,
17 I believe.

18 CHAIRPERSON HILL: But they didn't have anything
19 saying that you could speak on their behalf?

20 MR. JACOBS: No.

21 CHAIRPERSON HILL: Then that's okay; fair enough.

22 MR. JACOBS: I'm just giving myself a little bit
23 of cover here.

24 CHAIRPERSON HILL: No, that's fine. You got two
25 people also that they can come find.

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1 MR. JACOBS: In fact I'm actually a trained urban
2 planner, but I quickly realized that I lacked the patience
3 that you guys have for these proceedings and switched to the
4 much less contentious field of politics. With that, getting
5 into the substance. Just to clarify, we are in the 200 foot
6 demarcation for what it's worth, of this project.

7 And just a point of clarification, the fourth
8 house, who has not submitted a letter of support in the
9 record, on our side of the street the homeowner just recently
10 relocated and so the reason I mention is they sold their
11 property before the open house for almost ten percent above
12 ask. This was just a few months ago. And there's been some
13 testimony on the effect on property values that I think may
14 have been a little bit under-informed as far as that probably
15 goes, at least. So I just wanted to let you know that that
16 was happening as well.

17 Anyway, all of us are young families on our side
18 of the street. I, myself, have two little girls, ages 3 and
19 4, and we love our home, we love our neighborhood, we love
20 our neighbors, if they'll still have us after this. And,
21 frankly, I intend to leave this meeting toes up, whether this
22 project gets built or not, meaning on the -- flat on my back,
23 dead. I'll spell that out.

24 (Laughter)

25 CHAIRPERSON HILL: That might happen tonight, Mr.

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1 Jacobs.

2 MR. JACOBS: So the reason I felt compelled to
3 testify to the substance here is that, obviously, your main
4 job is to think about what are the injuries that the
5 neighborhood may suffer as a result of this project, and
6 specifically the variances and special exceptions being
7 granted. And I think that it's important that you have a
8 good feel, as, Commissioner Hill, you mentioned that you
9 already do, what the neighborhood is like today and,
10 therefore, being able to adjudicate what the injuries may
11 look like.

12 And I think one of the reasons I felt the need to
13 talk about that is the neighborhood has sort of being
14 presented as, you know, this kind of near silent Rockwellian
15 oasis, and I don't think that's exactly what it looks like
16 today, and I think that's important to understanding what
17 injuries may or may not be suffered. My house sits a few
18 hundred feet from Nebraska Avenue, Wisconsin Avenue, and the
19 rest of Tenley Circle. What that looks like today, now, pre-
20 project, is a constant stream of emergency vehicles,
21 construction vehicles, 18-wheelers, busses, honking horns,
22 et cetera, 24 hours a day.

23 Yuma Street is an exit off of Tenley Circle with
24 the attendant traffic flow from that to Reno and Connecticut,
25 there's a three story apartment building at the corner.

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1 Thirty-ninth Street is effectively a north-side cut-through
2 from Wisconsin Avenue to Nebraska that DDOT has done yeoman's
3 work in trying to reduce but still sees plenty of trash
4 trucks, large vehicles, and so on, every single day. I see
5 this as somebody who works from home fairly regularly, who
6 plays with his two little girls in the front yard constantly,
7 and is usually struggling to get them to sleep at night over
8 that din, which unfortunately my wife is still struggling
9 with tonight as we speak.

10 The historic home on 39th Street that we talked
11 about is a frat house, literally.

12 CHAIRPERSON HILL: Mr. Jacobs, since you're here
13 representing just one sole person that's supporting it, I'm
14 going to let you go until the five-minute mark some other
15 people did have. But I'm going to cut you off at five
16 minutes, of your last 30 seconds.

17 MR. JACOBS: The Metro is -- I think given the
18 existing traffic patterns, the heavy traffic that already
19 does exist in the neighborhood, much as we may wish it
20 didn't, I actually don't think that the impacts from this
21 property are going to be that great. I don't think, more
22 importantly, that the difference, the delta between what is
23 allowed by right and what is allowed under the variances and
24 special exemptions, which is what we're here about
25 particularly, is that big of a deal. And, in fact, we see

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1 a bigger fluctuation of traffic on Prime Day in our
2 neighborhood.

3 And I'll leave it there. I appreciate it. I had
4 more, but I'll put it in a letter.

5 CHAIRPERSON HILL: Okay. Go ahead and submit it
6 in a letter. That's great. Does anybody have any questions
7 for the witness?

8 (No audible response)

9 CHAIRPERSON HILL: Okay. And, yes, everybody is
10 entitled to their opinion, so leave fast.

11 (Laughter)

12 CHAIRPERSON HILL: Okay. Can I have the Applicant
13 and the parties in opposition, thank you, back up to the
14 table?

15 ***

16 CHAIRMAN HILL: Mr. Moy, what time does the garage
17 close?

18 MR. MOY: I'm not sure what time it's close, but
19 I know that if your car is in the garage, as you're going up
20 the ramp, the doors will open.

21 CHAIRMAN HILL: All right, okay. So let's see
22 now.

23 We are going to ask some questions, okay, from the
24 Board. So we're going to ask questions from the Board. And
25 really what I wanted to -- oh, no, wait, there was -- now

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1 again if the Applicant wants to ask any questions of any of
2 the witnesses, I suppose I should have done that. Or I could
3 have asked.

4 I don't think you're going to have any questions
5 from anybody. Okay, is that correct?

6 PARTICIPANT: Correct.

7 MS. FERSTER ANDREA: I have no questions for the
8 public testimony.

9 CHAIRMAN HILL: Yes, that's what I thought. Okay
10 great. So then what I thought we would do again, right, is
11 we're go ahead and ask our questions. And then maybe we can
12 just get those answered. And then we would go ahead and have
13 rebuttal. And then the cross could be from both the rebuttal
14 and the questions that we ask. Does that sound reasonable
15 to everyone, down there?

16 PARTICIPANT: Yes.

17 CHAIRMAN HILL: Okay, all right. So does anybody
18 have any questions for anybody?

19 MEMBER WHITE: Okay, one question for the
20 Applicant. Can you address the argument that Sunrise can't
21 request the variance since they are not the owner? Maybe
22 that is something that the church should respond to, but it
23 was one of the arguments of the opposition so, who is also
24 a party, so.

25 MS. BROWN: I'm glad you asked because we wanted

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1 to clear that up. Case law, there's the one case, the Palmer
2 case, where it was a tenant that had tried to get a variance
3 and the court denied it because it wasn't to the owner. And
4 it was the Palmer case.

5 Here we have a completely different situation
6 where we have the church that actually owns the property.
7 They have Fee-title right now. And they will continue to own
8 it after this project goes forward, they will own a portion
9 of it. And Sunrise has an equitable interest in the property
10 as a contract purchaser. And they will own the property if
11 this were to get approved, and they move forward. And each
12 would own -- a condominium regime would be created on the
13 property, and each would own a piece of that condominium.

14 MEMBER MILLER: Thank you, Mr. Chairman. I'm just
15 following, so just following up on that. So there have been
16 cases before where contract purchasers have been the
17 Applicant?

18 MS. BROWN: Absolutely, and the regulation --

19 MEMBER MILLER: Yes, I think I recall --

20 MS. BROWN: Yes, absolutely and I think you have
21 that in your Zoning Commission cases, you have that in the
22 BZA. And you also have many examples of fast food facilities
23 that are the tenants in a building.

24 MEMBER MILLER: The issue of shadow studies was
25 raised. Is there anything in the record from the Applicant

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1 on shadow studies?

2 MS. BROWN: No.

3 MEMBER MILLER: Would you be able to, depending
4 upon where we go in terms of asking for submissions, would
5 you be able to provide shadow studies that show the effect
6 on the adjacent, or the nearby single-family homes?

