

GOVERNMENT  
OF  
THE DISTRICT OF COLUMBIA

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ZONING COMMISSION

+ + + + +

PUBLIC HEARING

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IN THE MATTER OF: :  
 :  
1210C "R" Street, LLC : Case No.  
Modification of Significance : 04-13C  
to a Consolidated Planned :  
Unit Development :  
 :  
-----:

Monday,  
February 4, 2019

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

The Public Hearing of Case No. 04-13C by the District of Columbia Zoning Commission convened at 6:30 p.m. in the Jerrily R. Kress Memorial Hearing Room at 441 4th Street, N.W., Washington, D.C., 20001, Anthony J. Hood, Chairman, presiding.

ZONING COMMISSION MEMBERS PRESENT:

ANTHONY J. HOOD, Chairperson  
ROBERT MILLER, Vice Chairperson  
MICHAEL G. TURNBULL, FAIA, Commissioner (AOC)  
PETER G. MAY, Commissioner (NPS)  
PETER SHAPIRO, Commissioner

OFFICE OF ZONING STAFF PRESENT:

SHARON S. SCHELLIN, Secretary

OFFICE OF PLANNING STAFF PRESENT:

JOEL LAWSON  
STEPHEN MORDFIN

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

MAXIMILIAN TONDRO, ESQ.

The transcript constitutes the minutes from the  
Public Hearing held on February 4, 2019.

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

(6:30 p.m.)

CHAIRMAN HOOD: Good evening ladies and gentlemen.

This is a public hearing of the Zoning Commission for the District of Columbia. Today's date is Monday, February 4th, 2019. My name is Anthony Hood, we're located in the Jerrily R. Kress Memorial Hearing Room.

Joining me this evening are, soon to be joining us shortly will be Vice Chair Miller. We're also joined by Commissioner Shapiro, Commissioner May and Commissioner Turnbull.

We're also joined by the Office of Zoning Staff, Ms. Sharon Schellin, Office of Attorney General, Mr. Tondro, Office of Planning Mr. Lawson.

Mr. Lawson, are you by yourself, or did I see Mr. Mordfin?

MR. LAWSON: Good evening, Mr. Mordfin's here as well.

CHAIRMAN HOOD: Okay. Mr. Mordfin, thank you. This proceeding is being recorded by a court reporter, it is also webcast live. Accordingly, I must ask you to refrain from any disruptive noise or actions in the hearing room, including a display of any signs or objects.

Notice of today's hearing was published in the DC Register. And copies of that announcement are available to

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1 my left on the wall near the door.

2           The hearing will be conducted in accordance with  
3 provisions of 11Z DCMR Chapter 4, as follows: Preliminary  
4 Matters, Applicant's Case, Report of the Office of Planning,  
5 Reports of Other Government Agencies, Report of the ANC,  
6 Organizations and Persons in Support, Organizations and  
7 Persons in Opposition, Rebuttal and Closing by the Applicant.

8           The following time constraints will be maintained  
9 in this meeting.   The Applicant has up to 60 minutes, but  
10 I believe they requested 15.   Organizations, five minutes.  
11 Individuals, three minutes.

12           All persons wishing to testify before the  
13 Commission in this evening's hearing are asked to register  
14 at the witness kiosk to my left and fill out two witness  
15 cards.   These cards are located to my left on the table near  
16 the door.

17           Upon coming forward to speak to the Commission,  
18 please give both cards to the reporter sitting to my right,  
19 before taking a seat at the table.

20           When presenting information to the Commission  
21 please turn on and speak into the microphone, first stating  
22 your name and home address.   When you are finished speaking,  
23 please turn off your microphones so that your microphone is  
24 no longer picking up the sound of background noise.

25           The decision of the Commission in this case must

1 be based exclusively on the public record. To avoid any  
2 appearance to the contrary, the Commission requests that  
3 persons present, not engage members of the Commission in  
4 conversation during any recess at any time. The staff will  
5 be available throughout these proceedings to discuss  
6 procedural questions.

7 Please turn off all electronic devices. Would all  
8 the individuals wishing to testify please rise and take the  
9 oath?

10 Ms. Schellin, would you please administer the  
11 oath?

12 MS. SCHELLIN: Yes.

13 (Witnesses sworn.)

14 MS. SCHELLIN: Thank you.

15 CHAIRMAN HOOD: Okay. Ms. Schellin, do we have  
16 any preliminary matters?

17 MS. SCHELLIN: We do. The first one is proffered  
18 expert witness R. Michael Cross. He's being proffered in  
19 architecture, as an expert in architecture.

20 CHAIRMAN HOOD: Ms. Schellin, do you have the  
21 exhibit number?

22 MS. SCHELLIN: Yes, 17B.

23 CHAIRMAN HOOD: 17B.

24 COMMISSIONER MAY: Can the Applicant and the  
25 architect come to the table?

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1 MS. SCHELLIN: Yes. Mr. Rachal, would you and the  
2 architect please come forward?

3 CHAIRMAN HOOD: You want to turn your microphone  
4 on, Mr. Rachal?

5 MR. RACHAL: Good evening, Chairman Hood and  
6 Members of the Commission. My name for the record is Anthony  
7 M. Rachal III. And joining me at the table is our expert  
8 architectural witness, R. Michael Cross.

9 CHAIRMAN HOOD: All right. Commissioners we have  
10 the request to make Mr. Cross an expert in architecture. Any  
11 objections or questions, or comments? And we have his resume  
12 at 17B.

13 COMMISSIONER MAY: Yes, I do.

14 Want me to go first, Mike?

15 COMMISSIONER TURNBULL: Sure.

16 COMMISSIONER MAY: Mr. Chairman.

17 CHAIRMAN HOOD: Yes, Mr. May.

18 COMMISSIONER MAY: So there's not a lot of  
19 specifics about projects that you designed. I guess my first  
20 question though is are you a licensed architect?

21 MR. CROSS: Yes, sir. I hold a license here in  
22 D.C. as well as Virginia and Maryland.

23 COMMISSIONER MAY: Okay. You might want to put  
24 that on your resume because it's like the first question that  
25 comes up. And we see all these things that we often see for

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1 people who are not licensed architects.

2 CHAIRMAN HOOD: Sir, turn one of those mics off.  
3 We're getting feedback.

4 COMMISSIONER MAY: So I don't, I mean can you tell  
5 us more about the specific projects that you've designed  
6 because it's, as I said, pretty general.

7 MR. CROSS: Yes, my apologies. I was asked for  
8 a resume some time back, not quite specific about what the  
9 requirements are.

10 COMMISSIONER MAY: Right.

11 MR. CROSS: Maybe the reason for not providing  
12 anything further, is I'm the architect of record on the three  
13 infill units there at 1210 R Street Northwest. I'm also the  
14 architect of record at 721 Kennedy Street Northwest, kind of  
15 both the projects involved in this case.

16 COMMISSIONER MAY: And isn't Kennedy Street, is  
17 that already built?

18 MR. CROSS: It is under construction currently.

19 COMMISSIONER MAY: Yes, how big is that?

20 MR. CROSS: Ten units.

21 COMMISSIONER MAY: And so again, we often see a  
22 list of projects that the architect has designed, so it would  
23 be helpful if you could talk more about other projects that  
24 you've designed?

25 MR. CROSS: Sure. As some of you may know, I've



1 appeared before you several times before in Special Exception  
2 Cases. My practice was founded in 2007. We primarily do  
3 condo conversions here in the District of Columbia. And  
4 serve the small developer community specializing in that.  
5 Our typical project is somewhere between four and 20 units.

6 COMMISSIONER MAY: Okay, and I'm sorry I don't  
7 recall seeing you at the Board of Zoning Adjustment. I  
8 don't, have you been before the Zoning Commission before?

9 MR. CROSS: No, sir.

10 COMMISSIONER MAY: Okay, so and have you been  
11 admitted as an expert at the Board of Zoning Adjustment?

12 MR. CROSS: I, yes, I don't know if I'm -- I've  
13 been the Applicant there as the architect of record for  
14 special exception cases.

15 COMMISSIONER MAY: Okay, but then, okay.  
16 Commissioner Turnbull?

17 COMMISSIONER TURNBULL: Commissioner May, I think  
18 he was the agent for the Applicant, and so didn't have to in  
19 essence establish that he was also --

20 COMMISSIONER MAY: Sure, and that's fine. It's  
21 not a criticism, it's just a question because if he'd been  
22 admitted as an expert there, it would be kind of silly for  
23 us to not do that here.

24 COMMISSIONER TURNBULL: Yes.

25 CHAIRMAN HOOD: Okay, Commissioners. You finished

1 Commissioner Turnbull?

2           COMMISSIONER TURNBULL: Yes, I think Commissioner  
3 May has picked up on everything that I had. I think it's  
4 nice to see on a resume that if you want to be, go for an  
5 expert status in architecture, that at some place it does say  
6 architect on there. And says what state your licensed in.

7           It makes it a little bit more obvious as to what  
8 it is. I mean you could be just a designer, and which then  
9 we would have to look very carefully to whether we give you,  
10 we wouldn't call you an expert in architecture then.

11           So it would, just in the future, just for your own  
12 clarification, to actually state your qualifications better  
13 on your resume.

14           CHAIRMAN HOOD: I'm actually going to ask for  
15 updated resume with that information. You do have one plus  
16 because if I told you, do a good turn daily, you would know  
17 what I was talking about, right?

18           I'm an Eagle Scout as well, see. That's the plus  
19 you have. So I'm going to give you an opportunity,  
20 opportunity time. Plus, Commissioner May, all his sons, I  
21 don't know about you, are you Commissioner?

22           COMMISSIONER MAY: I am not, but my three sons  
23 are.

24           CHAIRMAN HOOD: All three of your sons, yes. When  
25 I saw that, that pointed right out. So hopefully you can

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1 update your resume. I'm not sure where my colleagues are who  
2 are the experts in that subject, Commissioner Shapiro.

3 COMMISSIONER SHAPIRO: I just can't remember if  
4 Ms. Schellin said, but if there's a specific area of  
5 expertise that he's been proffered as an expert witness in?

6 MS. SCHELLIN: Architecture.

7 COMMISSIONER SHAPIRO: General.

8 MS. SCHELLIN: Yes, correct.

9 CHAIRMAN HOOD: Correct.

10 COMMISSIONER MAY: So Mr. Chairman, I was going  
11 to make a proposal actually. The, you know, I appreciate the  
12 fact that Mr. Cross may have all of the credentials necessary  
13 to be an expert. But I'm not sure that the substance of this  
14 case hinges on the expertise of the architect. It's really  
15 just about the conditions of the, you know, related to the  
16 original PUD.

17 So, I was going to suggest that perhaps we not  
18 grant party status but, you know, with no prejudice against  
19 Mr. Cross, because he may well be an architect. But again,  
20 it's not, I don't think it's necessary to be able to decide  
21 this case.

22 I mean if we do decide by the end of the hearing  
23 that in fact it is critically important in some way, then  
24 maybe he should submit it. And we can reconsider it before  
25 we make a decision.

1 But I just don't see the importance of it at this  
2 stage. And I do think it's better to have it fully flushed  
3 out, and a resume on the record if we're going to grant  
4 expert status to anyone.

5 CHAIRMAN HOOD: I would agree with Commissioner  
6 May's proposal. If we see where, and basically what he's  
7 saying, Mr. Rachal, is we're just dealing with the condition  
8 here. And I have some questions before we even get started  
9 on that condition.

10 So, we'll hold that in abeyance if it's needed.  
11 But we still would like the updated resume just in case we  
12 have to go back and revisit it at a later time.

13 MR. CROSS: I'll provide that.

14 CHAIRMAN HOOD: Let me see what others --

15 VICE CHAIR MILLER: Thank you, Mr. Chair, I just  
16 wanted to add that I have sat on the BZA as the Zoning  
17 Commissioner presented when Mr. Cross was the architecture  
18 applicant or whatever. And found his testimony always to be  
19 credible.

20 CHAIRMAN HOOD: Did they, was he an expert with  
21 the BZA?

22 VICE CHAIR MILLER: I don't remember if he was  
23 expert or just the applicant. I don't remember that. But  
24 I, it was more than once though.

25 CHAIRMAN HOOD: Okay, so we will continue in with

1 our criteria of what was laid out. We still would like that  
2 updated resume. Okay, and we'll go from there.

3 MR. RACHAL: Mr. Chairman, if I could, or may  
4 address that issue. The architect was asked to speak in  
5 terms of the design changes relative to the change of  
6 conditions that occurred at the site that required the  
7 necessity of having the affordable unit moved off-site.

8 And we wanted to assure the Commission that the  
9 two units are very much identical in terms of the offerings,  
10 if not substantially improved because they've been increased  
11 in size.

12 CHAIRMAN HOOD: So let me ask you this, Mr.  
13 Rachal, that leads right into my questions. There were two  
14 outstanding recommendations which the Office of Planning, I  
15 think DHCD had mentioned.

16 Did we ever, did you agree to those? Was it, the  
17 unit be 50 percent I believe it was, affordable and also  
18 there's another one. Escapes me just that quick. Whatever  
19 it was. Did you agree to those two conditions, two  
20 outstanding issues?

21 MR. RACHAL: No, we did not agree to both issues.

22 CHAIRMAN HOOD: Did you agree to one, any of them,  
23 just tell me where you are. Here's the thing. I want to,  
24 Mr. Rachal, and I'm not trying to cut you off, I'm trying to  
25 get to the hearing.

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1 MR. RACHAL: Right.

2 CHAIRMAN HOOD: We don't need a long piece about  
3 that, because we need to get through the case, and if we get  
4 to that.

5 MR. RACHAL: Right.

6 CHAIRMAN HOOD: That's why I want to know because  
7 I have a proposal to my colleagues at first.

8 MR. RACHAL: Right, well I believe we have a  
9 disagreement as to the requirement of the 50 percent. We  
10 think the 50 percent under the city's housing requirements  
11 go to rental units, not units that are available for sale.

12 Currently, affordable units available for sale are  
13 subject to an 80 percent, which was the same as the  
14 Commission had approved at the original approval of the IZ  
15 units for the PUD in this case.

16 And so we were continuing with the original grant  
17 under the original PUD that maintained an 80 percent. And  
18 in the last modification before the Commission, the 80  
19 percent was maintained notwithstanding the position of the  
20 D.C. Housing Office.

21 CHAIRMAN HOOD: But the location is changing now,  
22 right?

23 MR. RACHAL: The location is changing now as well  
24 as the size of the unit, which when we talked with the  
25 Department of Housing, they had a need for larger units as

1 opposed to smaller units, which the original unit was.

2 So we went back and came back with a proposal to  
3 offer a two-bedroom unit in place of the one-bedroom unit.

4 CHAIRMAN HOOD: Okay, all right. Any other  
5 questions of Mr. Rachal before I ask -- colleagues, let me  
6 just ask this --

7 MS. SCHELLIN: Chairman, excuse me, Chairman Hood,  
8 there's one more preliminary matter.

9 CHAIRMAN HOOD: Oh, there is.

10 MS. SCHELLIN: Yes, the property was not posted  
11 until January 29th, 33 days late. The Applicant was advised  
12 for the need to file a motion for a waiver request from the  
13 posting requirement. I just looked and I don't see that  
14 waiver request in the record.

15 CHAIRMAN HOOD: How many days late was it?

16 MS. SCHELLIN: Thirty-three.

17 CHAIRMAN HOOD: Thirty-three days late?

18 MS. SCHELLIN: Yes.

19 CHAIRMAN HOOD: Oh, I thought you said three days  
20 late, 33 is a little different.

21 MS. SCHELLIN: Mr. Rachal, I don't see a waiver  
22 request for the late filing.

23 CHAIRMAN HOOD: Turn your mic on.

24 MR. RACHAL: I did not get a chance to file that  
25 motion. I was going to move that at the hearing.

1 CHAIRMAN HOOD: Mr. Tondro, can that be done at  
2 the hearing, or do you need time to review that?

3 MR. TONDRO: Yes, if I can review and get back to  
4 you on that?

5 CHAIRMAN HOOD: So we're going to, need five  
6 minutes. Okay, we're going take a five minute break, okay.  
7 Back in five minutes.

8 (Whereupon, the above-entitled matter went off the  
9 record at 6:45 p.m. and resumed at 6:53 p.m.)

10 CHAIRMAN HOOD: All right, I want to thank, Mr.  
11 Tondro, for finding this regulation for me. We'll go back  
12 on the record.

13 Colleagues, let me just read what's in our  
14 regulations. It says the Commission may, for good cause  
15 shown, waive any of the provisions of this subtitle if, in  
16 the judgment of the Commission, the waiver will not prejudice  
17 the rights of any party and is not otherwise prohibited by  
18 law.

19 So, Mr. Rachal, I would ask you to explain to us  
20 what is your -- show us the good cause that you have for not  
21 doing this?

22 And also not -- because I think you were notified  
23 that we needed to have this in writing, so explain all that  
24 to us and see if we can get to this point. Turn your mic on.

25 MR. RACHAL: We were in the process of dealing



1 with some crisis that came up relative to the project. And  
2 we were impacted by the weather and trying to get the  
3 additional help to put it up was somewhat problematic.

4 We believe that this case has been pending and has  
5 been widely distributed and publicized by the meetings that  
6 we've had for the last three years. This is a refiling of  
7 Case 04-13B, which notice was given to the entire community.

8 The Board, with the Commission, saw fit to have  
9 it reset as a case dealing with the modification of  
10 significance. We have then republished the notice of this  
11 hearing.

12 We also gave notice to the 200, within 200 feet  
13 to all the residents and public within that radius. And we  
14 did finally get the notice posted on the site.

15 We apologize for that, but we think that the  
16 amount of interest that has been shown and expressed is an  
17 indication that the public has been made aware of it.

18 It's been a matter before the ANC on numerous  
19 occasions. The representatives can testify to that affect.

20 The community representatives can also testify  
21 that we've been in communication constantly with regard to  
22 this proposal. We have made ourselves available at every  
23 opportunity, to respond to any questions about the proposal.

24 So, I would respectfully request that this be  
25 waived at this time.

1 CHAIRMAN HOOD: Okay. I think Mr. Rachal's point  
2 about notice is reflective of who I seen in the audience.  
3 We have a number of people who have interest in this.

4 And I think also the record warrants merit, that  
5 notice. I don't think anyone would be prejudice because  
6 they've been working it for years. But we always run, we  
7 could probably always run into a fact that one person maybe  
8 not knowing. But the heavy threshold for me was the 33 days.  
9 Three days I could see, but 33 days could possibly be a  
10 potential issue.

11 But I think the record and the attendance here  
12 this evening would give me a ease to go ahead and proceed  
13 with however we're going to proceed. And that they have  
14 shown good cause.

15 And I believe they have done the leg work to make  
16 sure that the community is aware of what's going on here with  
17 dealing this. As Mr. Rachal mentioned, this has been going  
18 on for a while.

19 But let me hear from others. Or does everybody  
20 agree with me? That's unusual. Okay, question?

21 VICE CHAIR MILLER: I would defer to your  
22 judgement, Mr. Chairman.

23 CHAIRMAN HOOD: Okay. Well, that's a first time.  
24 No, I'm just playing. I'm just playing.

25 Okay, so we'll move beyond that. But let me ask

1 this question before we go right into it.

2 Does anyone see any reason or rational that we  
3 should not proceed this evening? Okay. Mr. Rachal, you may  
4 begin.

5 MR. RACHAL: Thank you, Mr. Hood. I would like  
6 to get right into the proposal by calling, as my first  
7 witness, Mr. R. Michael Cross.

8 (Off record comments.)

9 CHAIRMAN HOOD: And let me just say this, he's a  
10 witness but he's not an expert. Well, I'm not going to say  
11 he's not an expert on this, but we didn't classify him as an  
12 expert.

13 And there was a question up here, I wanted to make  
14 sure it got on the record.

15 MR. RACHAL: Yes. Yes, it was on the record,  
16 Chairman Hood, and I think you were going to reserve  
17 judgment.

18 You were asking that we would file a updated  
19 resume, and we're going to do that. And we would ask that  
20 maybe at the conclusion that you would reconsider.

21 CHAIRMAN HOOD: But I think Commissioner May's  
22 point is very important here because we're not really looking  
23 at it. But we'll see.

24 MR. RACHAL: Okay.

25 CHAIRMAN HOOD: Let's hold that in abeyance.

1 MR. RACHAL: All right.

2 CHAIRMAN HOOD: I'm sorry, keep the mic up.

3 COMMISSIONER SHAPIRO: The decision was that he's  
4 not an expert witness, so this is a --

5 CHAIRMAN HOOD: We'll revisit that during our  
6 deliberations of this case. I mean, if it's needed. It may  
7 not even be needed, okay.

8 But I do want an updated resume regardless. Okay?

9 MR. RACHAL: That's fine.

10 CHAIRMAN HOOD: All right.

11 MR. CROSS: My name is Robert Michael Cross, I'm  
12 an architect licensed here in the District of Columbia. I'm  
13 also the architect of record for the three infill units at  
14 1210 R Street Northwest, as well as 721 Kennedy Street  
15 Northwest.

16 The layouts here represent those received by my  
17 Client from the seller. When we were retained for services,  
18 we were provided this plan by our client.

19 It shows three units, one of which is indicated  
20 as universal design. That unit is shown here outlined in a  
21 red dash, Unit 12.

22 Upon being retained we documented the site  
23 ourselves and found there to be many structural concrete  
24 columns in the space that were not reflected in the original  
25 plans, making the original plans largely not feasible.

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1           Furthermore, there were building utilities that  
2 pass through the space from other areas of the building,  
3 found both at the time of documentation and throughout  
4 construction.

5           Lastly, the column caps at the top of the columns,  
6 those structural concrete columns, were found to be very  
7 large in several locations further reducing the possibility  
8 for plumbing to be located around those column locations.

9           The final layout was completed redesigned for  
10 those three units at 1210 R Street Northwest. To account for  
11 the conditions that we documented.

12           Overall, the project yielded a lower  
13 bedroom/bathroom count than the original design. And many  
14 of the appliances were reduced to being ventless models.

15           The project at 721 Kennedy Street Northwest is a  
16 ten-unit building, largely of new construction. It's a mix  
17 of one and two-bedroom units. And it has just started  
18 construction.

19           Unit 202, in that building, is being proposed here  
20 as an offsite IZ unit. That unit is larger than the one  
21 provided at 1210 R Street Northwest.

22           It's also a two-bedroom unit, while still being  
23 of universal design. Here specifically a Type B unit.

24           Some of the universal design elements implemented  
25 in this unit, we have a 36 inch entry door, we've got a fully

1 accessible bathroom with blocking for grab bars, lower  
2 counter tops in the kitchen, in the bath. We've got an under  
3 counter microwave, and we've set all the switches at lower  
4 heights for ADA compliance.

5           This last slide just provides a summary of the two  
6 units compared. The original unit at 1210 R Street Northwest  
7 was 480 net square feet. The one proposed at 721 Kennedy  
8 Street is 450 square feet. The original was only one bedroom  
9 whereas the proposed is two bedrooms.

10           And as they'll discuss, they're proposing  
11 maintaining the same AMI percentage, maintaining the  
12 accessibility.

13           MR. RACHAL: Thank you, Mr. Cross. Mr. Cross, I  
14 have a couple questions for you. As a part of your  
15 inspection, did you find any features that provided for a  
16 conversion from a community room to residential use?

17           MR. CROSS: Any features that were --

18           MR. RACHAL: In that --

19           MR. CROSS: -- restrictive?

20           MR. RACHAL: No, any features that would  
21 accommodate, in the future, a conversion to resident use?

22           Were there any panels that were provided for in  
23 terms of utilities or other kinds of things in the room?

24           MR. CROSS: We found no features built into the  
25 original construction that would have facilitated this

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1 conversion.

2 MR. RACHAL: And with a lack of those type of  
3 features to provide for accommodation to residential, did  
4 that result in additional costs to make the conversion to  
5 residential?

6 MR. CROSS: Yes. I can't speak to the cost, but  
7 the difficulty was increased in the design to accommodate the  
8 lack of preplanning for conversion.

9 MR. RACHAL: Okay. And, are there any other  
10 features that would be more attractive with the Kennedy  
11 Street unit as opposed to the original unit, B12? Such as  
12 light, air, visibility.

13 MR. CROSS: Yes. I think possibly, subjectively  
14 speaking, it is a better unit. It is quantifiably larger.  
15 It has more bedrooms and it not located in the cellar, and  
16 therefore has the potential for great natural light.

17 MR. RACHAL: Okay, thank you. Mr. Cross is  
18 available for any questions by the Commission?

19 CHAIRMAN HOOD: Okay, Mr. Rachal, have you  
20 completed your --

21 MR. RACHAL: I'm complete as to Mr. Cross.

22 CHAIRMAN HOOD: Okay, why don't you go ahead and  
23 complete your whole --

24 MR. RACHAL: Okay.

25 CHAIRMAN HOOD: -- presentation.

1 MR. RACHAL: The next witness I would like to call  
2 is Mr. Dan Lindsay, to talk about his efforts at completing  
3 this project. Mr. Lindsay.

4 MR. LINDSAY: The original cellar plans approved  
5 and provided to us did not reflect the structural elements  
6 in the building. We brought on Mr. Cross, sorry.

7 We brought on Mr. Cross, who redid the plans, as  
8 you can see. And we lost or shrank multiple features in the  
9 property, den, bathroom, kitchen, closets.

10 As you can see from a letter the Board of  
11 Directors issued December 5th, 2017, they mentioned that the  
12 as-built drawings of the existing conditions in our building  
13 were inaccurate. That was definitely true.

14 As we continued through the construction process,  
15 we found column heads or drop panels that required additional  
16 changes to mechanical, electrical and plumbing. Rerunning  
17 plumbing lines, electrical, drain lines, gas lines,  
18 relocating exit doors as we found plumbing stacks run right  
19 through the middle of them.

20 No insulation in the exterior walls of the  
21 building and of the space. All of these things in cumulative  
22 required substantial, additional investment on our part.

23 MR. RACHAL: Were there any --

24 CHAIRMAN HOOD: Mic.

25 MR. RACHAL: Sorry. Were there any features in



1 this space that required your rerouting of utility lines?

2 MR. LINDSAY: The column drop, I believe they're  
3 called drop panels or column heads, required us to relocate  
4 an entire mechanical room in Unit 12.

5 And virtually every bathroom had to be  
6 reconfigured to avoid the column heads. Moving around  
7 bathrooms, toilets, et cetera, in an attempt to avoid the  
8 column head. We didn't want to do any structural work, or  
9 definitely not damage, to the property.

10 The party wall between the space and the general  
11 common element hallway, was effectively used as a giant chase  
12 for all of the units above the basement level. Since there  
13 was no existing doors to that common element, the original  
14 builder used it, essentially like I mentioned, as a large  
15 chase.

16 So, we had to relocate the door for the two-  
17 bedroom unit and we had to relocated plumbing stacks in the  
18 three-bedroom unit.

19 We also had to rerun gas lines for the unit on the  
20 first floor when we discovered that was illegally connected  
21 to the church's commercial kitchen. Right off of their gas  
22 line, effectively creating a lack of a shutoff valve for any  
23 gas line to that unit.

24 MR. RACHAL: And these were newly discovered  
25 issues when you took over the property?

1 MR. LINDSAY: Yes.

2 MR. RACHAL: Did the Homeowners' Association  
3 support your project as you went forward?

4 MR. LINDSAY: Yes, they did. We had a difference  
5 of opinion as to certain engineering issues, but in large  
6 part, yes, they did.

7 MR. RACHAL: Okay. Did you have a seat on the  
8 board?

9 MR. LINDSAY: Yes, I did.

10 MR. RACHAL: Okay. Did you discuss the project  
11 with the members of the board throughout the time that you  
12 undertaking your design and construction?

13 MR. LINDSAY: Yes. We discussed it, both in  
14 person at board meetings or phone, email throughout the  
15 process.

16 MR. RACHAL: And at any time during that process  
17 did they voice any objection to your going forward?

18 MR. LINDSAY: No.

19 MR. RACHAL: Have you been asked to discuss the  
20 proposal with the community?

21 Have you had meetings with the community?

22 MR. LINDSAY: Yes.

23 MR. RACHAL: And as a result of those meetings  
24 with the community, what did you propose as a revised  
25 alternative?

1 MR. LINDSAY: Our revised benefits?

2 MR. RACHAL: Yes.

3 MR. LINDSAY: We proposed a \$15,000 in-kind  
4 contribution to the Friends of Shaw Dog Park, as well as a  
5 contribution to the Garrison Elementary PTO.

6 We're also providing an additional parking space  
7 to the community. And as Mr. Cross mentioned, the larger  
8 unit at Kennedy Street.

9 MR. RACHAL: Now, when you came up with the  
10 proposal to increase the size of the unit, was this done in  
11 response to communications and discussions with the  
12 Department of Housing and community?

13 MR. LINDSAY: Yes. The IZ program manager at  
14 Department of Housing and Community development, told me that  
15 he has little to no wait list for a one-bedroom unit like the  
16 one proposed at 1210 R Street.

17 He said he has extensive wait lists, however, for  
18 two-bedroom units and larger. And that if we could offer a  
19 larger unit, given that he actually has a wait list for  
20 larger units, he'd like to see that happen.

21 MR. RACHAL: Okay. And did he also request the  
22 50 percent AMI?

23 MR. LINDSAY: Not at that time, no.

24 MR. RACHAL: Okay. What was your discussion with  
25 regard to the difference in terms of the 80 percent and the

1 50 percent?

2 MR. LINDSAY: I mentioned it would be at 80  
3 percent and he did not request any change to that at that  
4 time.

5 MR. RACHAL: Okay. Now, the proposed benefits for  
6 the Shaw Dog Park and the Garrison School, those are in-kind  
7 services, are they not?

8 MR. LINDSAY: That's correct.

9 MR. RACHAL: Okay. You're not going to write a  
10 check are you, directly?

11 MR. LINDSAY: That's correct.

12 MR. RACHAL: But you're going to assume certain  
13 projects that they have identified --

14 MR. LINDSAY: Yes.

15 MR. RACHAL: -- for you to do?

16 MR. LINDSAY: Yes.

17 MR. RACHAL: And do you have a list of those  
18 projects?

19 MR. LINDSAY: Yes, I do. Regrading the Shaw Dog  
20 Park and repairing the ten wooden tree boxes at the dog park.  
21 Upgrading the lighting, repairing the shed and other  
22 miscellaneous projects for the dog park.

23 MR. RACHAL: And you're amendable to doing other  
24 projects, so long as it totals to the amount that you've  
25 committed to?

1 MR. LINDSAY: Yes.

2 MR. RACHAL: Okay. I have nothing further from  
3 Mr. Lindsay.

4 CHAIRMAN HOOD: So, is that the completion of your  
5 presentation?

6 MR. RACHAL: Yes, in terms of making a closing at  
7 the end.

8 CHAIRMAN HOOD: Okay. All right. Let's see if  
9 we have any questions up here. Commissioners? Anybody?  
10 Okay, Commissioner May.

11 COMMISSIONER MAY: Yes. So, have the three units  
12 that are shown on the plans been built?

13 MR. LINDSAY: Yes.

14 COMMISSIONER MAY: Okay. By the way, I don't  
15 think we have this presentation in the record, did you submit  
16 that? This is, I think this is the first time I've seen  
17 drawings.

18 MR. RACHAL: No. There are drawings in the record  
19 with regard to the new two-bedroom units compared to the  
20 original plans. We have both sets.

21 COMMISSIONER MAY: Can you tell me the exhibit  
22 number because I just looked through it again and I didn't  
23 find it? Or maybe somebody else on the Commission knows  
24 where it is.

25 MR. RACHAL: It was a part of the plat that was

1 submitted.

2 COMMISSIONER MAY: Oh, the survey.

3 VICE CHAIR MILLER: The only plans I've seen of  
4 Kennedy Street are on Exhibit 4H. They're tiny little plans,  
5 it's hard to really read them.

6 CHAIRMAN HOOD: Yes, if you look at Exhibit 4.

7 VICE CHAIR MILLER: 4H.

8 COMMISSIONER MAY: 4H.

9 CHAIRMAN HOOD: Yes.

10 COMMISSIONER MAY: Yes. And I'm less concerned  
11 about that, I was just more interested in the plans for the  
12 building. The existing building.

13 MR. RACHAL: We can supply larger drawings for the  
14 record.

15 COMMISSIONER MAY: Yes. Surveyors plot, Exhibit  
16 2. Is that where you think it was?

17 CHAIRMAN HOOD: Look at Exhibit 2. My computer  
18 is cutting off and on.

19 COMMISSIONER MAY: Oh, yes, okay, I see. Well,  
20 yes, I mean, it just shows the division of the units.

21 So, yes. I mean, this drawing is helpful because  
22 it shows where there were columns appearing in the middle of  
23 the apartment. You know, in the bedroom and the living room  
24 and all that kind of stuff. Just, that is helpful to have.