7 MS. BROWN: Yes, we'll do that keeping in mind of
8 course that the 40 feet is the matter-of-right height. So
9 the shadow would not be any different from a matter-of-right
10 height building.

11 MEMBER MILLER: That's an important point.

12 MS. BROWN: Okay. But we can provide them.

13 MEMBER MILLER: And like in the other case, I
14 asked for some illustrative perspective renderings. You do
15 have some very nice -- where's the architect? There he is
16 -- some very nice elevations and pictures of the proposed
17 development. And I compliment you the facades and the
18 design.

19 But I, well I think I would like to see some
20 perspective renderings, perspectives from the adjacent homes
21 on 39th Street, Alton Place and Yuma Street. That would just
22 give me a better, it would give everybody a better feel of
23 the relationship between the surrounding single-family
24 neighborhood and this proposed development.

25 MR. HEATH: Commissioner Miller, can I just --

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1 MEMBER MILLER: Sorry.

2 MR. HEATH: I just want to be clear what you're
3 asking for so I can make sure to produce it. Would it be
4 acceptable, a perspective as if an individual was say
5 standing on the corner of 39th and Alton, and 39th and Yuma
6 looking back towards the building? And what that --

7 MEMBER MILLER: Right.

8 MR. HEATH: Is that?

9 MEMBER MILLER: Right, yes. And also showing the
10 single the single --

11 MR. HEATH: Yes, put in them on the foreground --

12 MEMBER MILLER: Yes, that's exactly what I'm
13 talking about.

14 MR. HEATH: We'll put the homes on the foreground
15 and the building in the background.

16 MEMBER MILLER: Yes, that's exactly what I was
17 talking about. We often get that in, both B --, well we
18 often get it in PAD cases, but sometimes in BZA cases as
19 well.

20 And, Mr. Koczela, oh you're still here. I
21 appreciated your sound effects of the trucks, that was very
22 vivid. And I noticed Ms. Brown, that in the MOA between the
23 ANC 3E which is in support of this project, they do have a
24 -- that in your MOA with them, you have a paragraph or two
25 on sound barriers.

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1 MS. BROWN: Mr. Kroskin can probably speak best
2 to that.

3 MEMBER MILLER: Okay, well, specifically, and talk
4 about sound barriers from the operations of the proposed
5 facility, whether coming from the units or from the facility.
6 So if you can describe what the buffer is that would buffer
7 the beeping and revving sounds of the trucks that are going
8 to be 12 feet from the backs of those homes. And I know
9 there's tree -- I think I saw the landscaping.

10 MR. SCHIESEL: Well, several things buffer, but
11 one of them is that you're 13 feet down. So you have a
12 concrete brick wall that's, you know, taking the sound in.
13 It's not, it's sending it up, not sending it out. So, but
14 we can talk about that. There's also a board-on-board fence,
15 a wood fence will provide some buffering. And landscaping
16 will provide some buffering.

17 The amount of buffering, I don't have a number for
18 you, but it will provide buffering.

19 MEMBER MILLER: Okay, thank you.

20 MR. HEATH: Excuse, I believe the trucks also back
21 into a space that has a wall between the truck that they're
22 backing into and the ramp. So there's that first wall, then
23 the ramp, then the retaining wall, then the fence.

24 MEMBER MILLER: And are they required under some
25 DOT or some other provision to have that beeping sound, or

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1 for the safety of the --

2 MR. HEATH: Yes, I believe that's an OSHA
3 standard.

4 (Simultaneous speaking)

5 MEMBER MILLER: -- people who might be working
6 there?

7 MR. HEATH: Yes, I don't know. I believe that's
8 an OSHA standard or something like that.

9 MEMBER MILLER: Okay. All right, thank you for
10 that, those responses. I didn't ask you a question, but you
11 can respond to that.

12 MS. GUNNING: I just wanted to respond to --

13 CHAIRMAN HILL: Wait, you have to get on the
14 microphone.

15 MS. GUNNING: Thank you, I just wanted to respond
16 to the owner question. It's not whether some contract
17 purchasers may have received variances in certain cases. The
18 question is, was the issue raised and addressed and then
19 granted to the contract purchasers.

20 PARTICIPANT: It hasn't gone --

21 CHAIRMAN HILL: Okay, hold on, hold on --

22 MEMBER JOHN: The application is signed by the
23 owner.

24 MS. GUNNING: Yes.

25 MEMBER JOHN: And there's an authorization to the

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1 contract purchaser to represent the owner.

2 MS. GUNNING: That's an administrative task versus
3 --

4 MEMBER JOHN: No for us it is not. It authorizes
5 the -- I don't want to argue -- but there has to be
6 authorization to the contract purchaser to speak on behalf
7 of the owner. So, that's an essential piece to close the
8 loop. So the relief goes to the owner.

9 Well, they've had cases where the contract
10 purchaser represents the owner without the owner being
11 present. Here there's a stronger nexus because the owner is
12 actually here and has signed the application.

13 MS. GUNNING: Great, but the practical difficulty
14 must be to the owner. And WABC is represented as --

15 CHAIRMAN HILL: Okay.

16 MS. GUNNING: -- the representation matter.

17 CHAIRMAN HILL: Okay so, right --

18 MEMBER JOHN: That's a legal issue.

19 CHAIRMAN HILL: So we're, okay.

20 MEMBER JOHN: We can sort that out through OAG.

21 CHAIRMAN HILL: So, all right. Let's just go to
22 rebuttal. Okay, so we're going to go to rebuttal. And then
23 after rebuttal we'll have an opportunity to -- so to clarify
24 what's going to happen is -- gosh, I wasn't around for the
25 first thing of rebuttal and how long they took, Ms. Brown.

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1 How long you need?

2 MS. BROWN: I'm terrible, I always under estimate,
3 but I think five to ten minutes, tops.

4 CHAIRMAN HILL: Okay, well good luck with that.
5 So, let's go ahead and say, whatever you got. We'll put ten
6 minutes up on the clock. Okay, for rebuttal, okay. And then
7 we'll go ahead and do cross again from the two parties in
8 opposition. And then we'll have a conclusion from all the
9 parties. And then we'll try to figure out what it is we're
10 going to get from the Board.

11 And just so people here in the audience know again
12 what's probably going to happen. And you can watch it all
13 afterwards if you want to leave or not, because it's
14 recorded. But we're going to ask some things from the
15 Applicant, and then the parties in opposition would have an
16 opportunity to respond to those items that we ask for.

17 And then we're probably going to ask for a
18 conclusions of law and findings of fact from both parties.
19 And there will be time enough from the transcript to, from
20 getting the transcript -- I'm sorry I'm smiling, people are
21 falling asleep on me -- the transcript. There will be enough
22 time to take a look at the transcript in order to do
23 conclusions of law and findings of facts. And then you can
24 go and look in the record, and read everything before we make
25 a decision.

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1 So, please go ahead with your ten minutes of
2 rebuttal.

3 MS. BROWN: Thank you. I'd like start with Ms.
4 Pat Dueholm. Ms. Dueholm, you heard the opponents testify
5 about an alternative plan to sell two single-family lots that
6 would generate \$1.7 million for the church. Could you
7 describe whether or not that would be sufficient for the
8 church?

9 MS. DUEHOLM: This sounds like a lot of money,
10 however, we would have to market the properties, obtain a
11 approvals for three new curb cuts, repave the parking lot,
12 redesign the playground, and there would be -- it's
13 interesting there would be much more parking in the
14 neighborhood. And they're already saying that they don't
15 want any more parking on their streets.