25 And so, yes, absolutely, you should submit this

1 presentation to the record, because now that we've seen it,  
2 it's part of the record.

3           So, you managed to reconfigure the units and make  
4 workable units, right?

5           MR. RACHAL: That's correct. Yes.

6           COMMISSIONER MAY: And I'm still, other than the  
7 fact that you think that DHCD doesn't want to have a one-  
8 bedroom unit, what's the problem with providing this one-  
9 bedroom unit as was originally obligated? As you were  
10 originally obligated to do.

11           MR. RACHAL: Well, because of the additional costs  
12 that were incurred in order to complete that unit. We had  
13 to devise a refinancing plan, if you will, to be able to  
14 cover those costs and meet the commitments made in the  
15 original proposal.

16           And we felt we could do that and enhance that, by  
17 providing for the IZ unit off site with a larger unit at a  
18 less --

19           (Simultaneous speaking.)

20           COMMISSIONER MAY: So what's --

21           MR. RACHAL: -- expensive cost in terms of  
22 construction.

23           COMMISSIONER MAY: So, you're saying it's going  
24 to cost less to provide the two bedroom up on Kennedy Street,  
25 plus the \$25,000 you've committed to these other

1 organizations? That's still going to be less.

2 MR. RACHAL: Right.

3 COMMISSIONER MAY: Okay.

4 MR. RACHAL: And that helps to offset the  
5 additional costs that were incurred throughout the entire  
6 project, to deal with the issues that we're not fully  
7 identified at the start.

8 COMMISSIONER MAY: Sure.

9 MR. RACHAL: And the fact that we were not taking  
10 existing residential space and converting it to residential,  
11 we were taking basically commercial space --

12 COMMISSIONER MAY: You know, I mean, I understand  
13 that. I mean, it's a bit of a pickle that the owners of the  
14 building are, whatever, are in at this moment.

15 But this is a planned, an approved planned unit  
16 development and we expected it to be built the way it was  
17 approved, and the fact that we now discovered that what was  
18 originally proposed didn't really work and so the backup plan  
19 was to fill it in with apartments, but now that doesn't  
20 really work.

21 I mean, I'm sorry that it was poorly constructed  
22 and that somebody didn't think through what was happening  
23 with the columns and the column caps and things like that.  
24 I mean, that's unfortunate, but I'm still trying to  
25 understand why we should accept this change.

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1 Can you tell me what would happen if we did not  
2 approve this?

3 MR. RACHAL: Well, it was never envisioned at the  
4 time that the Commission was asked to approve the plan, to  
5 inflict the hardship upon the Applicant. I think that --

6 COMMISSIONER MAY: No, we just expected it to be  
7 built the way we said, we agreed that it would be, as the  
8 applicant, the original applicant proffered it. And then as  
9 it was subsequently modified with these three units.

10 And that's what we expected to be delivered. And  
11 so now you're asking us to make another change to that.

12 So, again, my question, the original question is,  
13 I mean, you've already built this out so you've already  
14 incurred the cost, what's the, I mean, what happens if we say  
15 no, you're just going to wind up selling the unit, somebody  
16 is going to have to eat the difference in cost, is that that  
17 it boils down to?

18 MR. RACHAL: Basically yes. But I don't think  
19 that the original proposal was designed to subject the  
20 Applicant to a loss.

21 The regulations --

22 COMMISSIONER MAY: No, I'm sure the Applicant  
23 didn't lose any money on this. The Applicant, I mean, the  
24 original applicant probably sold all the units and now it's  
25 in the hands of the Homeowners' Association, right?

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1 MR. RACHAL: No.

2 COMMISSIONER MAY: No? Is the original applicant  
3 at the table?

4 MR. RACHAL: No, the original applicant sold to  
5 the current applicant.

6 COMMISSIONER MAY: Okay.

7 MR. RACHAL: Okay. So, the original applicant did  
8 not build out the plan that was presented to the Commission  
9 and approved by the Commission.

10 The current Applicant has been faced with  
11 undertaking those commitments with the assumptions that were  
12 made at the time of that grant.

13 COMMISSIONER MAY: All right. So who is the  
14 current Applicant then?

15 MR. RACHAL: 1210 C "R" Street, LLC.

16 COMMISSIONER MAY: Okay. And do the owners of the  
17 building control that or is it Mr. Lindsay? Mr. Lindsay owns  
18 the building?

19 MR. RACHAL: No.

20 COMMISSIONER MAY: Or owns the --

21 MR. RACHAL: No, owns the three units.

22 COMMISSIONER MAY: The three units.

23 MR. RACHAL: Yes. The space really.

24 COMMISSIONER MAY: Okay.

25 MR. RACHAL: And under the regs, it's not improper

1 or not used as a means, in fact, it is to provide IZ  
2 requirements by offsite alternatives.

3 COMMISSIONER MAY: No, we're familiar with that.

4 MR. RACHAL: Yes. And this is done, often times,  
5 to make a project financially viable. And in this case, we  
6 think that the --

7 COMMISSIONER MAY: Yes. I mean, it seems to be  
8 sort of a moving target, right?

9 We don't know that. I mean, there was an original  
10 proposal and then for some reason that didn't work and then  
11 there was a second proposal and that's turned out to be more  
12 expensive than initially anticipated.

13 So, I'm not sure, you know, what I'm trying to  
14 understand why this is our problem and not just yours to  
15 solve. I mean, solve it on your own with your own financing.  
16 I'm not understanding why it's important for us to solve this  
17 for you.

18 MR. RACHAL: Well, I think it's important in terms  
19 of being able to provide for, I guess Applicants like Mr.  
20 Lindsay, to take on projects without having to bear  
21 unexpected hardship.

22 The goal was to have an IZ fulfillment, and we are  
23 not only doing that, we're exceeding that by providing a  
24 better unit in terms of the size and quality of the --

25 COMMISSIONER MAY: I understand --

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1 MR. RACHAL: -- useable space.

2 COMMISSIONER MAY: I understand what you're  
3 proposing.

4 MR. RACHAL: And we're taking it to the same level  
5 that we did before in terms of keeping it as a universal  
6 design unit.

7 So that there is still a win-win, plus we're  
8 adding in additional benefits to maybe offset the loss of the  
9 community space by supporting other facilities that provide  
10 for community use, such as the dog park as a gathering place,  
11 such as the Garrison School facilities --

12 COMMISSIONER MAY: Yes.

13 MR. RACHAL: -- which are substitute gathering  
14 places.

15 COMMISSIONER MAY: Okay. So, let me ask you a  
16 couple of things. Who owns the dog park?

17 MR. RACHAL: It's owned by an association, I think  
18 they are registered to speak tonight so they can answer that  
19 question directly.

20 COMMISSIONER MAY: They actually own the land?

21 MR. RACHAL: No, I didn't answer that, I said they  
22 were here tonight, and they will speak to that.

23 COMMISSIONER MAY: So, you don't know who owns the  
24 property of the dog park?

25 MR. RACHAL: No, I know it's an association that --

1 COMMISSIONER MAY: You've been working with an  
2 association who are interested in getting the donation, I  
3 understand that.

4 MR. RACHAL: Yes.

5 COMMISSIONER MAY: I was asking about the  
6 ownership of the park.

7 MR. RACHAL: They have the right to use the park  
8 through --

9 COMMISSIONER MAY: Well, I think everybody has the  
10 right to use the park, I saw that in the record.

11 MR. RACHAL: Well, but they have a little bit more  
12 than the right to use the park, they have a right --

13 COMMISSIONER MAY: No, I mean, they're a support  
14 group for the park.

15 MR. RACHAL: Yes.

16 COMMISSIONER MAY: It's a DPR Park, isn't it?

17 MR. RACHAL: Yes.

18 COMMISSIONER MAY: Why didn't you just answer the  
19 question? I mean, it is a public park, it is owned by the  
20 City.

21 MR. RACHAL: And it could be under a lease, I don't  
22 know. It could be under some kind of a grant in terms --

23 COMMISSIONER MAY: That could be the, yes, that  
24 could have been the next question.

25 MR. RACHAL: -- and so I don't know. And that

1 would be --

2 COMMISSIONER MAY: I was asking who owned it.

3 MR. RACHAL: And that would be them. If they are  
4 in a tenant relationship, they would be the owner as  
5 respecting the tenancy.

6 COMMISSIONER MAY: Yes, I don't believe that they  
7 would be a tenant of a City owned park.

8 MR. RACHAL: Well, there are many public parks  
9 that are given away by the City, in terms of swaps or in  
10 terms of maintenance --

11 COMMISSIONER MAY: Okay, I'm very familiar with  
12 what the City does with its parks and as I understand it,  
13 this is just a public dog park and I understand that there  
14 is a support group that helps out with it.

15 And one of the questions I will have for them is,  
16 is the City doing its job of helping to keep it up because  
17 it seems like it should not be reliant on planned unit  
18 developments to provide this kind of basic level of  
19 maintenance, which is what's being requested.

20 So, and just for the record though, the Office of  
21 Planning is recommending denial unless the affordability  
22 level for the Kennedy Street unit is upped to 50 percent of  
23 AMI. So, is that something that the Applicant is unwilling  
24 to do?

25 MR. RACHAL: Yes.

1 COMMISSIONER MAY: Okay. All right, that's it for  
2 my questions.

3 CHAIRMAN HOOD: Okay. Commissioner Shapiro.

4 COMMISSIONER SHAPIRO: Thank you, Mr. Chair.  
5 Along those same lines as Commissioner May. And mister, is  
6 it Mr. Lindsay?

7 MR. LINDSAY: Yes.

8 COMMISSIONER SHAPIRO: Can I speak to you  
9 directly? Can you answer me directly?

10 MR. LINDSAY: Yes.

11 COMMISSIONER SHAPIRO: Thank you, I appreciate it.  
12 So this entire case is hinging upon economic hardship, as far  
13 as I can tell.

14 MR. LINDSAY: Yes.

15 COMMISSIONER SHAPIRO: And that's based upon  
16 information that you didn't have when you bought the  
17 property.

18 MR. LINDSAY: Yes, sir.

19 COMMISSIONER SHAPIRO: You know, based on what  
20 you're saying, why aren't you suing the seller?

21 MR. LINDSAY: The seller is a church and a church  
22 that's bankrupt.

23 COMMISSIONER SHAPIRO: So you're left holding the  
24 bag?

25 MR. LINDSAY: Yes, sir.

1 COMMISSIONER SHAPIRO: And so three, I didn't  
2 understand the response of Commissioner May's question. You  
3 have control of three units?

4 MR. LINDSAY: Yes, we bought the space and  
5 converted it to three units.

6 COMMISSIONER SHAPIRO: I'm talking about the  
7 entire property, the rest of the property.

8 MR. LINDSAY: The rest of Logan Station?

9 COMMISSIONER SHAPIRO: Yes.

10 MR. LINDSAY: No, that's --

11 COMMISSIONER SHAPIRO: So you have three --

12 MR. LINDSAY: We have three of the units.

13 COMMISSIONER SHAPIRO: Okay. So when you went in,  
14 when you bought this, what kind of inspection did you do?

15 MR. LINDSAY: We did a visual walkthrough  
16 inspection on a couple of occasions. Measurements, but  
17 visual. We didn't tear down any walls or --

18 COMMISSIONER SHAPIRO: And is this a typical  
19 business model for you, are you on a number of projects like  
20 this?

21 MR. LINDSAY: It's unusual to do a property within  
22 an occupied building with 60 units, 200 plus residents.  
23 That's unusual.

24 COMMISSIONER SHAPIRO: It sounds like an, again,  
25 this is based upon economic hardship, what rents are you

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1 going to be charging? What 80 percent of AMI?

2 MR. RACHAL: Mr. Shapiro, this is not a rental  
3 unit, these are units that are available for resale. These  
4 are condos.

5 COMMISSIONER SHAPIRO: So then, what are you  
6 talking about? How much are you going to be selling the unit  
7 it?

8 MR. LINDSAY: The one-bedroom unit, I believe at  
9 80 percent, I think it's around \$175,000, \$180,000.

10 COMMISSIONER SHAPIRO: Okay. And the other units?

11 MR. LINDSAY: The other two units have already  
12 been sold.

13 COMMISSIONER SHAPIRO: I'm getting this because  
14 your whole point is around economic hardship. I'm trying to  
15 understand, based upon the model that you're working with,  
16 how big of deal this is. I mean, if you have, if you've done  
17 this once or twice, that's a very different economic hardship  
18 as opposed to you either manage or you own 150 units  
19 throughout D.C.

20 MR. LINDSAY: Kennedy Street is our only other  
21 project in D.C.

22 COMMISSIONER SHAPIRO: So these are your two?

23 MR. LINDSAY: Yes, sir.

24 COMMISSIONER SHAPIRO: Okay. All right, thank  
25 you. That's all I have for them, Mr. Chair.

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1 CHAIRMAN HOOD: Commissioner Turnbull.

2 COMMISSIONER TURNBULL: Thank you, Mr. Chair. You  
3 know what, I'm trying to piece together, there was this whole  
4 PUD that was responsible for IZ units. How are you singled  
5 out to be the one that's got to provide them?

6 MR. RACHAL: Well --

7 COMMISSIONER TURNBULL: I mean, there's a whole  
8 PUD, this whole building.

9 MR. RACHAL: Well, we put in our application the  
10 fact that the building not only met the IZ requirement but  
11 exceed the IZ requirement. So that the Commission, when it  
12 imposed another IZ unit as a benefit, was really adding on  
13 beyond what was really necessary as a benefit, because the  
14 project, when it was first approved, exceeded its IZ quotas.

15 And that was noted in the record when the PUD was  
16 first approved by the Commission. Planning Office was aware  
17 of that and signed off on it.

18 We were willing to make the effort to follow  
19 through with that as a benefit, but without a subsequent  
20 hardship condition being imposed when certain things that  
21 were not known to anybody, not known to the Commission when  
22 they first reviewed this, when the church came in to ask to  
23 have the community room converted over from that space to  
24 residential.

25 There wasn't any present provisions for utilities,

1 be it electric, plumbing or anything. And most of the  
2 materials were hidden, in terms of the structure. Until you  
3 got into the construction, that they exposed themselves in  
4 terms of being real financial problems.

5 COMMISSIONER TURNBULL: Okay. I guess my other,  
6 the other issue with the Affordable Housing is that you're  
7 over three miles away. It's no longer a neighborhood serving  
8 affordable unit, it's out of sight.

9 I mean, offsite is fine, but when you go beyond  
10 a not serving the neighborhood that you're in for an offsite  
11 unit, it puts a hardship on the neighborhood. I mean, you're  
12 not fulfilling the, what we look at as IZ is, where they're  
13 supposed to be built.

14 Where this is supposed to be, now it's three and  
15 a half, three and a third miles away. So, I think that's the  
16 issue here.

17 It's far away from where it's supposed to be and  
18 I think that's why the housing people are talking about. If  
19 you're going to do that and we're going to let you, if we let  
20 you do that, then I think you need to up the ante and make  
21 it more of a benefit to housing for the community in general,  
22 rather than since you're not doing neighborhood IZ for what  
23 it was intended to do in this PUD, now you're moving it far  
24 away.

25 So I think that's where we're coming from. That's

1 where Office of Planning is coming from and DHCD is coming  
2 from.

3 And I think they're like, well, okay, we'll maybe  
4 give you that, there's something to you, you've got a  
5 hardship. But you need to make up something in the process  
6 of doing this. Do you see where I'm coming from?

7 MR. RACHAL: Yes, I do in part, but we did attempt  
8 to address that by offering a better unit in terms of what  
9 was needing in terms of the City's housing list of people  
10 wanting affordable units. They want two bedrooms so that  
11 they can help to support families, help to support workforce  
12 employment.

13 This is what we thought would be a benefit in  
14 terms of being larger in size. And in terms of the  
15 permanency.

16 COMMISSIONER TURNBULL: Well, we have a balance  
17 here. Like, I'm balancing that but I'm also balancing the  
18 location. Where it's supposed to be and what it really was  
19 intended to do.

20 MR. RACHAL: Right.

21 COMMISSIONER TURNBULL: So I think you got to look  
22 at that.

23 MR. RACHAL: Right.

24 COMMISSIONER TURNBULL: Because really, I think  
25 the, and the owner needs to look at this very carefully and

1 say, I've got a balance here, I want to get forward on this  
2 thing, what am I going to do.

3 MR. RACHAL: And we did that. We balanced it in  
4 terms of trying to look, to keep it within the same quadrant  
5 of the City. It's still in northwest.

6 The IZ regulations that provide for the ability  
7 to have offsite units do not impose a requirement that they  
8 be kept within the same award. In fact, they provide that  
9 offsite units can be offsite because --

10 COMMISSIONER TURNBULL: Not that far offsite.

11 MR. RACHAL: Well, they can be offsite within the  
12 entire City. They're not limited to just staying within the  
13 quadrant.

14 COMMISSIONER TURNBULL: All right, you're not  
15 listening to me. Thank you very much.

16 CHAIRMAN HOOD: Okay. Vice Chair Miller.

17 VICE CHAIR MILLER: Thank you, Mr. Chairman. Good  
18 to see you, Mr. Rachal.

19 MR. RACHAL: Always, appreciate it, Mr. Miller.

20 VICE CHAIR MILLER: I think we worked together in  
21 the early '80s.

22 MR. RACHAL: Yes, we certainly did.

23 VICE CHAIR MILLER: Saw you a lot in what was then  
24 called the District Building.

25 Remind me who the, the church, the church where

1 this all originated from, what's the name of the church?

2 MR. RACHAL: The church was the Metropolitan  
3 Baptist Church.

4 VICE CHAIR MILLER: Right, right. And where are  
5 they now?

6 MR. RACHAL: Well, they're trying to come out of  
7 bankruptcy with the Commission's approval of the site --

8 CHAIRMAN HOOD: Mr. Rachal, he's asking where they  
9 are now, they are in Largo.

10 MR. RACHAL: Yes.

11 CHAIRMAN HOOD: That's what he's asking.

12 MR. RACHAL: Oh, I'm sorry.

13 CHAIRMAN HOOD: Yes, let's stick to the, we didn't  
14 need to know about the bankruptcy.

15 MR. RACHAL: I'm sorry.

16 VICE CHAIR MILLER: Yes.

17 MR. RACHAL: They --

18 VICE CHAIR MILLER: Well, so, I guess my only  
19 comment is, I commend you for increasing the IZ unit to two  
20 bedrooms from one bedroom, increasing the affordability  
21 period to in perpetuity --

22 MR. RACHAL: Yes. Yes, exactly.

23 VICE CHAIR MILLER: -- as opposed to ten years.

24 MR. RACHAL: Yes, correct. Under regulations.

25 VICE CHAIR MILLER: And the public benefits that

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1 are associated with the dog park and the school that are in  
2 the neighborhood, you know, where the church used to be.

3 And this all did originate with a church. A non-  
4 profit religious institution in the City. So, anyway, that's  
5 my only comments at this point.

6 CHAIRMAN HOOD: Okay. You know, Mr. Rachal, I  
7 think back to when we voted for Metropolitan to do all this  
8 and it seems like just ain't nothing worked through this  
9 whole process. The church didn't work, nothing works. Since  
10 you already put it out there about the bankruptcy.

11 For me this is a heavy lift. I associate myself  
12 with Commissioner Turnbull's comments. Yes, the quadrant  
13 doesn't mean, you know, one is R Street Northwest and one is  
14 on Kennedy Street.

15 So, the benefit, and I understand some of the  
16 benefits that is being offered to the community. We will  
17 listen to them about the dog park and everything else when  
18 they come up here, those who want to come to testify. And  
19 the school.

20 But it's a balance and I think we're not talking  
21 about a whole lot of money to get to where the Office of  
22 Planning and the ACD is asking.

23 But for me it's a heavy lift. And right now, I  
24 haven't heard anything that can help me get over that lift.  
25 It's a heavy lift for me. Because I don't think we're asking

1 for it. I don't think that the recommendations from the  
2 Office of Planning and DHCD.

3 Here's another thing that you said that, if DHCD  
4 knew that there was a demand for two, well, I hear all the  
5 time that the market is not, well, actually that argument  
6 goes both ones.

7 One week I'm down here, I hear that we don't need  
8 a whole lot of two and three-bedroom apartments, the next  
9 week I'm done here I hear that we need a whole lot of one  
10 bedroom apartments, we don't need two and three. Or vice  
11 versa. I hear that argument. It depends on who comes down  
12 here, what they're asking for.

13 So now I'm hearing from you that DHCD has in the  
14 market, they need more two and three bedroom, well, you said  
15 two, you didn't say three so I don't want to put anything in  
16 your mouth. You said two bedrooms.

17 Well, if that was the case, why would they not be  
18 supportive?

19 If that was the case, why would DHCD not be  
20 supportive?

21 You've been having the conversations with them,  
22 why would they not be supportive of this?

23 MR. RACHAL: They have been trying to get us to  
24 the 50 percent of AMI level, and that is a financial  
25 computation that gets us back in the same quagmire.



1           We're trying to avoid the hardship, we're not  
2 trying to take on another one with regard to taking it from  
3 80 percent when 80 percent is what's the customary percentage  
4 for units that are being sold as affordable units.

5           So, in their own regs they're saying 80 percent,  
6 yet with us they want to take us to 50 percent. Fifty  
7 percent is what is imposed on apartments or rental units,  
8 this is not a rental unit.

9           CHAIRMAN HOOD: Okay. Well, you might better work  
10 with them because for me I've asked 30 percent.

11           So I would just say, you might want to really  
12 reconsider and work with them, because this whole thing has  
13 just, this whole thing has evolved, it seems to be, and I  
14 know we can't control marketing additions and things like  
15 that, but this whole thing, I'm talking about from the church  
16 moving to how many times we've dealt with this, keeping a  
17 presence on R street. It seems like it just keeps coming  
18 back.

19           How many years ago was it that we voted for this?  
20 Was it in the '90s?

21           MR. RACHAL: 2000.

22           CHAIRMAN HOOD: 2001. Well, in the late '90s.

23           MR. RACHAL: Yes.

24           CHAIRMAN HOOD: Okay.

25           MR. RACHAL: Right.

1 CHAIRMAN HOOD: Okay.

2 MR. RACHAL: And that's 2009.

3 CHAIRMAN HOOD: When we first started, when we  
4 first started this whole initiative, I've been here for this  
5 the whole time and every time it comes back it's an  
6 additional problem. So, we need to really re-look at that.  
7 I would suggest that we re-look at that hardly. I would ask  
8 Mr. Lindsay to re-look at that.

9 MR. RACHAL: All right.

10 CHAIRMAN HOOD: Okay, Commissioner Shapiro has a  
11 follow-up.

12 COMMISSIONER SHAPIRO: Thank you, Mr. Chair. Mr.  
13 Lindsay, another question for you. I was just doing the math  
14 in my head, and I apologize if I'm doing the math wrong, but  
15 by my calculation, the difference between the 80 and the 50,  
16 the hit on you is going to be about \$50,000?

17 MR. LINDSAY: Okay.

18 COMMISSIONER SHAPIRO: Does that sound about  
19 right?

20 MR. LINDSAY: Yes.

21 COMMISSIONER SHAPIRO: Okay. And spread across  
22 this project and Kennedy Street? Is that the two properties  
23 that we're talking about?

24 MR. LINDSAY: Yes, those are the two properties,  
25 so we'd lose, if you drop at 50 percent at Kennedy, you're

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1 saying it would be \$50?

2 COMMISSIONER SHAPIRO: The difference in cost to  
3 you, if I'm doing the math right, between 80 percent AMI and  
4 50 percent AMI, that will be about a \$50,000 hit on you.

5 So, I'm, again, this is about economic hardship,  
6 you have made the case that that's why this needs to happen.  
7 So, that's the math that I'm hearing.

8 And I think, unless I'm understanding it wrong,  
9 and please correct me if I'm wrong, that's what this entire  
10 conversation is about, is that hardship. And I'm not, by any  
11 means belittling that or over minimizing that, I can't speak  
12 to your financial situation, but that that's what I'm hearing  
13 is about \$50,000.

14 Because otherwise, if you say yes to the 50  
15 percent AMI you, I imagine, would have the support of OP.  
16 I'll let you ponder that for a second. And that's all I had,  
17 Mr. Chair.

18 CHAIRMAN HOOD: Be in support of OP, but also the  
19 subject matter experts, DHCD. Mr. Turnbull.

20 COMMISSIONER TURNBULL: Yes, I was just going to  
21 get back to Mr. Rachal. I think an offsite housing has to  
22 be in the same census area as the original unit. I think you  
23 got to be in that same local from the census standpoint. I  
24 don't think you can just go far away.

25 You got to be in that same census local that the

1 other one is in. So I'm just throwing that out.

2 I mean, we can check the regs, I think it's 1006.

3 But I think we'll have to go back and check on that.

4 CHAIRMAN HOOD: It's 1006?

5 COMMISSIONER TURNBULL: I think so.

6 CHAIRMAN HOOD: I would encourage you to look at  
7 that, because if we're talking about the census tracks --

8 COMMISSIONER TURNBULL: Census tracks, right.

9 CHAIRMAN HOOD: Yes. As opposed to ANC areas and  
10 quadrants, then that's a difference. Okay, so let's look at  
11 that.

12 All right. Commissioner May.

13 COMMISSIONER MAY: Just one other quick question.  
14 On Kennedy Street, that's a, you say a ten-unit building?

15 MR. LINDSAY: Yes.

16 COMMISSIONER MAY: And that already has an  
17 affordable unit in it so you're adding a second one?

18 MR. LINDSAY: Yes.

19 COMMISSIONER MAY: Okay. And is the other  
20 affordable unit, tell me more about that?

21 Is that, what's the affordability level, what's  
22 the size of it, is it the same kind of unit?

23 MR. RACHAL: Mr. Cross is pulling it up on his  
24 plans.

25 MR. CROSS: Yes, we don't have a plan that shows

1 that unit. I believe it's a seller unit in this building  
2 currently proposed.

3 That is a one-bedroom unit. And it is currently  
4 at 80 percent AMI.

5 COMMISSIONER MAY: And the unit that's highlighted  
6 in red here, which is on the second floor, and at the rear  
7 of the building, that's two bedroom, and that's what you are  
8 proffering? That exact unit.

9 MR. RACHAL: That's correct.

10 CHAIRMAN HOOD: Okay. Any other questions up here? Okay.  
11 Let's see if the ANC has any cross-examination. Not your  
12 report but do you have any cross? Okay. Thank you, Chairman  
13 Fanning.

14 Let's go to the Office of Planning. Mr. Mordfin.

15 MR. MORDFIN: Good evening, Chair, and Members of  
16 the Commission. The Office of Planning recommends denial of  
17 this application and it stands on the record and is available  
18 for any question. Thank you.

19 MR. LAWSON: If I could, Mr. Chair, I'm just going  
20 to add a couple of thoughts. I'm going to kind of wing it  
21 here so I hope I get everything right. There has been a lot  
22 of discussion about what this unit is.

23 I would just like to remind people this is  
24 actually not an IZ unit. This is a proffer put forward by  
25 the Applicant in response to modifications to a PUD. While

1 we often look to the IZ provisions to give us some direction  
2 for how those PUD proffers are administered, this is not an  
3 IZ unit.

4           As the Chair rightly pointed out, it's actually  
5 very frequent in PUDs for applicants to proffer units at less  
6 than what IZ would require. That's what makes it a proffer.  
7 In this case -- and we really do appreciate the Applicant's  
8 efforts to make this a larger unit.

9           I can't speak for DHCD but I think I can pretty  
10 safely say that they do very much encourage larger sized  
11 units right now. I think they would be -- I'm not surprised  
12 that they were supportive of the provision of the two-bedroom  
13 unit.

14           However, again, because this is a proffer,  
15 proffers are intended to relate to the project. In this  
16 case, the Applicant is requesting permission to locate the  
17 proffer in an entirely other neighborhood.

18           It's pretty rare that this kind of thing happens  
19 and so we think that's considerably -- that represents  
20 considerably flexibility on the part of the Commission if you  
21 elect to approve this.

22           We've been convinced by the Applicant that there  
23 may be some sense to locating this unit off site. I think  
24 that having the drawings that the architect has provided has  
25 actually been very helpful today because it's kind of

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1 displayed what some of the difficulties are. Although it  
2 wasn't so difficult that three units couldn't be actually  
3 created in that space.

4 I think that was helpful to see that. We think  
5 that it is important that any approval by the Zoning  
6 Commission to take this PUD proffer and locate it in another  
7 building in another neighborhood in another part of the  
8 District should be taken, as you are taking it, very  
9 seriously. It certainly is not a precedent that we want to  
10 set.

11 I think my last comment, and I certainly will be  
12 available for questions and I suspect there will be some from  
13 you and from the Applicant, is that we don't, by the way, see  
14 it as an either/or. There has been a lot of discussion on  
15 the record about support for the contribution to the dog  
16 park, the support for the contributions of the school.

17 We think that the OP suggestion for the proffer  
18 combined with those two is starting to get at something that  
19 is getting commensurate with the amount of flexibility that  
20 they are asking for.

21 However, having said that, we would definitely  
22 want to make sure there is not a message going out that we  
23 would consider things like a contribution to a dog park to  
24 be an acceptable way of getting out from under an applicant's  
25 proffered IZ unit.

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1           Affordable housing is, and remains, a critical  
2 need in the District. Improvements to dog parks I'm sure is  
3 also a very critical need but we try not to pit one against  
4 the other.

5           In this case we think that a significant benefit  
6 related to affordable housing is required and we think these  
7 other proffers that are being given to the -- that will be  
8 proposed to the neighborhood are also reasonable things for  
9 the Applicant to propose.

10           With that I'll be available for questions. Thank  
11 you.

12           CHAIRMAN HOOD: Thank you, Mr. Lawson and Mr.  
13 Mordfin.

14           Mr. Lawson, I really appreciate the way you framed  
15 that. At the end of the day, while we sound like we're a  
16 little tough, for me this is new territory.

17           Mr. Rachal, you are a great person. You are.  
18 It's just that you brought a heavy lift down here. The other  
19 lifts were heavy and this might not turn out but you're a  
20 great person so I don't want you to think anything other than  
21 that. I always soften the blow sometimes but you are a great  
22 person. I sincerely mean that.

23           Any questions for the Office of Planning?

24           Thank you, Mr. Lawson. You framed it just right  
25 for us.



1 Does the Applicant have any cross of the Office  
2 of Planning? Turn your microphone on.

3 MR. RACHAL: Yes, we do, Chairman Hood. I just  
4 would like to say as a point of personal privilege to thank  
5 you for those remarks. I take on these heavy assignments to  
6 try to find a win/win solution. Our appearance here today  
7 is in that regard, trying to find a way to solve what is  
8 often a tough and difficult situation.

9 This is a rare case but it's a rare case that has  
10 really provided for a benefit of what the Commission is about  
11 and what the Department of Housing is about; that is, trying  
12 to solve the problem of affordability in the city. I think  
13 we have done that because we got two units here for the price  
14 of one unit which will accommodate more families.

15 CHAIRMAN HOOD: Mr. Rachal, you was doing good.  
16 You were getting ready to do cross-examination. Maybe I  
17 started it. This is cross-examination. Maybe I should never  
18 even started.

19 MR. RACHAL: Let me just say I would like to ask  
20 whether the Planning Office recalls the record with regard  
21 to the original PUD and did it not point out that the  
22 original applicant had exceeded the IZ requirement?

23 MR. LAWSON: I'm not sure I understand the  
24 question. Sorry.

25 MR. RACHAL: It's a question of simply did the

1 original applicant for the PUD exceed the then imposed IZ  
2 requirement.

3 MR. LAWSON: The original applicant was proposing  
4 to provide an IZ unit on the property.

5 MR. RACHAL: But didn't it exceed the IZ  
6 requirement by almost 25 percent?

7 MR. LAWSON: I don't know the percentage but it  
8 probably did as do most PUDs exceed the IZ requirement.  
9 That's what a proffer is.

10 MR. RACHAL: Right. And the community room when  
11 it was offered as a benefit at the original time of the PUD,  
12 it was seen as a community gathering space. Was it not?

13 MR. LAWSON: I believe so, yes. I wasn't here at  
14 that time. Sorry.

15 MR. RACHAL: And isn't a dog park the more modern  
16 equivalent of a community gathering place?

17 MR. LAWSON: But the issue of replacing the  
18 community space with three units has already been decided by  
19 the Commission. That happened in the last case. What you're  
20 asking for now, it seems to us, is you're trying to pit  
21 contributions to a dog park for the provision of affordable  
22 housing unit.