16 Plus we might need to pay unrelated business
17 taxes. And so just for that we estimate 250 to 300,000.
18 Then we have to pay for extensive building repairs. New
19 roof, new outside steps, window replacement, landscape,
20 boiler renovation, sprinkler system, air condition units,
21 rewiring, fire alarm, asbestos abatement, and ADA accessible
22 bathrooms, a lift, ramps, and then in the end we still have
23 an old building. And we have maintenance issues and we have
24 no land that we can leverage in the future.

25 So this option doesn't give us a right sized low

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1 maintenance church. And it doesn't give us an endowment
2 fund. And it takes away our visibility from Tenley Circle.
3 And we'll still need to be a landlord. So, this is not a
4 good option for us.

5 MS. BROWN: And when you testified on direct, you
6 said that this was the -- the partnership with Sunrise was
7 the only viable alternative. Could you explain that again?

8 MS. DUEHOLM: Yes, so developers had come to us
9 and they said, every single one of them said, to relocate.
10 And Sunrise was the only developer who said, let us work with
11 you. And immediately we thought, yes. They're a
12 well-established company with a good track record. I
13 personally know people in two different Sunrise facilities.
14 We are mission compatible. Our focuses are on service. And
15 so this was a positive option for us.

16 MS. BROWN: And you've heard testimony today from
17 some of the witnesses, and those in the public who stated
18 that you got a raw deal on this with Sunrise. That you were
19 taken advantage of. Do you agree with that characterization?

20 MS. DUEHOLM: We absolutely were not taken
21 advantage of. As a matter of fact we worked very closely
22 with Mr. Kroskin, to ask him to increase the size of the
23 church. And several times he actually increased the size
24 because we said this original drawing is too small.

25 We had outside counsel. We had an attorney. We

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1 had Terry Lynch, from Downtown Cluster of Congregations,
2 advising us. It's was a long negotiation process. No, we
3 were not taken advantage of. We are excited to do this.

4 MS. BROWN: And it was also raised that the
5 building is not, couldn't be in that bad of a condition
6 because CommuniKids was given a Certificate of Occupancy to
7 operate a child development center. Do you have an
8 explanation for that?

9 MS. DUEHOLM: Well CommuniKids is on the second
10 floor. They have two classrooms, dedicated classrooms and
11 office space. Those two classrooms have new flooring. They
12 don't have access to most of the building. They got their
13 Certificate of Occupancy or need. Their inspection was in
14 July, when we didn't have any boiler problems. So I don't
15 know how the inspection was done. I know that it involved the
16 health and welfare of the children, but I don't have any
17 knowledge of the inspection itself.

18 MS. BROWN: Thank you. Mr. Kroskin, I have some
19 questions for you about the testimony we heard on the
20 building being too close to the houses on Alton, Yuma, and
21 39th Street. Do you have a response to that?

22 MR. KROSKIN: Yes, I think I was qualified as an
23 expert, but I have a Master's in Urban Environmental Planning
24 as well as the other jobs that I do. One of the things that
25 attracted us to this site, is the fact that this site has so

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1 much open space in and around it. While the neighbors do
2 claim that this is a big hulking building adjacent to it, I
3 believe that the code was pretty clear in recognizing that
4 40 feet could comfortably sit in this location.

5 For example, between Alton and Yuma houses, from
6 the face of houses, to the face of the building, you have
7 between 84 and 93 feet. That's almost two times the height
8 of the building, and if you're looking at urban planning
9 parlance, you know a two to one ratio is a really comfortable
10 ratio for urban planning.

11 For the 39th Street houses, you have a 46 to 86
12 feet from the back of those homes to the building face.
13 Again, in some cases one time, in other cases two time. To
14 Michael's testimony on the corner, his house is currently
15 looking at the back of the building today.

16 That building will be moved, I think 18 feet away
17 from where it is now. And with only -- the current building
18 is 30 feet high. We're going up to 40 feet, and yes the
19 sloping parapet thereafter, but it's not significant. It
20 actually increases the light in there.

21 MS. BROWN: Could you clarify again about the
22 trash operations and whether there will be open roll-off.
23 And you saw some photos of some other Sunrise facilities.

24 MR. KROSKIN: Yes, the photos that were presented
25 were representative of Sunrise of Connecticut Avenue that has

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1 been going through a full gut renovation. Those photos were
2 from roll-off containers that are temporary. In fact it's
3 a good indication of how we maintain our buildings. The
4 building I think was built in 2009, and it has been a top to
5 bottom complete renovation, interior and exterior. But those
6 photos don't represent that.

7 For our building itself we expect that all those
8 containers will be in the trash room. They will be
9 hand-rolled right out to the trucks, and then moved on from
10 there.

11 MS. BROWN: We've heard testimony today from the
12 opponents about the volume of people that can -- the overall
13 capacity of the building. With the number of people that can
14 be in the church, and the number of people in the Sunrise
15 facility in the neighborhood of some -- it was in the written
16 testimony as well -- up to 450 people at one time.

17 Do you agree with that?

18 MR. KROSKIN: No. We're offering a building that
19 has a total of 86 total units with a potential sharing of
20 units, which a lot of our residents do. It's about a 25
21 percent sharing ratio. We expect max occupancy at this
22 building to be about 106 total residents at 100 percent
23 occupancy.

24 I would love it if our buildings were 100 percent,
25 but we just don't because of turnover. They're typically

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1 running between 93 and 95 percent, so call it 100 residents.
2 And then we have our shifts, the max shift at any given time
3 is 30 employees in the morning, 25 in the afternoon, and
4 tapering off in the evening. So that's our side of it,
5 that's about 130 at kind of max if we're really maxing our
6 side.

7 And then for the church, you know, yes they have
8 events up to 250 people, but I think they've testified that
9 they're looking for a right sized small church and to remain
10 small.

11 MS. BROWN: And actually I did want to ask, Ms.
12 Dueholm another question. You're getting to a 250 seat
13 church sanctuary. Do you expect 250 people on Sunday, or is
14 that for more like weddings or funerals?

15 MS. DUEHOLM: Yes, weddings, funerals, maybe a
16 special concert or something, but yes that's all.

17 MS. BROWN: And how many would you expect on a
18 typical Sunday?

19 MS. DUEHOLM: On a typical Sunday, I don't know,
20 maybe 50 people.

21 MS. BROWN: And you spoke about some modest
22 increase, you want to keep it a small church. What is your
23 target for number of congregants?

24 MS. DUEHOLM: Well, the thing is you can have lots
25 of members but every member doesn't come every Sunday. So,

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1 you know, if we had 100 to 125 members that would be
2 wonderful.

3 MS. BROWN: Back to Mr. Kroskin, you heard the
4 opponents represent that the church takes up 13 percent of
5 the building. Is that accurate?

6 MR. KROSKIN: No, the number is 16 percent.

7 MS. BROWN: The opponents also stated that Sunrise
8 does not provide healthcare and therefore is somehow not in
9 compliance with the CCRC definition. Do you agree with that?

10 MR. HEATH: We are not considered under the DC
11 code, a healthcare facility as defined under the code.

12 MS. BROWN: But you do provide some healthcare to
13 your, to the residents of course?

14 MR. HEATH: I don't qualify it as healthcare as
15 much as I qualify it as activities of daily living and
16 personal care. But again, I don't, I think it's
17 hair-splitting. I think the healthcare definition
18 specifically doesn't include our use.

19 MS. BROWN: Okay. You heard some testimony as
20 well about the diminishment of property values in the
21 neighborhood. And then how do you respond to that?

22 MR. HEATH: In fact that's just false. You have
23 three properties that sold on 39th Street. One property sold
24 for seven point -- I'm sorry, sold for \$100,000 more than its
25 asking price, from listing to close in two and a half months.

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1 Another one sold for \$5,000 more than its asking price, from
2 listing to close in two and a half months.

3 The third property sold below its listing price,
4 no I'm sorry. The third property sold for -- yes, one
5 probably sold for below its listing price from 1090, asking
6 to 1050, also in the two and a half month timeframe.