23 I think both of those are laudable things for an  
24 applicant to do, but they are not equivalent. So I think  
25 honestly -- I don't think that's a correct argument. The

1 community space is gone. We are not looking for amenity to  
2 compensate for the loss of the community space because that  
3 has already been decided by the Commission. That's done.

4 MR. RACHAL: Right. And the provision of the IZ  
5 unit, that is still being maintained. Is it not?

6 MR. LAWSON: It's being -- again, it's not an IZ  
7 unit. It's a PUD proffer and the proffer is to take it off  
8 site and into another neighborhood.

9 MR. RACHAL: But isn't it the same percentage as  
10 the original one approved by the Commission at 80 percent?

11 MR. LAWSON: It is typical when people are asking  
12 for flexibility that they up the response to that  
13 flexibility. I understand that there is a disagreement of  
14 opinion here. You feel that by providing a two-bedroom unit  
15 that you have addressed that additional flexibility.

16 If the Commission agrees, then we would accept that.  
17 We feel that it would be more appropriate, and it would be  
18 more commensurate with the level of flexibility, the  
19 considerable level of flexibility to locate this unit three  
20 miles away that the unit be provided a 50 percent AMI.

21 MR. RACHAL: I have nothing further.

22 VICE CHAIR MILLER: Thank you. Does the ANC have  
23 any cross-examination of the Office of Planning?

24 MR. FANNING: I do not.

25 VICE CHAIR MILLER: Okay. Then I think the next

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1 thing on the agenda is the ANC testimony. Do you have ANC  
2 testimony that you want to present tonight? Come forward and  
3 identify yourself for the record and present your testimony.

4 MR. FANNING: Good evening and thank you members  
5 of the Commission, Chairman. My name is John Fanning and I'm  
6 the chairman of ANC-2F. This is a head scratcher, right?  
7 So it's a little complicated. I guess I could understand the  
8 concern that the Office of Planning has about the affordable  
9 unit leaving the neighborhood.

10 On behalf of the community, I realize that we're  
11 in this situation so I would hope that there could be a  
12 compromise somehow struck because, one is, these units are  
13 already developed. We have the loss of the community space.  
14 We have two local non-profit organizations affiliated with  
15 the community that are in need of resources.

16 This is a challenge, right? The situation that  
17 occurred when the developer first came before the ANC  
18 Commission we weren't aware of the engineering and structural  
19 issues that occurred while they went into the development of  
20 the property. I'm here to voice support that we don't lose  
21 sight of the community benefit and that somehow this could  
22 be worked out.

23 That concludes my testimony.

24 VICE CHAIR MILLER: Does the Applicant have any  
25 cross-examination of the ANC? Okay. I'm going to turn the

1 mic back over to the Chairman.

2 CHAIRMAN HOOD: I actually thought I was timing  
3 what I had to do right because I wanted to hear your  
4 testimony.

5 MR. FANNING: Welcome back. Okay. We can do it  
6 all over again.

7 CHAIRMAN HOOD: So pretty much --

8 MR. FANNING: So like I stated, this is --

9 CHAIRMAN HOOD: Thank you for doing that.

10 MR. FANNING: This is a head scratcher. There's  
11 some challenges that have been brought on by the developer  
12 when they purchased the property. As you know, this was a  
13 community space that was part of the PUD development when  
14 they reached an agreement with Metropolitan Baptist Church.

15 We had used this community space on occasion. Now  
16 that it's built out, I was hoping that the Commission could  
17 reach a compromise with the developer because we still have  
18 a community benefit obligation.

19 I think that, you know, depending on whether you  
20 like dogs or you don't, or you want to be supportive of the  
21 elementary school, which is in need of program support, that  
22 the developer made a financial obligation to support these  
23 two community non-profits.

24 With that said, I do understand the opinion  
25 reached by the Office of Planning because of the unit being

1 offered in another neighborhood outside of where the  
2 affordable unit should be developed in caps.

3 With that said, we go back to the one and two-  
4 bedroom issue, right? I think it's clear by the  
5 administration and folks in the housing market that there  
6 aren't enough affordable units for families and that the bulk  
7 of the housing stock in the Logan Circle community is studio  
8 and one-bedroom apartments.

9 I think that the developer offering to make this  
10 affordable unit much larger would accommodate a family in a  
11 neighborhood that has experienced some economic  
12 revitalization in the 700 block of Kennedy Street.

13 I'm here on behalf of my local neighbors and there  
14 will be testimony from a member of the Logan Circle Station  
15 Condo Board who was previously in support of the resources  
16 going towards these two non-profits.

17 That concludes my testimony. If there's any  
18 questions, I would be more than happy to answer them.

19 CHAIRMAN HOOD: Okay. Thank you, Chairman  
20 Fanning, for revisiting your testimony for me. I think we've  
21 already --

22 Any questions up here? We do have a question.  
23 Okay.

24 COMMISSIONER MAY: Just one quick questions.

25 MR. FANNING: Sure.

1 COMMISSIONER MAY: I remember seeing the community  
2 benefits agreement that was in the record that you signed off  
3 on. It's like a year old or something like that.

4 MR. FANNING: Two.

5 COMMISSIONER MAY: Okay. I believe it.

6 MR. FANNING: This has been going on for quite  
7 some time.

8 COMMISSIONER MAY: Do we actually have an ANC  
9 report in the record?

10 MR. FANNING: Yes.

11 COMMISSIONER MAY: Okay. For some reason I could  
12 not see that. I'll look back through the record. You had  
13 a regularly-noticed meeting and all that kind of thing?

14 MR. FANNING: Oh, yes. This has been on -- this  
15 has been in the Current newspaper, a couple of area blogs.  
16 There's been a lot of community --

17 COMMISSIONER MAY: I just want to make sure we  
18 have a piece of paper that allows us to address any of your  
19 concerns.

20 CHAIRMAN HOOD: If we look at Exhibit 4E1, that  
21 is their letter.

22 COMMISSIONER MAY: Got it. Thank you.

23 CHAIRMAN HOOD: All right. So we didn't have any  
24 cross. Mr. Rachal, you didn't have any cross. Okay. Thank  
25 you very much, Chairman.

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1 MR. FANNING: Thank you.

2 CHAIRMAN HOOD: All right. Organizations and  
3 persons in support. I'm going to call what I have here on  
4 the list. Bryan Pruitt. If I mess up your name, if it  
5 sounds like it, just come forward. Bryan Pruitt, Urzula  
6 Lazcano, Steven Oatmeyer, Lisbeth Lyons.

7 Is there anyone else who would like to come and  
8 testify in support who is present? We are going to start to  
9 my right, your left. You may begin.

10 MS. LAZCANO: Hi. My name is Urzula Lazcano. I  
11 am the PTO president for Garrison Elementary School. Good  
12 morning. Thank you for being here.

13 Garrison Parent-Teacher Organization supports for  
14 Garrison Elementary School community, as you know. And our  
15 qualifies as a Title I school with high concentration of  
16 students from low-income families. Recently we have a  
17 beautiful renovation of the school. Right now the school  
18 looks very, very nice. All the installations are very good.

19 Every dollar that we receive right now goes  
20 directly to enriching the educational experience of our  
21 students. We are talking about field trips, for example.  
22 This year we had a field trip for our second and first  
23 graders to the Cox Farm. Last year we took our preschoolers  
24 to the Building Museum.

25 Right now all our budget for field trips are gone.



1 Also, what the PTO does with the cash or donations that we  
2 receive, like the most recent thing we gave our third graders  
3 the chance to attend off-site swimming lessons by providing  
4 bathing suits, towels, toiletries, et cetera.

5 Also, what we do is have a teacher appreciation  
6 week. We are trying to treat our teachers with some lunch,  
7 goodies, gifts. Well, to pamper them during that week. We  
8 do all of that with the money that we receive from donations.

9 Garrison hosts also family nights like Hispanic  
10 Heritage. We have game nights. Recently we have a Conscious  
11 Discipline night that was very interesting because as parents  
12 we got seven points in how to educate our children and to get  
13 them in a better behavior without going crazy.

14 So what do we do as a PTO in all this? We provide  
15 food, drinks for everything that specific night requires.  
16 For example, the game night, the PTO donated a lot of board  
17 games for giving away like in a raffle.

18 Garrison PTO is an integral part of the Garrison  
19 School community. We are looking forward to continuing our  
20 work this year through field trips and other enrichment  
21 activities through our work providing support for our  
22 families in our community.

23 That is what we're looking for at the PTO. We are  
24 looking to help these kids that without those donations maybe  
25 they couldn't be visiting farm like they did this year, or

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1 taking swimming lessons, or having a game night like they did  
2 this year. Thank you.

3 CHAIRMAN HOOD: Thank you.

4 Next.

5 MR. PRUITT: Good evening. Mr. Chairman, point  
6 of personal privilege. If I heard correctly, from one Eagle  
7 Scout to another, would it be more appropriate for Mr.  
8 Oatmeyer to speak because he has a formal presentation from  
9 the Shaw Dog Park Association? I'm in support of that.

10 CHAIRMAN HOOD: Are you a Eagle Scout?

11 MR. PRUITT: Yes, I am, sir.

12 CHAIRMAN HOOD: Okay. Go right ahead. However  
13 you want to do it. No, I'm just kidding.

14 (Laughter.)

15 MR. PRUITT: Mr. Oatmeyer has the more formal  
16 presentation from the association and I'm in support of that.

17 CHAIRMAN HOOD: Okay. Mr. Oatmeyer.

18 MR. OATMEYER: Hi. I'm Steve Oatmeyer and I'm  
19 representing the Shaw Dog Park Association Board of  
20 Directors. I never made it past First Class. I gave that  
21 up.

22 So for over 10 years Shaw Dog Park Association's  
23 mission has been to provide a safe space for the residents  
24 of the Shaw, Logan Circle, and U Street communities to assist  
25 in raising healthy, well-tempered dogs in an urban

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1 environment.

2           Our park consist of two open areas; one for small  
3 and senior dogs, and another for larger dogs with adequate  
4 space to run off leash to encourage socialization. The  
5 combined area is 15,000 square feet and located on 11th  
6 Street between R and Rhode Island Northwest.

7           Currently the park gets approximately 2,000 park  
8 patrons per month. As the Logan, Shaw, and U Street  
9 neighborhoods keep expanding, we expect even more in the  
10 future. Many of the recent construction projects in our area  
11 have used our dog park as a marketing feature to promote  
12 their properties.

13           The Shaw Dog Park is the largest in DC and is  
14 maintained solely by volunteers with very little assistance  
15 from the city. As per our initial agreement with DPR we  
16 enlist volunteers to open the park daily, secure it in the  
17 evenings, and assist in monthly cleaning.

18           The park has been used for pet social and  
19 educational events including dog adoption, DC dog licensing  
20 and training, and the occasional puppy birthday party. The  
21 park has been rated the second best dog park in the DMV by  
22 Washingtonian Magazine and the Washington Post.

23           Since the park opened, all of our funding has come  
24 from private donations and fundraisers. Local businesses  
25 such as Eat Well DC, the Commodore, and Nelly's Sports Bar

1 have supported the Park Association by hosting fundraising  
2 events. Our largest fall fundraiser provides a portion of  
3 funds needed for maintenance but none for improvements.

4 We had to solicit funds for over two years to  
5 replace the four gates and latches and repair part of the  
6 fencing. Our annual cost for park maintenance is  
7 approximately \$3,000 which includes spraying the park surface  
8 with a disinfectant from spring to fall to control  
9 transmittable diseases such as kennel cough plus watering and  
10 maintaining our shade trees and the other unexpected costs.

11 Over a year ago Commissioner Fanning notified the  
12 Shaw Dog Park Association through an email that the ANC-2  
13 approved a \$15,000 donation from 1210 R Street, Logan  
14 Station. As you can imagine, we were thrilled with the news.  
15 After a decade of park wear and tear, finally there was an  
16 opportunity to address some of our outstanding issues.

17 Our first goal is to regrade the large park  
18 because approximately a fifth of the park turns into a mud  
19 pit after heavy rains. This was a constant problem last  
20 summer due to the extremely wet summer. The water does not  
21 drain properly and is a breeding ground for mosquitoes which  
22 can transmit heartworms in dogs and West Nile Virus in  
23 humans.

24 Second, we have 10 full-grown crepe myrtle trees  
25 in large wooden boxes that provide shade. The tree boxes

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1 need to be repaired, treated, and preserved as the wood is  
2 drying out. The boxes have not been treated since they were  
3 installed in 2011.

4 Third, there is limited lighting available and  
5 would like to upgrade it for increased evening and early  
6 morning park safety.

7 Last, any additional funding would help in the  
8 repair of our storage shed and put towards the yearly  
9 maintenance.

10 I want to thank you all, Commissioner Fanning and  
11 Dan Lindsay, for giving us the time to give us a voice in  
12 support of our Shaw Dog Park community and families. We urge  
13 you to approve this much-needed donation. Thank you.

14 CHAIRMAN HOOD: Okay. Thank you.

15 You want to go next or you want the young lady to  
16 go next?

17 MR. PRUITT: I'll go next. No problem at all.  
18 Thank you so much. This is obviously a much bigger case than  
19 a lot of the neighbors know about and I appreciate the  
20 Commission welcoming the public to really understand what's  
21 going on with this particular case and why this money has  
22 kind of been languishing for a while.

23 My name is Bryan Pruitt. Thank you for the  
24 opportunity to speak to you today in support of the Logan  
25 Station donation to Shaw Dog Park Association. Like I said,

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1 my name is Bryan and my partner and I live at 1425 Euclid  
2 Street in Ward 1.

3 I've been a resident of the District for over 20  
4 years. We adopted our dog Maddie a year-and-a-half ago from  
5 City Dog Rescue. While Shaw Dog Park is not immediately  
6 walkable from our home, it is of such value in our lives that  
7 we drive Maddie to the park multiple times each week. We  
8 volunteer with the association on its leadership team and  
9 with opening and closing the park once a week.

10 Quite simply, the SDPA plan for the use of these  
11 funds is efficient and impactful -- is the most efficient and  
12 impactful way to use this money. The SDPA's plan was  
13 developed by members of the community who use the park on a  
14 regular basis and know the needs of residents and their four-  
15 legged family members.

16 These resources could be deployed in a timely  
17 manner, which is very important, to ensure neighbors see the  
18 improvements in the very near future and connect those  
19 changes to the donation itself.

20 Shaw Dog Park operates on a small annual budget,  
21 as you know, and these funds used in a way set forth in the  
22 SDPA plan, will have a multiplier effect well beyond the  
23 actual dollar amount. Because the park serves residents of  
24 at least three wards, and probably more, this plan is unique  
25 and impactful. It will touch the lives of a large number of

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1 District residents.

2 Shaw Dog Park increases property values in the  
3 neighborhood. It creates neighbors and friends who would  
4 otherwise be strangers. It had a public safety impact and  
5 is seen, I believe, unanimously as a real-world asset to the  
6 city and our immediate neighborhoods. Please support this  
7 request. Thank you.

8 CHAIRMAN HOOD: Thank you.

9 Next.

10 MS. LYONS: Hi. Good evening. My name is Lisbeth  
11 Lyons. This has been an eye-opening experience. It's my  
12 first Zoning Commission meeting. I'm learning a lot from all  
13 of you. I'm still not sure of an IZ unit versus proffer but  
14 I'm trying to learn.

15 I am appearing in support of the proposal. I'm  
16 representing my own individual opinions, but I happen to be  
17 an original condominium owner at Logan Station so,  
18 Commissioner Hood, I agree with you there's been a lot of  
19 drama with our building, it seems, since I moved in in 2007.  
20 I also serve as a member of the Board of Directors of Shaw  
21 Dog Park Association.

22 Originally in learning about this issue, as it's  
23 been mentioned by our ANC Chairman Fanning, there has been  
24 a lot of neighborhood media coverage of this issue over the  
25 last year-and-a-half. It appeared to me that this was, in

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1 the words that someone maybe had used tonight, a win/win and  
2 a positive balance for maintaining the benefits of affordable  
3 housing.

4 I did know, having been an original owner at Logan  
5 Station, and continuing to live there that our building has  
6 always provided and exceeded affordable housing units and we  
7 are proud of that and that contribution.

8 I know that I don't have the expertise that you  
9 all have in terms of regulatory and zoning requirements, but  
10 just from a citizen's perspective it seems also to me that  
11 a renter should figure into that mix.