7 But what needs to be said, is that two of the
8 properties were sold at a per square basis at market. And
9 one of the properties was offered below market, and said for
10 a quick close. And that was after the two homes had already
11 put on the market and sold. Or at least one of them had been
12 put on the market and sold quickly.

13 CHAIRMAN HILL: That's okay. Ms. Brown, I mean
14 like I don't know as far as the market stuff and all that.
15 I mean, you know, each house is individual. And, you know,
16 and if -- I mean, so okay, all right.

17 MS. BROWN: Okay. Quickly, we just have traffic
18 to wrap up, and I'm just --

19 (Simultaneous speaking)

20 CHAIRMAN HILL: Sure, sure let's wrap up.

21 MS. BROWN: -- Mr. Schiesel go ahead, and that's
22 it.

23 MR. SCHIESEL: Okay, good evening once again.
24 This is Rob Schiesel with Gorove/Slade Associates. I'm just
25 going to go through some of the points that came up in the

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1 testimony of Joe Mehra and just kind of give quick responses.

2 Point four on Joe Mehra's exhibit, discusses the
3 trip methodology, trip generation methodology we used. I'm
4 just going to explain why I disagree with some of the
5 statements that were made. He said, we've counted comparable
6 Sunrise facilities to estimate the amount of trips going in
7 and out of the Sunrise. And that's why we did not do that
8 for the existing church.

9 The reason we did is we did not want to undercount
10 the traffic activity going to and from the church. There's
11 sometimes a difficulty in urban locations of getting an
12 accurate traffic count due to the presents of on street
13 parking and other parking options. And it was very difficult
14 at a location like this to count the driveway in and outs,
15 and figure out how much traffic the actual church was
16 generating, just because of the location and the environment.

17 Also it was our understanding that there could be
18 more potential activity in the church. The church might not
19 have the congregation size that it would expect to have in
20 the future. So in that case, we prefer to go to national
21 standards of comparable data. Because that way we would
22 ensure that we were not undercounting how much the church was
23 going to generate in traffic.

24 A second point Joe Mehra made was about the mode
25 splits we used. We were very focused on the commuter peak

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1 periods because that's a standard for the methodology. And
2 that is what was presented in the report when we talk about
3 how we assume that church members were going to be getting
4 to -- the trips generated by the church during weekday peak
5 hours we think are by employees of the church. So we assumed
6 that that would be 60 percent of those driving.

7 CHAIRMAN HILL: Okay, I'm going to cut you off
8 because I don't think we've had a whole lot of questions
9 about the traffic stuff. And if you want to, you can go
10 ahead, but you can also talk about in your findings of fact
11 and conclusion of law when you get a chance to summarize all
12 this once again.

13 So, any other questions? Or not questions, any
14 other --

15 MS. BROWN: No other rebuttal.

16 CHAIRMAN HILL: Thanks rebuttal, all right.

17 So Ms. Ferster, so and by the way congratulations
18 to all of you for being here, also as long. Particularly Ms.
19 Fester for actually being -- trying to form sentences and
20 such this late in the day in two cases and 12 hours --

21 MS. FERSTER: It's just that I am speaking very
22 briefly.

23 CHAIRMAN HILL: Twelve hours later, I don't think,
24 I think this is where, this is where they get the best shot
25 at you, I think, 12 hours in.

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1 But let's see, if again I just want to say one
2 thing, I'm just going to point out one thing, which is it's
3 just cross on, for everybody, it's just cross on what the
4 rebuttal was. So we're not testifying again. So go ahead
5 Ms. Ferster.

6 MS. FERSTER: Thank you. And I appreciate your
7 patience, you've been as long as I have. And I have only one
8 question. And that is a question for Ms. Dueholm. And that
9 is, relates to your testimony about why the church rejected
10 the Tenley neighbors' subdivision option? And one of the
11 points you made was that you felt that that would result in
12 a requirement that you pay what you call UBIT, unrelated
13 business income tax on the deal in some fashion.

14 And we can certainly, this is a legal issue and
15 we can certainly address that in our proposed findings. But,
16 and I am a lawyer who does tax exempt for organizations, so
17 particularly address that. But I just wanted to question
18 whether or not, if there's unrelated business income tax in
19 your view, on the possibility of subdividing the site,
20 wouldn't there also be unrelated business income tax on your
21 deal with Sunrise, your development deal with Sunrise?

22 MS. DUEHOLM: No -- I don't know. I'm not a tax
23 attorney. And I don't know if we would have to pay this tax
24 either, but it's kind of irrelevant because there's all this
25 other thing, all these other things we'd have to pay for.

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1 So that's just one more thing piled up.

2 MS. FERSTER: That's the only question I had.

3 CHAIRMAN HILL: Okay, thank you.

4 MS. CHESSER: Hello --.

5 CHAIRMAN HILL: No, sure go ahead.

6 MS. CHESSER: Okay. On the ownership issue. I
7 think what we were trying to say was it hadn't been
8 adjudicated.

9 CHAIRMAN HILL: Wait a second, who are you asking
10 a question to?

11 MS. CHESSER: Carolyn, because she was the one
12 talked about ownership before.

13 MS. BROWN: I'm not a witness so you can't ask me
14 a question.

15 MS. CHESSER: Okay.

16 CHAIRMAN HILL: It's true. So --

17 MS. CHESSER: Okay, I'll ask Mr. Kroskin.

18 CHAIRMAN HILL: Okay, go ahead with your question.
19 Go ahead, ask your question please.

20 MS. CHESSER: Yes, the ownership issue. I know
21 that you've said you're a contract purchaser now -- which we
22 didn't, you didn't use that term until quite recently -- and
23 that the church owns the land. And that eventually you'll
24 be in a condominium regime, and which is condos. But what
25 happens with the land? And how would you divide the land up

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1 when like for example, on the church side, the top two
2 stories are Sunrise completely.

3 And the church is only like a little piece of the
4 first floor and a little piece of the second floor. And so
5 who owns the land under the church?

6 MR. KROSKIN: So in a condominium regime, you have
7 unique ownership of your four walls.

8 MS. CHESSER: Okay.

9 MR. KROSKIN: And then you have shared ownership
10 of common elements. So for example, the roof is a shared
11 element, common element. The parking is a shared element,
12 common element. And the ground --

13 MS. CHESSER: The real estate, yes.

14 MR. KROSKIN: -- is a shared element, common
15 element.

16 MS. CHESSER: So they're owned in common.

17 MR. KROSKIN: No it's owned in a condominium.
18 These are common elements that are shared in the condominium
19 regime. It's just like if you live in a condominium
20 building. Who owns that land underneath the building? If
21 there --

22 (Simultaneous speaking)

23 CHAIRMAN HILL: Okay, Ms. Chesser, I understand
24 the answer, and so I do think he answered the question.

25 MS. CHESSER: Okay.

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1 CHAIRMAN HILL: And I just want to make one more
2 point. As far as the whole ownership thing again, we are
3 going to get even more information from the Office of the
4 Attorney General too.

5 MS. CHESSER: Okay.

6 CHAIRMAN HILL: And that is something that has
7 been kind of gone over several times. But I'm just saying
8 we also are very much interested in that answer, that we've
9 been asking for clarification of from the Office of Planning
10 and the Office of the Attorney General.

11 MS. CHESSER: Okay, I have another quick question.
12 The church at 13 percent, the Zoning Administrator told us
13 you could only count above ground. We're getting 13 percent
14 with everything above ground. Is your 16 percent because
15 you're counting things in the basement, in the garage?

16 MR. KROSKIN: I'm not sure how you count, but I'm
17 counting useable space.

18 MS. CHESSER: Okay, so you're counting part of
19 what's in the first floor basement, because the church sits
20 in there?

21 CHAIRMAN HILL: I have no idea, he just said 16
22 percent. That's all I have.

23 MS. CHESSER: I just didn't want it to be like you
24 thought we just pulled 13 percent out of the air. The Zoning
25 Administrator told us how to measure it.

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1 CHAIRMAN HILL: Got it, okay.

2 MS. CHESSER: FTE's visitors private aids, since
3 you've owned 325 facilities, you must have estimates or
4 numbers about how many people have private aids, how many
5 people, more or less, how many visitors come and go? You
6 have I know 75, 65 to 75 FTE's. But then how many people
7 does that tend to represent?

8 Because for us, if you have one job spread over
9 every two people, to us that's two people coming and going,
10 not one. Can you break down all those numbers and provide
11 them for the record, or excuse me, to us?

12 MR. KROSKIN: That's, you need to ask your
13 question.

14 CHAIRMAN HILL: I think I understand your
15 question, what's the answer?

16 MR. KROSKIN: Well, the answer is going to be, I'd
17 prefer not to give a specific answer right now. I'd rather
18 just get the details from one of my operators.

19 CHAIRMAN HILL: Okay.

20 MR. KROSKIN: Of exactly how we break up those
21 numbers. And the various people, and how they come and go.

22 CHAIRMAN HILL: Okay.

23 MR. KROSKIN: For me to answer that question, I
24 might give a wrong answer, and I'd rather just put it in the
25 record.

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1 CHAIRMAN HILL: Okay, I'll let you put it on the
2 record.

3 MR. KROSKIN: Okay.

4 CHAIRMAN HILL: Do you have questions?

5 MS. GUNNING: I just had one point of
6 clarification as to some of the photos of the roll-offs were
7 taken one year apart.

8 PARTICIPANT: Right.

9 MS. GUNNING: Last September or October and then
10 most recently again in this October.

11 PARTICIPANT: And at different facilities, but we
12 digress.

13 CHAIRMAN HILL: Okay, okay, all right.

14 MS. GUNNING: Point of clarification.

15 CHAIRMAN HILL: Okay, thank you all very much.
16 Okay so now -- were you going to say something, Ms. Brown?
17 Okay, great. I'm sorry, I just realized how much fun this
18 job actually is. It's like, you know, it's like my wife, you
19 could actually just feel like -- no, we're not going to talk
20 about --

21 So, if we're going to do -- normally just the
22 Applicant gets a conclusion, but I'd like to hear a
23 conclusion from each of you because it's the end. It just
24 ties it all up for a little bit. But we're not going to do
25 a long conclusion. So, if everybody can just give us 10

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1 minutes each, okay. And let's -- Carolyn.

2 MS. BROWN: What I was going to suggest is given
3 the lateness of the hour, we can submit a closing statement
4 in writing.

5 CHAIRMAN HILL: Yes, I appreciate that. And I
6 appreciate that but -- and you're welcome to do it. And you
7 don't have to then talk at all if you don't want to. I was
8 just so, it closes it up for me. If you could do, if you can
9 just do five minutes each then, okay, as a conclusion, okay.

10 And then you can submit to the record a conclusion
11 as well. And then we'll figure out what we're going to all
12 get. And then everybody will have an opportunity to respond.
13 But I just want to tie this up just a little bit for us.

14 So, Ms. Chesser, if you could go on and we'll put
15 five minutes on the clock, and just conclude. Yes, to
16 conclude.

17 MS. CHESSER: To conclude as we said earlier, in
18 2016 there was a CCRC exception, special exception allowed
19 by zone, by changing the zoning regulations. But that
20 doesn't make it a CCRC matter-of-right. It's supposed to be
21 that you're looking at six conditions. If they meet those
22 six different conditions, and a particular CCRC gets the
23 exception, if they meet those conditions.

24 This particular CCRC to me has a very upward climb
25 to do that because they have to meet all those conditions.

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1 Plus they're asking for three variances, plus another special
2 exception. Somewhere in here, there's just nothing left of
3 zoning.

4 I mean I guess we still have height, because --
5 they don't need something for the steeple -- but we've got
6 lot occupancy, retaining wall, side yard, stories. And all
7 of this surrounded by single-family detached homes of two
8 stories, 20 trucks a week, 30 foot long trucks, and
9 no-thru-truck zone.

10 I'll will tell you something, I'm going to do one
11 little personal thing here. My husband had 16 operations.
12 He retired and four weeks later -- we retrofitted our house
13 eight ways to Sunday. He retired, four weeks later Mr.
14 Kroskin came to our front door, and rang the bell, and told
15 us he wanted to put this across the street from us. And my
16 husband said to me, "I can't live next to that". And he
17 can't.

18 CHAIRMAN HILL: Okay, Mr. Chesser, I'm sorry, I'm
19 not trying to take more testimony.

20 MS. CHESSER: I know you're not --

21 CHAIRMAN HILL: But you are giving more testimony.

22 MS. CHESSER: Okay.

23 CHAIRMAN HILL: So, I'm just trying to get a wrap
24 up.

25 (Simultaneous speaking)

1 MS. CHESSER: I have another minute and a half.
2 But I'm not alone in that. This is a neighborhood where
3 everybody relied on certain things being in place.
4 Neighborhood conservation, single-family detached, living
5 near a federal park land, and all of that is sort of out the
6 door if this is allowed.

7 The volume of use here is, as I said, 20 trucks
8 a week, 121 people, 70 staff, plus the church. And I just
9 asked for all the visitors and the like. That is a
10 tremendous volume of use in a single-family detached
11 neighborhood.

12 And frankly I think that the truck length is a
13 dangerous situation right next to those houses. They've got
14 little kids. You know, who would have thought they're going
15 to get a 13 foot drop and a truck ramp next to their house?
16 And all of those lots on 39th Street that back up to the
17 church, every one of them is more or less a half-lot. So
18 they are not big long backyards. They've got very short back
19 yards after the truck ramp.

20 And I just think that this is, for a very, very
21 small congregation, that's not in need of expansion, and
22 which all the other church cases they're expanding, this
23 church is not expanding. I just don't see where this should
24 be allowed.

25 CHAIRMAN HILL: Okay, all right. So just again

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1 everybody is talking about zoning, and how there is no
2 zoning, and no zoning. We're here to determine the zoning.
3 I'm just, that's why we're here. So, just to let you know
4 that's why we're here. Okay, Ms. Ferster.

5 MS. FERSTER: Yes, thank you. I'd like to speak
6 to the legal standard that should govern the decision making
7 on this project. And I know, with all due respect to the
8 Office of Planning, and you did reference their report as
9 providing you with the expert guidance that you need, I would
10 disagree.

11 I would agree with that in terms of the special
12 exception. I would not agree with that in terms of the
13 variance. And I want to speak very specifically to the
14 variance standard.

15 There is a regulatory standard, which the Office
16 of Planning quoted and others have -- but the standard for
17 variance has been illuminated quite extensively through case
18 law. And that case law really spells out the burden proof.
19 And it's a heavy burden of proof that the Applicant has to
20 justify a variance.

21 So first of all in terms of burden of proof, we
22 disagree that the leniency standard is applicable here. It
23 is not applicable here. The leniency standard, which would
24 be a lighter burden of proof when a non-profit is asking for
25 a variance, would apply if the church were here and saying,

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1 well, you know, we need to operate a daycare center.

2 And we know we need more students that -- whatever
3 the word is -- that is excessive for zoning, or a school, or
4 something like that. And so because of our unique situation,
5 we need that. Perhaps under that circumstance, the case law
6 would allow them to have a leniency standard.

7 But Sunrise is a for-profit operation. So all the
8 variances they are asking for, are all for Sunrise, all for
9 Sunrise. So the leniency standard absolutely not applicable
10 here.