12 At Logan Station, we have an active rotation of  
13 renters and that certainly increases the diversity of the  
14 economic situation for the building and the neighborhood.  
15 I think that's a benefit as well.

16 In terms of the trade, if you will, of the  
17 neighborhood that's been talked about a lot tonight, I heard  
18 Census data mentioned, or zoning data. I don't follow that.

19 I do follow a lot of local media and I know that  
20 whether it's WTOP, Washingtonian, Washington Business  
21 Journal, just a quick Google search probably within the last  
22 year would show that the perception of the Petworth  
23 neighborhood is very much that it's on the rise.

24 A lot of media refers to it as kind of the next  
25 Shaw or the next Logan. Without the benefit of knowing the

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1 Census data requirement and all that you've talked about, it  
2 seems to me again, just as an individual citizen, that would  
3 be a fair and equitable trade, not to mention a larger unit  
4 as we've heard.

5 In particular, I think it would be in perpetuity  
6 which would make it seem like that neighborhood would tend  
7 to keep increasing and provide a lot of economic and social  
8 amenities to the residents. Again, my opinion.

9 Finally, I will say I think there was some  
10 confusion maybe in some of the reporting of this. I believe  
11 the original report said -- may I have 30 seconds?

12 CHAIRMAN HOOD: You can go on.

13 MS. LYONS: Thank you. That the contributions to  
14 both Garrison Elementary School, which is essentially the  
15 front yard of Logan Station, and a block over the Shaw Dog  
16 Park, were to be financial contributions and it seems like  
17 the testimony we've heard tonight from the Garrison PTO, as  
18 well as Shaw Dog Park, is under the assumption that there  
19 would be actually a check written and funds provided not in-  
20 kind. That was something I think that might be either a  
21 discrepancy or something that hadn't been widely reported.

22 I would note that my support was generally based  
23 on the thought that I thought these were financial donations  
24 to the community organization so I would question whether --  
25 I guess maybe that's a question for you all to decide.

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1           With that, I will just close in statement of I  
2 hope that you all will find in support, that this would be  
3 a balanced solution to from what I learned tonight is a very  
4 messy, unprecedented, and head-scratching situation. Thank  
5 you.

6           CHAIRMAN HOOD: Thank you. Let me just respond  
7 to the financial. Typically, this Commission decided some  
8 years ago money doesn't transfer because what happens when  
9 we do that, not in these cases nowadays, but back then money  
10 became missing and nobody knew where it was and this group  
11 didn't get it all.

12           What happens now is the developer, whoever is  
13 handling the project usually does the work to that value.  
14 Is that the way this is, Mr. Rachal?

15           MR. RACHAL: Yes. That is exactly the way and we  
16 work with the community to identify what priorities they had,  
17 what projects they wanted us to do. Initially we had come  
18 in with a cash proposal but I think the Commission wanted us  
19 to convert that to projects.

20           That's what we did in this application to identify  
21 specific projects that totaled up to the amount involved.  
22 What it amounts to on the organization's books is that they  
23 can now divert money that they would be collecting rather  
24 than building the stuff. We would build it and it saves them  
25 the money that they can then use elsewhere to do the

1 different --

2 CHAIRMAN HOOD: Mr. Rachal, you seize the moment,  
3 don't you? You had answered my question about three  
4 sentences ago, but you seized the moment, and that's good  
5 actually, but I just need to cut you off.

6 Commission Shapiro.

7 COMMISSIONER SHAPIRO: Thank you, Mr. Chair. That  
8 is a good part of my question as well. Specifically, Ms.  
9 Lazcano, I heard it the same way as your interpreter of this  
10 that it was a cash contribution to the school, the PTO.

11 MS. LAZCANO: The email that we received, that's  
12 how it was written.

13 COMMISSIONER SHAPIRO: Okay. When did you receive  
14 that?

15 MS. LAZCANO: I don't have it right now but I --

16 COMMISSIONER SHAPIRO: A few days or a few weeks?

17 MS. LAZCANO: A week ago, week-and-a-half ago.

18 COMMISSIONER SHAPIRO: Okay.

19 MS. LAZCANO: As I said, we already have a  
20 beautiful renovation. The school is beautiful right now so  
21 what we need is how to fund different projects.

22 COMMISSIONER SHAPIRO: Thank you for that. First  
23 of all, I appreciate your service. I appreciate all the  
24 testimony that we've heard. This is by no means adversarial,  
25 but I'm wondering if hearing that this is not a cash

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1 contribution that is being proffered, what is in the  
2 community benefits agreement, it's for support for  
3 infrastructure, do you have any thoughts about that?

4 MS. LAZCANO: Not right now, especially because  
5 we just had this renovation. We just have this new field.  
6 We have football and baseball and the playground and all the  
7 classrooms with big windows. The school already have this  
8 work done.

9 COMMISSIONER SHAPIRO: Yes.

10 MS. LAZCANO: And what we read in the mail is that  
11 it was a financial.

12 COMMISSIONER SHAPIRO: Okay. Thank you for that.  
13 Thank you for being clear about it. I understand that this  
14 might be something that was lost in translation with the  
15 Commission or otherwise, but I think it's important --

16 MR. PRUITT: If you wouldn't mind --

17 COMMISSIONER SHAPIRO: -- to know exactly what it  
18 is.

19 MR. PRUITT: Commissioner, from the Shaw Dog Park  
20 Association we were all fully briefed that it was in-kind.

21 COMMISSIONER SHAPIRO: That it was in-kind.

22 MR. PRUITT: Would you agree with that Steven?

23 MR. OATMEYER: Something must have changed  
24 throughout the year that we've been going back and forth.  
25 The original email I received was dated January 2018 and

1 there was a email thread talking about where to sign the  
2 check, who to give the check to. Again, something may have  
3 happened throughout the course of this year where things have  
4 changed. I do have all those -- all the email threads.

5 COMMISSIONER SHAPIRO: One thing if I can, and  
6 this goes back to Commission Chair Fanning and what I believe  
7 what the Commission's point was which is it sometimes can be  
8 quite useful for these contributions to be in kind. Perhaps  
9 something did get lost in the translation there, but I think  
10 it is helpful that you are clear with what your understanding  
11 was.

12 MR. OATMEYER: If I could say one thing. It would  
13 benefit us because, yes, everything that we need to have done  
14 is physical to the park.

15 COMMISSIONER SHAPIRO: That makes sense.

16 MR. OATMEYER: So it's not that we are investing  
17 in anything that we do need so, yes, we would benefit from  
18 an in-kind donation.

19 COMMISSIONER SHAPIRO: Thank you. That's all I  
20 have, Mr. Chair.

21 CHAIRMAN HOOD: Vice Chair Miller.

22 VICE CHAIR MILLER: Yes. So I think what you need  
23 to just do is identify what the program or infrastructure  
24 improvements are going to be and submit that.

25 MR. RACHAL: We have them. We can do that. Yes.

1 VICE CHAIR MILLER: And it gets into the  
2 Commission order before the C of O is issued to see that  
3 these improvements have happened.

4 COMMISSIONER SHAPIRO: If I may, I have one more  
5 thing, Mr. Chair. You may want to have a conversation with  
6 the PTO.

7 CHAIRMAN HOOD: Okay.

8 Chairman Manning -- I mean, Chairman Fanning. I'm  
9 thinking about Commissioner Manning. Anyway.

10 (Laughter.)

11 CHAIRMAN HOOD: I want to ask Chairman Fanning,  
12 and I can do this because I know Chairman Fanning. Could you  
13 come up and find a seat and then tell us whatever?

14 I can do that because I know him, I think.

15 MR. FANNING: Thank you, Chairman, Mr. Hood. The  
16 arrangement was for financial support for the PTO for  
17 programming. The school has been beautifully renovated. We  
18 have a beautiful athletic field.

19 That portion of the community benefit was to fund  
20 programming for the PTO, for after-school programs, field  
21 trips for the students. The other in-kind contribution was  
22 to support the completion of structural issues that we're  
23 currently experiencing at the dog park.

24 COMMISSIONER SHAPIRO: That's very clear. Thank  
25 you.

1 MR. FANNING: Unfortunately --

2 COMMISSIONER SHAPIRO: What's in writing isn't  
3 communicated that way, but what's in writing is very old.

4 MR. FANNING: Yes, yes. So there were some things  
5 that it was in the beginning when we started these  
6 deliberations about the community benefit was a financial  
7 contribution. Then it was later on corrected that they would  
8 be in-kind and any program -- that's correct.

9 The unfortunate part is, you know, the city  
10 develops a lot of these recreational and public spaces and  
11 never has funding to support the maintenance of them.

12 I think that should be clear. We'll build it and  
13 we'll figure how to maintain it later. This is a situation  
14 where you will be benefitting the infrastructure of publicly  
15 owned DC government property.

16 COMMISSIONER SHAPIRO: Thank you for the clarity  
17 on that.

18 MR. FANNING: Thank you.

19 CHAIRMAN HOOD: All right. Thank you for that  
20 clarification. Let's have the gentleman back up. The reason  
21 I want you back up is because we're going to do cross-  
22 examination. We're not going to let you off that easy.

23 Any other questions up here? Commissioner May.

24 COMMISSIONER MAY: So, I mean, I do have a  
25 question about the city-owned part. I'm glad to have it

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1 clear that it's a city-owned park. The city built it a few  
2 years ago specifically to be a dog park because you all  
3 petitioned them to set it up? How did it come to be?

4 I know there was a law the city had passed about  
5 requiring OP to start planning dog parks or something like  
6 that. I've forgotten how it all played out. There was  
7 supposed to be one in every ward and then there were going  
8 to be more and so on. This was one of the original  
9 beneficiaries of that? Is that what happened?

10 MR. OATMEYER: Right, right. Yes, I believe so.  
11 I was not part of the association at that time. It started  
12 in 2006 when the community got together, the Logan Circle  
13 community, to take what was next to the Shaw Middle School,  
14 which was then just a soccer field.

15 They were having some issues over there as far as  
16 drugs and some illegal activity and to take part of that and  
17 turn it into a dog park. Jack Evans got behind the  
18 initiative and he kind of pushed it forward. It took two  
19 years and officially opened in 2008 with Mayor Fenty.

20 COMMISSIONER MAY: And since that time the city  
21 has not spent anything to maintain it?

22 MR. OATMEYER: The city will pay for trash pickup  
23 but that's it. We've had some issues over the past few  
24 years. Most recently we do have a water spigot that we've  
25 battled with for about a year of leaking until finally the

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1 thing fell apart and just flooded the park.

2 We would constantly contact the mayor's office and  
3 DPR and say look, we've got this problem. Can somebody come  
4 out. I've met people out there. A few other associate  
5 volunteers have met people out there.

6 The reason why they couldn't fix it is because  
7 nobody knew how to turn the water off. Everybody was  
8 pointing here, here, here, here. Past couple years we've had  
9 the original trees that were very large crepe myrtle trees  
10 that were dying.

11 We tried to get the city to come out and cut them  
12 down or replace them. One finally did fall apart. The city  
13 came out and cut it down but never removed the stump. It was  
14 a couple of years of battling with that until we finally lost  
15 another tree.

16 Fortunately, last year they came out and planted  
17 trees for us. That's it. It's just phone call after phone  
18 call and getting the run-around. I mean, the lighting for  
19 a while was out for about six months.

20 COMMISSIONER MAY: Right.

21 MR. OATMEYER: Again, we have people going in at  
22 7:00 in the morning in the winter when it's dark out to turn  
23 light on, to open the gates, and again at night because we  
24 close the park at 10:00. It starts getting dark at 5:30 and  
25 it's a security hazard. That, again, was another battle.

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1 COMMISSIONER MAY: Sure. So you operate on annual  
2 expenditures of about \$3,000 a year. Do I understand that  
3 right?

4 MR. OATMEYER: Yes.

5 COMMISSIONER MAY: Which doesn't obviously buy  
6 that much and certainly can't offer enough to make even the  
7 smallest capital improvements that you've described. Right?

8 MR. OATMEYER: Right. The biggest part of that  
9 is, again, putting disinfectant on the park surface twice a  
10 week. Again, that was one of the things that we were told  
11 that we have to maintain that.

12 COMMISSIONER MAY: So that's part of the original  
13 deal. You have a partner agreement or something like that  
14 with the city and that's one of the things that you have to  
15 do. But it is a public park. It's open to everybody.  
16 Right?

17 MR. OATMEYER: It's open to everybody.

18 COMMISSIONER MAY: Okay. We appreciate what you  
19 do. The Park Service relies on partners to help out in  
20 operations of parks, too, but it's unfortunate that you have  
21 to fight so hard to just get basic stuff like a spigot fixed.

22 MR. OATMEYER: Right. You know, as far as  
23 maintenance, we do a monthly clean-up where we get a group  
24 of folks out there and we fill in holes and rake. There's  
25 a lot of weeds around the side by the church. We pull that

1 out so we clean it up as we can.

2 COMMISSIONER MAY: Okay. Thank you. I appreciate  
3 knowing more about it.

4 CHAIRMAN HOOD: Any other questions up here?

5 Okay. Does the Applicant have any questions of  
6 this panel?

7 MR. FANNING: No. The Applicant does not.

8 CHAIRMAN HOOD: Okay. Does the ANC have any  
9 questions?

10 MR. FANNING: No, Mr. Chair.

11 CHAIRMAN HOOD: Okay. Thank you all very much.  
12 We appreciate your testimony.

13 I'm going to call -- that was all of the  
14 proponents. I'm going to call the opponents. Brian  
15 Whitesides and Joel Heisey. If I didn't pronounce your name  
16 right, you can correct me when you come up.

17 Is there anyone else who is here in opposition?  
18 You can come forward.

19 Has everyone been sworn in? Is there anyone else  
20 also who's is undeclared? Okay. We're going to go with  
21 those opponents. Undeclared wants to testify as well.  
22 Right? Okay. I'm going to have to call you up later.

23 Has everyone been sworn in? You haven't been  
24 sworn in?

25 Anybody else who hasn't been sworn in? Would you

1 mind rising to take the oath, please.

2 Ms. Schellin.

3 (Witness Sworn.)

4 CHAIRMAN HOOD: All right. We're going to start  
5 with the young lady to my left. Turn your mic on.

6 MS. ESTELLE: Good evening. LaTonja Estelle.  
7 Similar to Lisbeth Lyons, original home owner of Logan  
8 Station Condominiums. Also I am a member of Metropolitan  
9 Baptist Church so I was there at the beginning of the church  
10 when they bought the property, offered it to its memberships,  
11 part of the ADU program.

12 Did the 10 years and completed the program. Still  
13 a homeowner aware of the dog park, aware of the issues, aware  
14 of the community center as well.

15 The concern that I have is that there were  
16 supposed to be about 10 affordable -- sorry, a 10 percent  
17 affordable unit program. One of the units was taken off the  
18 market and provided to the developer. No other unit was  
19 offered as a replacement.

20 Now that the construction has been completed, we  
21 are again at a developer's requirement of providing a  
22 replacement unit that has not ever been replaced, nor are  
23 they trying to replace this one. Again, they are trying to  
24 take it off site of -- that's the word. They want to take  
25 it to a different location.

1           The concern that I have is that I've seen the  
2 community from -- I've been here since 1988. I've been here  
3 and seen the transition. I bought in Columbia Heights before  
4 it became Columbia Heights. I moved to Logan Circle before  
5 it became Logan Circle.

6           I can say clearly that if you want to transition  
7 Kennedy Street into a Logan Circle, it will take you about  
8 10 years. The benefit of that is we've lost stability in our  
9 community by taking a unit off site.

10          I believe that if we kept the unit there, it would  
11 still meet a requirement that I'm under, or that was offered  
12 to me of having affordable units and members of the community  
13 still being able to stay and represent the community.

14          Right now I see that community very much in  
15 transition. I'm also a real estate agent so I see a lot of  
16 not-affordable places to live within DC. A lot of my friends  
17 who have bought early on, we have no place to move to. We  
18 are kind of in the same neighborhoods. We would like to move  
19 somewhere else but, again, there are no affordable places to  
20 live.

21          If we take affordable spaces to places where that  
22 are in our community, not in our -- we've built up our  
23 network of support. Now we have to transition out to get and  
24 build up another network of support. That takes years. I  
25 think that if we kept the community in its current place, it

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1 would be of more benefit to the local community than taking  
2 it off site. Thank you.

3 CHAIRMAN HOOD: Thank you.

4 Next. You're next. Who are you representing?  
5 Oh, you're Brian Whitesides? You have five minutes. Ms.  
6 Schellin is usually on that. Once she hears your name, she  
7 would put five minutes on it.

8 MR. WHITESIDES: All right. So my name is Brian  
9 Whitesides and I serve as the secretary of the board of the  
10 Logan Station Condos Association. I'm here tonight  
11 representing the board of the building that contains the unit  
12 in question and we are opposed to the modification based on  
13 what we feel is an established history of acting in bad faith  
14 by the developer.

15 First, I would like to correct an error in the  
16 Notice of Public Hearing. In the notice it says it was  
17 stated the application was filed in support of the board.  
18 That was not true. After consultation with unit owners in  
19 the building, there were decidedly mixed feelings.

20 Some people were very supportive because they felt an  
21 affordable housing unit in the building could affect property  
22 values. Others were against because they felt that given the  
23 gentrification in the Logan Circle/Shaw area that they  
24 shouldn't be allowed to escape the low-income-housing rules.

25 Ultimately, what we decided was we would issue a

1 neutral statement which would be classified as an approval  
2 and not an endorsement. We actually had legal counsel weigh  
3 in on this but there was actually a big battle over those  
4 words.

5 I should also note that owner of the commercial  
6 space Mr. Lindsay was on the board and was the primary author  
7 of that letter. In fact, he wrote a letter approving  
8 himself.

9 Really, the basis of our objection is that given  
10 our experience of Mr. Lindsay and Washington Street Homes and  
11 the damage he's done to our community through this  
12 development, we have no faith that Washington Street Homes  
13 will honor its commitments and cannot be trusted to act in  
14 good faith.

15 To provide a specific example of him working in  
16 bad faith, as part of the approval process working with the  
17 board and overseeing some of the construction and the  
18 building that would involve common elements such as plumbing  
19 and water, he agreed to submit to an engineering review in  
20 which he would abide -- we would make sure that nothing would  
21 be affected that would negatively impact other owners in the  
22 building.

23 After several months we agreed on a set of  
24 drawings and then we agreed to move forward with a set of  
25 drawings. We sent those drawings to Mr. Lindsay asking him

1 to confirm that these are the drawings that he's going to  
2 proceed with. He never responded despite several follow-up  
3 emails.

4 We then had our engineer do a site walk who then  
5 determined that what was going on was that he was negotiating  
6 his drawings separately in order to silence the concerns of  
7 the board and then was proceeding with the original set of  
8 drawings.

9 When we confronted Mr. Lindsay with this reality,  
10 he simply lawyered-up and has not communicated with us ever  
11 since. He has not shown up to a board meeting. He has been  
12 a member of the board and was until he sold those two units.

13 So ultimately we were able to compel him to fix  
14 some of the plumbing issues because he needed access to the  
15 common shut-off in order to fulfill some of his plumbing  
16 piping and he couldn't do it without our approval so we have  
17 approved that given a conditional on the water issue.

18 However, still some of these issues are  
19 unresolved. We have significant concerns whether the  
20 construction units meet DC code. We have requested as-built  
21 drawings of the constructed facilities as they concern shared  
22 infrastructure important to the functioning of the building  
23 and we've received no response.

24 He has also showed complete disregard for what an  
25 alternative would be. If you walk into our unit you will



1 notice that the doors, external lighting fixtures, and  
2 landscaping do not match the original style. Then, in  
3 addition to that, he caused significant damage to the garage  
4 and hallways which we'll have to pay for out of our own  
5 funds.

6           Of more serious concern we do not have  
7 confirmation that the light safety devices, including smoke  
8 detectors, are linked to the system properly, and he has not  
9 provided documentation regarding warranty of the plumbing  
10 works or if DCRA has approved the exhaust systems as meeting  
11 code. It's possible but we have asked for it and we have not  
12 received it.

13           We have incurred significant costs related to our  
14 engineering oversight. Given our discovery of what he was  
15 doing with the engineering, we have incurred significant  
16 legal expenses trying to compel Mr. Lindsay to fix the  
17 damages caused to the building and to pay the engineering  
18 fees incurred to fix this design, fixes which I note were  
19 ignored.

20           These costs have caused significant damage to the  
21 finances of the building and a partial driver of our need to  
22 collect a special assessment this year.

23           We have delivered to Washington Street Homes on  
24 numerous occasions via our legal counsel letters asking to  
25 address the many construction issues we've had with his

1 construction and the damages to the building.

2 We are asking for either a correction or  
3 restitution and these letters have been ignored. I have  
4 copies of these letters for anybody who would like to read  
5 them.

6 In addition, I think it's worth noting that  
7 Washington Street Homes has represented the replacement  
8 property as being in Petworth, but it doesn't seem to be the  
9 case. It's in Brightwood. I think Petworth is a more  
10 vibrant area with Metro access, restaurants, markets. I do  
11 not believe Brightwood has any of that to the same degree.

12 I fear that the obligations that the developer is  
13 going to take in order to kind of make up for the lack of the  
14 housing unit, those obligations may not be met or he will not  
15 honor those commitments.

16 CHAIRMAN HOOD: Okay. Are you finished?

17 MR. WHITESIDES: Yes.

18 CHAIRMAN HOOD: Okay. Thank you.

19 Next.

20 MR. HEISEY: Hi. I'm Joel Heisey. I'm a resident  
21 at 1516 12th Street, which is just around the corner from  
22 this property. I only saw the notice on Saturday even though  
23 I walk by that place quite frequently, so I haven't been able  
24 to do a written testimony. Please pardon the exception.

25 I would like to follow on with what the Board was

1 going on before on the larger issue of the provision of the  
2 community benefit and the location of the IZ unit, and then  
3 also the implicit request actually for a financial hardship.

4 I am an architect. Not registered Mr. May, sorry.  
5 I went into housing policy and housing finance, but I did get  
6 my masters in urban design and public policy specializing in  
7 low-income housing so this is very dear to me.

8 I think the public benefit that was provided in  
9 the original PUD of the common space should be honored as  
10 retaining a public benefit to the neighborhood which an IZ  
11 unit or a proffered unit would provide.

12 Moving it out of the neighborhood completely  
13 defeats the purpose of any IZ or affordable housing  
14 requirement in my view. It's against the intent of the law,  
15 I would guess.

16 It is -- there is also one of the other units.  
17 Exhibit 41A is also a opposing letter for the same reason,  
18 that they don't want to see the IZ unit moved out of the  
19 neighborhood. That's kind of the locational thing.

20 I think it's very important to keep the IZ unit  
21 in the local neighborhood and not move it to what is now not  
22 a million dollar neighborhood. Every house on my block goes  
23 for over a million dollars right now. It's just ridiculous.

24 I've lived there since '92. I've seen the change.  
25 I moved into an economically diverse neighborhood because I

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1 like that and it's not that anymore and I want to do  
2 everything I can to keep it as close to that as I can.

3           The developers kind of implicit request for a  
4 financial hardship, he's gone through all the design changes.  
5 As an architect design changes are minimal compared to  
6 construction changes.

7           And also as a developer I would have thought he  
8 said he walked through and he noticed the columns were where  
9 they were. He should have noticed that they didn't conform  
10 with the plans he had. I don't see how the community should  
11 be responsible for bearing the burden for lack of due  
12 diligence, shall I say.

13           The other thing is it's this implicit financial  
14 hardship but there's no documentation. I don't know if the  
15 original performer was for a million-dollar profit and now  
16 he's down to a half-a-million-dollar profit, or if he's  
17 losing \$200,000.

18           There's been no -- nothing I can find in the  
19 record and I haven't heard anything else. That kind of  
20 concerns me, just everybody claims financial hardship and  
21 there's no backup for it.

22           My two arguments really is I would like to keep  
23 the IZ unit in the neighborhood, try to keep some mixed  
24 economic diversity in the neighborhood, and I have questions  
25 of everyone's kind of claiming financial hardship with no

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1 backup and why should the community be saddled with  
2 developers' mistakes. Thank you, sirs.

3 CHAIRMAN HOOD: I want to thank you all for your  
4 presentation. Let's see if we have any questions up here.  
5 Questions or comments. Someone did say the -- was moving to  
6 Petworth and I was trying to -- that went by me. But, no,  
7 Kennedy Street is not Petworth unless it's moving like  
8 Capitol Hill moves.

9 (Laughter.)

10 CHAIRMAN HOOD: So any questions up here? Not  
11 seeing any, does the Applicant have any cross of any one of  
12 the witnesses?

13 Turn your mic on, Mr. Rachal.

14 MR. RACHAL: Yes, I do. I have some questions for  
15 the secretary of the Homeowners' Association. What did the  
16 bylaws provide for in terms of additions, alterations, or  
17 improvements to the commercial space by the commercial unit  
18 owner?

19 MR. WHITESIDES: I don't have a copy of the bylaws  
20 with me at this moment, but I believe the point you're  
21 getting at is that we should not be interfering with the  
22 rights that your client has to construct the space in his  
23 control.

24 MR. RACHAL: Could I should you a copy of the  
25 bylaws and have you refresh your recollection as to Section

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1 6.12?

2 MR. WHITESIDES: Yeah. I mean, it appears what  
3 you're trying to say is that he does not need consent of the  
4 Board of Directors to construct the space that he wants.

5 Partially that's true; what happens within the  
6 walls that don't affect the common elements of the building  
7 to include the drainage stacks, the main electrical supply,  
8 the water supply to the building.

9 If he wants to put in a new sink, yeah, that's  
10 fine. He can do what he wants and the board does not need  
11 to get approval for that. However, if he's making  
12 alterations to the building that would affect the water  
13 supply to the building, the sewage drainage systems of the  
14 building.

15 In fact, he actually drilled into the electrical  
16 system and the elevator went out for quite some time. The  
17 issues that concern the building at large do concern the  
18 board.

19 CHAIRMAN HOOD: So can we keep -- Mr. Rachal, can  
20 we keep -- this is the Zoning Commission, as you know.

21 MR. RACHAL: Yes.

22 CHAIRMAN HOOD: This is not a Board meeting or  
23 we're not conflict resolution. Let's keep it germane to the  
24 topic and the questions of the panel, germane to the topic  
25 which is within our purview.

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1 Hold on one second. He's doing cross right now.

2 MR. RACHAL: Was there a dispute as to what the  
3 plans actually showed that the Homeowners' Association had  
4 for the building?

5 MR. WHITESIDES: Which plans? Do you mean his  
6 construction plans or building plans?

7 MR. RACHAL: No, the building plans. The original  
8 building plans.

9 MR. WHITESIDES: You mean -- which building plans?  
10 I mean, there's a lot of plans going on.

11 MR. RACHAL: Logan Station.

12 MR. WHITESIDES: I'm not sure what you're  
13 referencing. I mean, the overall building design? I mean,  
14 I'm not sure. There is a specific -- I think you have  
15 something --

16 MR. RACHAL: Yes. The as-built drawings for the  
17 existing conditions in Logan Station.

18 MR. WHITESIDES: Are you referencing the drawings  
19 provided by Metropolitan Baptist Church?

20 MR. RACHAL: As the original plans for the  
21 building.

22 MR. WHITESIDES: My understanding is that those  
23 plans were provided by Metropolitan Baptist Church.

24 MR. RACHAL: And those were the original built  
25 drawings from the Homeowners' Association.

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1 MR. WHITESIDES: I cannot -- I don't believe --  
2 I don't know.

3 CHAIRMAN HOOD: Excuse me. Let me do this. He's  
4 asking the questions to the gentleman to the right. We have  
5 to -- we want to run an orderly Board -- I guess we're  
6 running now a Board conflict resolution. Again, let's stick  
7 with what we can deal with. I don't mind hearing it all but  
8 what helps us is what we're going to be voting on.

9 MR. WHITESIDES: For the record, I cannot comment  
10 on the plans that were provided to him.

11 CHAIRMAN HOOD: That's your answer. He's answered  
12 it.

13 MR. RACHAL: All right. I have no further  
14 questions.

15 CHAIRMAN HOOD: Okay. We don't normally do this  
16 but was it a response to -- it's not a response to his  
17 question?

18 MS. ESTELLE: It's more for clarification.

19 CHAIRMAN HOOD: Okay. I'll let you do that.

20 MS. ESTELLE: I'm asking for clarification because  
21 --

22 CHAIRMAN HOOD: Oh, you're asking him questions.

23 MS. ESTELLE: No, no. I want to give  
24 clarification to his comment in that I was a former -- I was  
25 on the board as an original board members as the treasurer

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1 or secretary and vice president.

2 CHAIRMAN HOOD: Which board?

3 MS. ESTELLE: Logan Station.

4 CHAIRMAN HOOD: Okay.

5 MS. ESTELLE: The Homeowners' Association. So the  
6 covenants with the building were different for the community  
7 center because it was a community space and not under our HOA  
8 requirements. When you purchase the building, you then  
9 convert it to unit-owned properties which had value now in  
10 the building.

11 The commercial space didn't have value. It didn't  
12 have any -- there was no concern with the commercial space  
13 as far as the homeowners affecting our percentage of home  
14 ownership evaluation.

15 When you purchased it and then you converted it  
16 to now units to be acquired or absorbed into our building,  
17 then it became a different set of regulations and covenants  
18 that you fell under. It was a commercial community space  
19 that now was not -- didn't affect any homeowner's evaluation  
20 of property percentages.

21 When you purchased it and then you converted it  
22 to home ownership or condominium units, then our percentage  
23 of home ownership requirements changed. The covenant that  
24 was originally there changed.

25 CHAIRMAN HOOD: Thank you. When is the next board

1 meeting? Could you announce it, the date and time, so  
2 everybody will know they can all show up there for that? I  
3 promise you none of us will be there.

4 MR. WHITESIDES: I think it's this Thursday.

5 CHAIRMAN HOOD: This Thursday? What time?

6 MR. WHITESIDES: 6:30, 7:00.

7 CHAIRMAN HOOD: So, Mr. Rachal, if you all choose  
8 to -- you're on the board so I'm sure you'll show up because  
9 I understand you've been missing. If you could, if you could  
10 -- well, okay. You're not? Whatever. The board meeting is  
11 this Thursday. What time? 7:00?

12 MR. WHITESIDES: 7:00.

13 CHAIRMAN HOOD: 7:00. Some of those things can  
14 be discussed. It's this Thursday at 7:00 wherever you all  
15 meet at.

16 Is there anything else? Any other cross-  
17 examination? Let me go through cross first.

18 Chairman Fanning, if you have some cross.

19 MR. FANNING: For the record, we received a letter  
20 of support from the condo board back in December so I just  
21 want that to be recorded into your records.

22 CHAIRMAN HOOD: Okay. Did you have any cross-  
23 examination or you just was letting us know --

24 MR. FANNING: You're doing a pretty good job. I  
25 don't have any.

1 CHAIRMAN HOOD: So let me just tell you this.  
2 Typically, I try to look at the cases we do and, say, we'll  
3 probably be here an hour tonight so I'm not doing a good job.  
4 It's going on 9:00. I'm doing a very bad job.

5 MR. FANNING: Well, it's a little bit of a  
6 complicated situation. I appreciate you hearing all sides  
7 in the matter.

8 CHAIRMAN HOOD: You are welcome down here any  
9 time.

10 MR. FANNING: Thank you, sir. Appreciate it.

11 CHAIRMAN HOOD: Let's see. Commissioner Shapiro.

12 COMMISSIONER SHAPIRO: Okay. I am now confused.  
13 In the record there's a letter from December 5, 2017 stating  
14 support from the Logan Station Condominium Association.  
15 That's not in reference to this modification of significance  
16 I assume. That's not in reference to this modification of  
17 significance, I assume. That's in reference to -- why is  
18 that -- who submitted that into the record?

19 MR. RACHAL: The Applicant submitted that into the  
20 record because that was a position of the Homeowners'  
21 Association relative to the original --

22 COMMISSIONER SHAPIRO: For this case you're saying  
23 that the Logan Station Condominium Association, according to  
24 your understanding, is supporting this case?

25 MR. RACHAL: At the time, yes.

1 COMMISSIONER SHAPIRO: This modification of  
2 significance?

3 MR. RACHAL: Yes, at the time that is was  
4 submitted.

5 COMMISSIONER SHAPIRO: When did you file this  
6 modification of significance?

7 MR. RACHAL: We filed it --

8 COMMISSIONER SHAPIRO: I'm not talking about the  
9 case that's been -- this issue that has been around  
10 apparently since, I don't know, a decade or more.