11 The second area where case law, well the
12 regulations actually, and Mr. Hawkins did spell that out.
13 So one of the things they have to show is that there's
14 something about this property that's unusual. And there was
15 testimony that they felt that something about this site was
16 unusual in that it was too small for Sunrise's proposed use.

17 Well, in fact it may be too small for Sunrise, but
18 in terms of the variance standard, and that we're looking to
19 the church here really, which is supplying the real concern
20 about the viability of its use. It's not too small. It's
21 pretty big. And so the size of the lot in question is not
22 an appropriate factor to consider on the variance standard.

23 So it really comes down to the question of
24 practical difficulties. And this again is a heavy burden of
25 proof, but the case law enumerates. And the particular case

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1 that I'd like to quote is -- and of course we'll get into
2 more detail -- but the Clerics of St. Viator case vs DC Board
3 of Zoning Adjustment, which is a stunningly on-point case in
4 terms of the, you know, a religious institute with a
5 declining membership. That you know, was having difficulties
6 sustaining its building, and asked for a variance from the
7 Board of Zoning Adjustment.

8 And what the court, the court overturned the BZA,
9 but what they said here, and that was quite a bit of the
10 focus of my questioning of Ms. Dueholm, was that a necessary
11 element of proof of hardship or that would be, or practical
12 difficulties is "evidence showing the inability of the
13 Applicant to make a reasonable disposition of the property
14 for a permitted use". And -- and this is an important
15 qualification -- "it is certain that a variance cannot be
16 granted where property conforming to the regulations will
17 produce a reasonable income but if not put to another use
18 will yield a greater return."

19 And so that's one of the questions here. We
20 understand if you look at this from Sunrise's perspective,
21 this property is too small and they need 86 units. But if
22 you look at it from the church's perspective, they have not
23 satisfied their burden of proof of showing that they looked
24 at other options.

25 CHAIRMAN HILL: Okay, okay. All right. Ms. Baum.

1 Mr. Moy can you just throw up five minutes, I just want to
2 know.

3 MS. BAUM: All right, thank you so much for your
4 patience today. We really appreciate it. It's been a long
5 day for everyone. I want to speak to the framework for
6 analysis here again. We have presented evidence today that
7 really has been unrefuted. That this church, who is an
8 Applicant here, needs to do something to survive.

9 They have a right to stay at their site. They say
10 compatible with their mission, they want to stay at their
11 site. Their congregation is in the neighborhood. They're
12 entitled to do that.

13 And contrary to what I just heard, Ms. Dueholm
14 testified unequivocally that they looked at other options.
15 They even considered what the neighborhood wanted them to do.
16 Sell off, subdivide, and sell off two lots and make what the
17 neighborhood claims would be \$1.7 million.

18 She said totally apart from all the other
19 expenses, that's not enough. That might fix some stuff, but
20 it won't fix everything. She testified to that. And it
21 wouldn't do anything for them going forward. It would not
22 ensure the viability of this institution going forward. And
23 they have a right to try to survive going forward, and to
24 ensure their viability.

25 So, the church has testified unequivocally to the

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1 institutional necessity. And why is the institutional
2 necessity of doing this project relevant? It's relevant
3 because the first prong of variance relief, which is the
4 extraordinary or exceptional circumstances, can be met by a
5 more flexible standard if you have a public service
6 organization, which clearly this church is.

7 So, and in order to do that, the cases clearly
8 show, Monaco for example, that in terms of the more flexible
9 standard, they need to show what are the institutional needs.
10 And we've laid that out unequivocally. And how does this
11 variance serve that necessity? How do you, why do you need
12 the variance to provide that needed institutional need?

13 And she testified that this is the need for the
14 church to survive. And then we have the unrefuted testimony,
15 really unrefuted from Mr. Kroskin and Ms. Katz that this
16 facility needs to be this size in order for it to work.

17 And it started off at a higher number, 100 and
18 some units. And the neighborhood negotiated it down. And
19 they said we can't -- if it's going to be below 86, and of
20 course whether it's 86 or 85, the footprint's the same -- if
21 it's going to be below that number it's not going to work.
22 And so, you have to have this relief in order to make it
23 work. And in order for this church to survive.

24 So it's a very clear chain. Frankly, whether you
25 apply that flexible standard or not -- and Office of Planning

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1 testified that they didn't even really consider the flexible
2 standard. They looked at the traditional analysis, the more
3 rigid standard under the zoning, under the variance standards
4 under the law, not applicable to public service
5 organizations. And they said, you meet it anyway.

6 And frankly, you know an exceptional circumstance
7 -- the opponents have really focused on the configuration of
8 the land. But under the cases, and lots of established
9 precedence, it's not just the shape of the lot. It's not
10 just the slope or the topography. It's where is this
11 situated? And why is this lot exceptional? And so there are
12 a whole host of reasons including the park land in front of
13 it that is adjacent to the lot.

14 Because what -- the reason you have a lot of these
15 requirements, the setback requirements, the height
16 requirements, the massing requirements is to allow a feeling
17 of light and air and space. And because you happen to be
18 adjacent to this park land on which no one is going to build
19 anything. As Mr. Altman testified, this is a perfect site
20 for it.

21 And it's these adjustments to what's normally
22 allowed through the variance process, are not going to affect
23 the feel of light, and air. And as Mr. Altman testified, but
24 in a very compelling way, he's a former Director of the
25 Office of Planning, this is an ideal project. There's huge

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1 demand.

2 So if you talk about the other prong, practical
3 difficulties, you can't do it in another way. And that was
4 unequivocally stated. And finally, for the public good is
5 it inconsistent with the zoning plan? Mr. Altman was
6 particularly compelling on that.

7 He said, this is ideal for this. It's totally
8 consistent with the zoning, the intent of the zoning laws.
9 And he explained that this is, you know, it's consistent with
10 all of that. And certainly there's the public good element
11 to it. We spoke to the demand. This is something that is
12 a huge demand in the District of Columbia.

13 I thought it was particularly compelling and I
14 wanted to just point the Board's attention to the testimony,
15 two pieces of testimony that came out today.

16 One, was from Ms. Chesser. She said, we don't
17 care about the number of units, we care about the number of
18 people. Well, the number of units is what drives the size
19 of, and the lot occupancy. That's the number of units.

20 So basically what she was saying implicitly was,
21 I don't care about the size. That's what being sought in
22 terms of the variance. She said, all we care about is the
23 number of people. But you haven't heard any testimony about
24 the number of people, the incremental number of people due
25 to this, the variance and special exception relief being

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1 sought.

2 CHAIRMAN HILL: Ms. Baum, I'm just going to
3 interrupt you one second. Like, I don't want to get into
4 kind of a discussion again about asking the people what they
5 said, or what you thought they said. So, you guys pretty
6 much getting ready to wrap up?

7 (Off-microphone comments)

8 CHAIRMAN HILL: No, no, no it's okay. That's all
9 right. So that's okay.

10 MS. BAUM: Yes, and well there's the Office of
11 Planning support --

12 CHAIRMAN HILL: She's just concluding.

13 MS. BAUM: -- Office of Planning support, the ANC
14 supported it, Office of Planning, DDOT. So in terms of the
15 number of people, what that would impact? The areas in which
16 the number of people would have an impact, everyone who is
17 tasked with independently evaluating what's the impact of the
18 number of people -- the thing they say they care about --
19 they've all said this is good.

20 CHAIRMAN HILL: Okay, all right. So, Ms. Brown
21 and everybody here. I guess what I want to see is what we,
22 I just want to make sure we're all clear as to what we're
23 going to get. And then Mr. Moy, when we're going to get it.
24 And so, okay I'll start on my list and then everyone has a
25 couple of things here I guess that they want to see.

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1 I guess from Ms. Brown, like you know, when you're
2 doing -- so I don't think, do you have to provide any
3 conclusions in the record? Are you good with your
4 conclusions or you want --

5 MS. BROWN: Good, we can just go straight to the
6 findings of fact.

7 CHAIRMAN HILL: so, if you do findings of fact,
8 conclusion of law and you'll be doing that after you get the
9 transcript. So we'll figure out how that all works, at least
10 in this case, we're going to probably end up doing it that
11 way because I think we are going to try to work with Mr.
12 Miller's schedule.

13 What I'd be interested in seeing, or at least some
14 of the discussion again, when you're seeing this kind of like
15 the whole height issue. So I like you've been speaking of
16 the height again, and the number of stories that you get
17 within the height that you're allowed. So, if you can kind
18 of again just clarify that in your findings of fact. I'm
19 sure you will, but I'm just kind of pointing that out.

20 If you want to put in whatever the piece of the
21 regulation is that you're quoting concerning the steeple, and
22 the height of the steeple. I know that one of the side yards
23 that was mentioned was the eight feet, sorry, the zero
24 setback was against the National Park Service land. So I
25 don't really have, I guess I'm just kind of going over my

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1 list here.

2 I am kind of curious because we haven't had a lot
3 of time yet to go over the ANC resolution, as well as kind
4 of like, their Memorandum of Understanding. And I forget who
5 said it or who asked, but the ANC can submit anything at any
6 time. And so we had stuff from the ANC, like literally the
7 day before the hearing, and they can show up and give us
8 anything. So, we got what we got from them, when they gave
9 it to us.

10 So, if you can go ahead and -- oh those are -- so
11 the Memorandum of Understanding, if you could kind of like,
12 I don't know if you do kind of clarify a little bit more of
13 not necessarily even the teeth, but how you think you might
14 implement some of these things.

15 Like what came up in testimony that I was again,
16 kind of curious of was like the -- I'm trying to see if it's
17 even mitigated in here -- the construction. Like there was
18 like, there was something about, I thought there was
19 something about construction. About the jack hammering of
20 something.

21 And then also there was testimony about like, you
22 were going to give people, like devices to measure. If
23 things were going to happen and then it was also then -- I
24 mean I guess I'd just like a little bit more, since we just
25 kind of got this okay, a little bit more clarification as to

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1 the meat.

2 As to how you plan on actually not doing what
3 people always think somebody is going to do, which is give
4 them, you know, something to measure. And then they'll
5 determine whether or not they do anything about it. Like
6 really like how you plan on mitigating some of these things
7 that are in the Memorandum of Understanding?

8 And I can't, yes, I got the construction, because
9 the construction is in here. So again, I'd just like
10 something of all of the testimony that we had, that you've
11 already agreed to do, just how you plan on actually doing it,
12 okay?

13 And then after that, just write the findings of
14 fact for me. But then Mr. Miller you had some things. And
15 then if we could just clarify them. And then the last thing
16 again, from an OP, you were going to speak to OAG about the
17 whole owner definition issue, okay? And see if we can get
18 something in the record from OAG. And I guess I'm just
19 throwing on to you, I could throw it on Mr. Moy as well, but
20 you'll follow up with that? Okay, great. Commissioner.

21 MEMBER MILLER: Thank you, Mr. Chairman, I
22 appreciate your list that you've just articulated. So, I
23 think I discussed with the Applicant, getting perspective
24 renderings and which show the relationship between the
25 project and the surrounding single-family detached

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1 neighborhood.

2 And as well as shadow studies, and you can show
3 the comparison with the matter of right, which you made that
4 point. If you're able to show the comparison with the
5 existing, it might be just illuminating as well, the existing
6 condition.

7 And that was it, I think -- oh, we were expecting
8 -- we've had testimony from Mr. Lawson, or an answer in
9 response to Mr. Lawson -- or not response, that Maxine.
10 Brown-Roberts was going to be providing a response to the
11 Council Member Cheh letter, in this case.

12 MS. BROWN-ROBERTS: Yes.

13 MEMBER MILLER: And so we'll expect to see that
14 too.

15 CHAIRMAN HILL: So, Ms. so Ms. Brown-Roberts,
16 you're going to get that to us, or try to work with DDOT to
17 see if get it by whatever date we talk about with Mr. Moy?

18 MS. BROWN-ROBERTS: Yes, I will convey that to
19 them.

20 CHAIRMAN HILL: Okay.

21 MS. BROWN: I believe you also asked for the truck
22 turning diagrams, if you didn't list them --

23 (Simultaneous speaking)

24 CHAIRMAN HILL: Yes, oh yes, thanks. I did list
25 it. It was the, whatever that auto thing, I forgot what it's

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1 called, auto turn. And now that I got the mic back on again,
2 if there was some discussion about like the trees that were
3 being put up in terms of, and I can't remember where the
4 trees were being put up for mitigation of the neighbors. And
5 are they the trees just on the rear?

6 Where was the trees being put up? It's just along
7 the real property line?

8 MR. KROSKIN: Both the rear property line and on
9 the right of ways.

10 CHAIRMAN HILL: Okay, so if you could show us what
11 that actually kind of looks like a little bit. You know, I
12 mean a diagram perspective, right. And I'm just trying to
13 get an idea as to what it is that you're supplying to
14 mitigate those issues?

15 And so, and I think there is something in there
16 possibly already, I'm not sure. And I would also encourage
17 whatever you submit, maybe beef it up a little bit more.
18 Okay, just so you know, I mean there was some concerns that
19 they're going to be like, you know, smaller trees that are
20 going to take years to come in. You know, plant more, you
21 know, and just like show us what that looks like.

22 Ms. John, you had something I thought.

23 MEMBER JOHN: Yes, I wanted to see the
24 matter-of-right option as well. But I think Mr. Miller asked
25 for the -- no?

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1 MEMBER MILLER: No, I only asked --

2 MEMBER JOHN: You just wanted shadow studies?

3 MEMBER MILLER: No, you can ask for that.

4 MEMBER JOHN: Yes, I'm interested in the
5 matter-of-right option without the variances. Just so we
6 could see what that would look like.

7 MS. BROWN: Okay.

8 MEMBER JOHN: Thank you.

9 CHAIRMAN HILL: Ms. White.

10 MEMBER WHITE: I think you captured the issue.

11 CHAIRMAN HILL: Okay, great.

12 MEMBER WHITE: But I did have a question. Was
13 there ever an issue that was raised about mitigation of noise
14 at all? Or did that not come up at all during the --

15 MEMBER MILLER: I asked about it in terms of the
16 truck ramp. And it's in the answer -- it's in the MOA.

17 CHAIRMAN HILL: It's in the MOU. MOA.

18 MEMBER MILLER: And the Chairman asked for how
19 they're going to implement things.

20 CHAIRMAN HILL: All the mitigations, where ever
21 they are.

22 MEMBER WHITE: Then I don't need it, if it's in
23 there. I'll just look at that again.

24 CHAIRMAN HILL: Yes, but again, how you're going
25 to implement the MOA? I thought it was MOU, MOA.

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1 MEMBER JOHN: Memorandum of Understanding.

2 MEMBER MILLER: Yes, I think I got my vowels mixed
3 up.

4 CHAIRMAN HILL: MOU, I thought, well okay I
5 thought, maybe not. So, okay and then we'd get all that.
6 And then the party in opposition would have an opportunity
7 to respond to all that. And so --

8 MS. BROWN: Okay.

9 CHAIRMAN HILL: I mean, it's just in writing and
10 then I guess, now I get confused again, because then you'd
11 have an opportunity to respond to their response. And so I'm
12 trying to understand. I actually, I'm just trying to
13 remember how this circle eventually ends. Mr. Moy, how would
14 that work? I forget.

15 MS. BROWN: If I can make a suggestion. We can
16 just exchange them and not respond to each other. Have the
17 same, supply them on the same day.

18 MS. FERSTER: We're not, I don't think anybody
19 asked us to supply anything.

20 CHAIRMAN HILL: Yes, we haven't, we haven't asked
21 you to supply anything yet, right. Anyway, so Mr. Moy.

22 MR. MOY: Mr. Chairman, I'm going to propose three
23 dates, three actions, and you can modify that anyway you
24 wish. I'll need a date when the Applicant can submit the
25 information that the Board has requested.

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1 Then from there, I can set a date for responses
2 from the parties, which will of course include the ANC. And
3 if the Board is not going to ask for another response from
4 the Applicant of the parties, then we can move directly
5 toward setting a date for draft findings of fact and
6 conclusions of law. And then I can get to a date for
7 decision making.

8 CHAIRMAN HILL: Well, this is the only problem
9 that I always get kind of confused about. So you're going
10 to submit on a certain date. They're going to have an
11 opportunity to respond to your submittal, Ms. Brown that is.

12 And then I guess you could talk about in your
13 conclusion of law -- and findings of facts and conclusion of
14 law, or you want another date to respond to their date?

15 MS. BROWN: If we did need to respond, we could
16 so within three days.

17 CHAIRMAN HILL: Okay. I was trying to understand
18 when the circle ends.

19 MS. BROWN: The circle always ends with the
20 Applicant, because we always rebuttal.

21 MS. FERSTER: So in my experience, the way and the
22 way we just did it in the previous case, is that the
23 Applicant provides a document, and then we respond to it with
24 whatever response we have. And then everybody deals with it
25 in proposed findings of fact. We're not going to do, we're

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1 not going to generate a new study. We're not going to do
2 anything but respond in paper. We're not going to submit
3 testimony --

4 CHAIRMAN HILL: Yes, Ms. Ferster, that's okay --

5 MS. FERSTER: We're just going to have a written
6 response.

7 CHAIRMAN HILL: Okay, we've done it before, and
8 so I'm just trying to understand what's going to happen,
9 could possibly happen, right. Like, I don't know what you're
10 going to submit. And then they don't know what you're going
11 to submit in response also. And so I just don't know if they
12 -- I want to have an opportunity -- the Board wants to have
13 an opportunity for everyone to hear everything, including the
14 response to whatever the response is, if that makes sense?

15 MS. BROWN: So I have a suggestion, and it's too
16 far from what Ms. Ferster just suggested, that we make a
17 submission, she responds, we submit our findings of fact.
18 But we have a cover letter to call out anything in particular
19 that we think needs to be addressed.

20 MS. FERSTER: That's fine with me.

21 CHAIRMAN HILL: Okay, all right. So okay, great.
22 So then we're going to work backwards from I think when Mr.
23 Miller is with us again, okay. And I hate to say this date
24 for you guys, I hope it's not a big deal, but this is what
25 we're going to do anyway. Is January, what's the date you're

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1 here again?

2 MEMBER MILLER: 16th.

3 CHAIRMAN HILL: January 16th, so work back from
4 that day, Mr. Moy, please.

5 MR. MOY: All right, let me take a stab at this.
6 January 16th -- Okay January 16th working back from there.
7 If the Applicant and parties can file draft findings of fact
8 and conclusions of law, let's say a week prior. So let's
9 just make that January the 9th. And then in December
10 responses to the Applicant's filing, let's say before the
11 holiday starts, so let's say, Monday, December 17th.

12 MS. FERSTER: When will the Applicants provide
13 their --

14 MR. MOY: I'm getting to that, Monday, December
15 17th. And the Applicants will provide their responses, or
16 not response --

17 MEMBER MILLER: Post-hearing submissions.

18 MR. MOY: Yes, post-hearing submissions, let's
19 say, you said you could do this like in three days?

20 MS. BROWN: No. That was the response -- the
21 thing that concerns us the most is probably the perspective
22 renderings those will take some time.

23 MR. MOY: Okay, let's --

24 MS. BROWN: And we'll need probably --

25 MR. MOY: Two weeks?

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1 MS. BROWN: -- given the Thanksgiving holiday at
2 least two weeks.

3 MR. MOY: Two weeks, okay. All right.

4 MS. BROWN: Chuck, how long will it take for the
5 perspective renderings?

6 CHAIRMAN HILL: You've got to be on the
7 microphone. You've got to be on the microphone.

8 MR. SCHIESEL: You need these for information more
9 than beauty? You're not going to hang them on your wall or
10 anything?

11 MS. BROWN: We need to get them accurately done.

12 MEMBER MILLER: That's right.

13 MR. MOY: All right, could you do this, Ms. Brown
14 by like December? Could you submit the post-hearing
15 submissions by Monday, December the 3rd?

16 MS. BROWN: If we did, maybe December 10th, and
17 then have the opponents get a week to respond? Is that okay?

18 MR. SCHIESEL: I think that works.

19 MR. MOY: All right. Let's try that Mr. Chairman.
20 So, the Applicants will submit Monday, December -- or rather,
21 yes, Monday, December the 10th. Responses by December the
22 17th, which is the following week. Draft findings of fact
23 and conclusions of law, January the 9th. Decision making on
24 January the 16th.

25 When would you care for -- would you care for

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1 anything from the Office of Planning? You did actually.

2 CHAIRMAN HILL: Yes, so it was the same time that
3 we get the stuff from the Applicant, so which date that?

4 MR. MOY: December 10th.

5 CHAIRMAN HILL: December 10th, also from DDOT and
6 OAG. And OAG skipped out early by the way, hours ago.

7 MR. MOY: Okay, that's it. That's good.

8 CHAIRMAN HILL: Okay, oh you have a question.

9 MS. FERSTER: Ms. Brown asked for a copy of Don
10 Hawkins's visuals. And they reside on the laptops, should
11 we, can you extract them there? Or should I submit them?

12 CHAIRMAN HILL: A copy from Don Hawkins, visuals.
13 What visuals?

14 MS. BROWN: The different seven lots.

15 CHAIRMAN HILL: Oh, I'm sorry, you're not on
16 microphone, but he had the different seven lots, that's okay.
17 So do you need those?

18 MS. BROWN: If they're submitted to the record,
19 I would need a copy. But if they're not being submitted then
20 I don't.

21 MS. FERSTER: We want them in the record.

22 CHAIRMAN HILL: Okay, then get a copy to the
23 Applicant.

24 MS. FERSTER: Okay, and are they already in the
25 record, because they're in your, or do I need the BZA a copy

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1 as well?

2 MR. MOY: I'm sorry, I lost this line of thought.

3 CHAIRMAN HILL: There's a presentation that Mr.
4 Hawkins did that is not in the record. But he gave the
5 presentation, so you need to then put it into the record.
6 You would need to upload it in the record.

7 MR. MOY: If you can upload the record tomorrow
8 morning, I'll be sure that it's in the record.

9 MS. FERSTER: Okay, I just the visuals. He
10 delivered his testimony, so that will be in the transcript.

11 MR. MOY: Right.

12 CHAIRMAN HILL: Yes.

13 MS. BROWN: And email to me is fine.

14 CHAIRMAN HILL: Okay, but put it in the record
15 though, please. Okay. All right. Okay, anybody else?
16 Okay, going once. Going twice. Okay, Mr. Moy does the Board
17 have anything else today?

18 MR. MOY: That's it from the staff, sir.

19 CHAIRMAN HILL: All right, it's a record, 11:30
20 -- I'm going to wait.

21 MS. BROWN: Actually it's slow, let's do it.

22 CHAIRMAN HILL: Okay, I'm waiting for that clock.
23 Oh, we're adjourned.

24 (Whereupon, the above-entitled matter went off the
25 record at 11:30 p.m.)

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