11 MR. RACHAL: We filed it in 2018. I believe the  
12 Commission set it down for a hearing on September 17th so we  
13 filed it just prior to that date.

14 COMMISSIONER SHAPIRO: 2018?

15 MR. RACHAL: 2018.

16 COMMISSIONER SHAPIRO: So what you submitted as  
17 a letter of support is not for this modification of  
18 significance?

19 MR. RACHAL: It was for the modification of the  
20 project with regard to changing it from a community space to  
21 the residential use.

22 COMMISSIONER SHAPIRO: Just a quick follow-up.  
23 I would imagine you were authorized to speak on behalf of the  
24 association if you are here before us.

25 MR. RACHAL: Yes.

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1 COMMISSIONER SHAPIRO: It was your position in a  
2 previous incarnation, but not related to this modification  
3 of significance?

4 MR. RACHAL: I have the letter in front of me.  
5 It was a letter that we wrote in 2017 to the ANC and that was  
6 Order No. 13-14A. It was not this specific case that you're  
7 looking at today in my understanding. I'm not as familiar  
8 with how these proceedings work. I apologize.

9 COMMISSIONER SHAPIRO: Okay.

10 COMMISSIONER MAY: I'm looking at the letter now.  
11 Sorry.

12 COMMISSIONER SHAPIRO: If I can just real quick.  
13 Commissioner Fanning, do you have an opinion about  
14 this? The letter was to you all a little over a year and two  
15 months ago.

16 MR. FANNING: We requested the letter in order to  
17 take action on the case because it would directly impact the  
18 residents that reside at the Logan. Otherwise, we would not  
19 have taken any action or placed this on our business agenda.  
20 The letter was essential in our decision.

21 COMMISSIONER SHAPIRO: Okay. Thank you.

22 Thank you, Mr. Chair.

23 COMMISSIONER MAY: If I could just ask Mr.  
24 Whitesides, the letter specifically mentions Order 13-14A,  
25 but the substance of what is in the letter seems to be an

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1 endorsement of the project, or the changes that are proposed  
2 in this current case because it makes reference to providing  
3 a new unit in the northwest section of Petworth.

4 It mentions the Friends of Shaw Dog Park, and  
5 things like that. Those all came into play with this case  
6 and they were not part of 13-14A which was the original case  
7 when we changed from community space to the three units.

8 It appears there is a letter with your signature  
9 on it from the board saying yeah, we're fine with what is  
10 before us tonight. That is what it reads.

11 MR. WHITESIDES: Back in December 2017. You are  
12 correct. The board does not have any objection to the dog  
13 park or donations made to Garrison Elementary. We are wholly  
14 supportive of that. However, we have experienced a long  
15 history of kind of bad-faith negotiation with the developer  
16 and we have a lot of mistrust at those in-kind donations  
17 actually being made.

18 COMMISSIONER MAY: Okay. So in December of 2017,  
19 so a little more than a year ago, did that predate the  
20 various issues that you had?

21 MR. WHITESIDES: Yes.

22 COMMISSIONER MAY: Okay.

23 MR. WHITESIDES: Yeah, it was right about that  
24 time that we were finding out about the various engineering  
25 and other problems that we were facing.

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1 COMMISSIONER MAY: Okay. All right. Thank you.

2 CHAIRMAN HOOD: Any other questions up here?

3 Okay. So we've done all our cross.

4 Do you have any other questions?

5 MR. RACHAL: I have one, Chairman Hood.

6 Commissioner May has pointed out the consistent elements in  
7 that letter. Also, earlier that letter contains one of the  
8 items I was speaking to the Homeowners' Association  
9 representative about a recognition that the as-is-built  
10 drawings for the existing conditions in the building were  
11 inaccurate as far as the conversion of the space to involve  
12 more costly changes.

13 MR. WHITESIDES: We don't dispute that he's had  
14 some challenges.

15 MR. RACHAL: Thank you. I have nothing further.

16 CHAIRMAN HOOD: Okay. Anything else up here? All  
17 right. Thank you all very much. We appreciate your  
18 testimony.

19 Okay. That's right. Thank you, Vice Chair.  
20 Undeclared, I saw two hands. Is there anyone else here who  
21 is undeclared? Okay. These are undeclared. We'll start to  
22 my right, your left.

23 MR. DANIELSON: Thank you, sir, from another Eagle  
24 Scout.

25 CHAIRMAN HOOD: Oh, go right ahead.

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1 (Laughter.)

2 MR. DANIELSON: I don't think I've seen so many  
3 Eagle Scouts in one place.

4 CHAIRMAN HOOD: Me either.

5 MR. DANIELSON: I'm sort of thinking about Eagle  
6 Scouts and one of the things that is core to us is that a  
7 scout is trustworthy. I live at 1210 R Street, unit B06,  
8 which is right across from these three units that were  
9 developed.

10 I met Mr. Lindsay when he looked lost in the  
11 building and offered to help him. He told me he had just  
12 purchased the church space. When I bought my unit in 2006  
13 I was very conscious about where I was in the building and  
14 that I knew there was a church space across the hall.

15 However, there were no entry doors into the main part  
16 of the building from that space. It was separate, separate  
17 access from Vermont Avenue. I knew that when I read my condo  
18 docs that area could be converted.

19 When Metropolitan Baptist sold to Unity, I made  
20 sure I followed that process. I noticed that their mortgage  
21 had fallen through when they were out in Largo and I asked  
22 the board of Logan Station if we had a contingency for what  
23 would happen if Metropolitan decided to sell that space, even  
24 though they had said for years that they had been on R Street  
25 for 100 years.

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1           At that meeting where I asked that question, the  
2 board did disclose that Metropolitan had approached the board  
3 and was talking about selling that space. I knew all of that  
4 was going on.

5           After that I ran into Mr. Lindsay in the hallway  
6 downstairs. I said, hey, can I help you. You look lost.  
7 He's like we're purchasing the church space and we are going  
8 to renovate it. I said, oh, that's fantastic. You'll find  
9 this building is a really welcoming community.

10           We really would just like you to communicate with  
11 us. As residents on the ground floor, there are some  
12 concerns we have. One is the placement of the doors in the  
13 hallway and that it aesthetically matches the rest of the  
14 building.

15           Fast forward. No conversation about placement of  
16 the doors. I walked out of my residence one morning to go  
17 to work to see gentlemen cutting the doorways. As soon as  
18 that happened, I asked for the site supervisor and said these  
19 doorways can't be directly across. We've had conversations  
20 about this, about consulting us. Sorry, you are fresh out  
21 of luck.

22           The doorways that are currently installed are six  
23 inches to a foot shorter than the rest of the doors in the  
24 building. they are slightly off-color and don't match.

25           In a board meeting Mr. Lindsay asserted to the

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1 owners that he had done many of these infills, which he  
2 apparently is not taking responsibility for tonight, and that  
3 he could make the doors match exactly and you would never  
4 know. If you currently walk down my hallway, it is visibly  
5 different between the doors on my side of the hallway and the  
6 doors on his side of the hallway.

7 I raise this for one reason. Do not trust that  
8 they are going to deliver what they say. In-kind  
9 contribution, put controls around the contribution because  
10 it will not happen the way they are describing it.

11 COMMISSIONER TURNBULL: I wonder if we could get  
12 your name?

13 MR. DANIELSON: Sure. I'm Jason Danielson.

14 COMMISSIONER TURNBULL: Thank you, Mr. Danielson.

15 CHAIRMAN HOOD: Okay. If you could hold your  
16 seat, we may have some questions for you.

17 Next.

18 MR. CARSI: My name is Thomas Carsi. I also am  
19 a resident of 1210 R Street. I really had issues regarding  
20 the difference between the financial contributions and in-  
21 kind contributions. I think that's been sufficiently  
22 discussed. I don't really have anything else to add.

23 My concern was making sure that the commitments  
24 were honored. I heard what was said earlier regarding the  
25 policy of the Zoning Commission regarding why things are

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1 translated from in-kind -- from financial to in-kind. My  
2 questions have been sufficiently answered. Thank you.

3 CHAIRMAN HOOD: So we've accomplished at least one  
4 thing tonight.

5 Okay. Let's open it up. Any questions up here?

6 VICE CHAIR MILLER: Thank you, Mr. Chair. I just  
7 want to reiterate it's not just the policy, it's a regulation  
8 in our zoning regulations that requires the benefits to be  
9 measurable and delivered prior to the C of O.

10 CHAIRMAN HOOD: Okay. Any other questions or  
11 comments up here?

12 Not seeing any, does the Applicant?

13 Hold on one second. We might have a question for  
14 you. Might not.

15 Does the Applicant have any questions?

16 MR. RACHAL: No, I do not at this time except to  
17 say that the Applicant would abide by any conditions imposed  
18 by the Commission in any of its orders and by the covenants  
19 required by DC Housing.

20 CHAIRMAN HOOD: Mr. Rachal, I said does the  
21 Applicant have any cross-examination or questions. You can  
22 give me that later. You know what? You seized the moment  
23 and my hat is off to you.

24 Okay. Does the ANC have any cross-examination or  
25 questions?

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1 MR. FANNING: No, Mr. Chairman.

2 CHAIRMAN HOOD: Okay. Thank you all very much.  
3 We appreciate your testimony.

4 Okay. Mr. Rachal, do you have any rebuttal or  
5 closing? This is where you can tell me all that, either  
6 rebuttal or closing. You have the floor now. The ANC can  
7 cross on rebuttal or we may have questions if you have any  
8 rebuttal. If not, you can give us your closing statement.

9 MR. RACHAL: Yes. Thank you, Chairman Hood. The  
10 Applicant would, I guess, end with this statement. Given the  
11 original charge to provide for affordable housing, the  
12 Applicant has come back with a proposal that would exceed the  
13 original request by increasing the size of that unit and  
14 continuing to keep with the same conditions that were  
15 previously imposed.

16 The Applicant has gone beyond to try to maintain  
17 the benefit of the community space by supporting those  
18 organizations in the community that are responsible for  
19 continuing the community's socialization through a meeting  
20 place at the dog park and for physical activities at the  
21 elementary school.

22 The money that would be saved because both  
23 organizations would not have to collect donations and then  
24 pay someone to do the infrastructure work is something that  
25 we are going to assume.

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1           They would then have those funds available to do  
2 the other programs that are not infrastructure. The  
3 Applicant has faced many hardships with regard to the  
4 project. The original plans were not clearly provided to  
5 identify all of the structural changes that were necessary.

6           The Applicant has tried to ameliorate this by  
7 coming up with an arrangement that would reduce the loss that  
8 is associated with this project greater than it would be  
9 other than having the changes made by this proposal under 04-  
10 13C. With that, we would ask that the Commission approve the  
11 submission.

12           CHAIRMAN HOOD: Okay. I want to thank you, and  
13 thank everyone for their testimony tonight. Let me just say  
14 this, Mr. Rachal. We would ask that you complete the  
15 proffers and conditions process as set forth in our PUD  
16 regulations of 11 DCMR 308.8 to 308.19. That will spell it  
17 out. We have a process for proffers and conditions since  
18 this is -- you're amending the original conditions.

19           Commissioners, any other follow-up questions? Mr.  
20 May.

21           COMMISSIONER MAY: I just want to be clear on the  
22 proffers. We need to have clarity on that and it's going to  
23 have to spell out exactly how the benefits are proposed to  
24 be delivered to the elementary school and to the dog park and  
25 how that will be accounted for as a pre-condition to the

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1 Certificate of Occupancy. It's basically how are all those  
2 benefits going to be delivered. That has to be spelled out.

3 I do actually have a question for the Chairman but  
4 it's a sidebar so I want to come over.

5 CHAIRMAN HOOD: You want me to sit down there?

6 (Laughter.)

7 COMMISSIONER SHAPIRO: Thank you, Mr. Chair. A  
8 final question for you because now I'm not sure I have all  
9 the information. How many infill development projects have  
10 you been involved in?

11 MR. LINDSAY: Hundreds.

12 COMMISSIONER SHAPIRO: Okay. Did you think I was  
13 talking about your LLC?

14 MR. LINDSAY: No, I thought you were talking about  
15 this specific type meaning within an occupied building.  
16 That's why I mentioned that this one was unique.

17 I apologize if I misunderstood the question. I've  
18 been doing this since 1998. Infills, vacant properties, but  
19 this is a unique building within a 60-some-unit building, 200  
20 plus people. That's the first time I've done that type of  
21 project --

22 COMMISSIONER SHAPIRO: Sounds like a bit of a  
23 unique project.

24 MR. LINDSAY: -- inside of an occupied building.  
25 This is a first and everything else is generally vacant,

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1 ground up, that type of project.

2 COMMISSIONER SHAPIRO: So your interpretation of  
3 my question was you thought it was referring to these two  
4 buildings?

5 MR. LINDSAY: This type of project, an infill that  
6 is within an envelope of another building.

7 COMMISSIONER SHAPIRO: Okay. The other question  
8 is I just want to, again, hear from you, or your  
9 representative Mr. Rachal, are you open to continuing the  
10 discussion with OP and considering the broader proffer as Mr.  
11 Lawson discussed would be the kind of proffer that they would  
12 actually consider as commensurate with the benefit that's  
13 being provided?

14 CHAIRMAN HOOD: I would take time -- let me just  
15 say this. I know that Mr. Shapiro asked you that. I  
16 wouldn't answer that off the cuff. I would go home and get  
17 a good night's sleep and think about it again. But if you  
18 want to answer it right now, go right ahead. I think if you  
19 just look at it and give it some more consideration and some  
20 more thought.

21 If you don't mind, Mr. Shapiro.

22 COMMISSIONER SHAPIRO: No, I'm fine, Mr. Chair.

23 CHAIRMAN HOOD: If you answer it right now, it  
24 might not be --

25 MR. LINDSAY: I'll get a good night's sleep and

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1 think it out.

2 CHAIRMAN HOOD: Exactly. Even if you take two  
3 nights.

4 MR. LINDSAY: Thank you.

5 CHAIRMAN HOOD: All right.

6 Commissioner May.

7 COMMISSIONER MAY: Yes. So I'm always hesitant  
8 to ask this. This is something that comes up periodically  
9 in BZA cases, although it's been a while since I've heard the  
10 argument. It's the financial hardship aspect of this.

11 This is a difficult thing to ask for. It's a  
12 difficult thing to evaluate but I feel like we cannot make  
13 an informed decision about this until we understand something  
14 more about the finances.

15 I think we need to see your pro forma for this  
16 development and something about the economics at 729 Kennedy  
17 Street, or at least the unit that this would apply to to make  
18 the case that it is, in fact, a financial hardship. I think  
19 we need to have that case made.

20 CHAIRMAN HOOD: Commissioner Shapiro.

21 COMMISSIONER SHAPIRO: Thank you for that,  
22 Commissioner May. Respectfully, it's hard for me not to  
23 evaluate that if it's not spread out across the perhaps  
24 dozens of projects that are alive right now for you.

25 I just don't have any sense of how Commissioner

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1 May's request would fit in to how solvent your organization  
2 is at the time. You know, if you're making the economic  
3 hardship argument, that data isn't going to help me. I need  
4 to know how solvent your organization is.

5 That's a lot but if you're making the economic  
6 hardship argument, if that's the only case, I'm sorry if you  
7 made a difficult business decision but that's not -- as the  
8 Chair would say, that's not in our purview.

9 CHAIRMAN HOOD: I tried to get away from that  
10 issue because I didn't want to hear that in an oversight  
11 hearing in front of the Council. Anyway, I would suggest you  
12 take all of our comments, Mr. Rachal.

13 I know sometimes we do send a lot of different  
14 signals but one thing about the five of us is we each have  
15 a vote and you never know how that's going to end up. I  
16 would consider everything that everybody said.

17 Mr. Turnbull.

18 COMMISSIONER TURNBULL: Thank you, Mr. Chair. The  
19 other things that I think we have to pick up are the plans  
20 that were presented tonight are going to be submitted and the  
21 resume. I have no problem getting the financial analysis,  
22 or whatever, statement mainly because of the data and how  
23 it's submitted and presented.

24 I often have trouble with financial analysis and  
25 traffic analysis because a lot of times it seems like a lot

1 of smoke and mirrors. It is sometimes hard to digest and  
2 interpret an analysis by different individuals on what they  
3 are actually presenting.

4 I have no problem getting it. It's just that I  
5 get a little suspect in how I analyze it and how I look at  
6 it. It may be helpful and it may not be helpful.

7 The other thing is, Commissioner Shapiro, we  
8 talked about the affordable dwelling unit. You were talking  
9 about you're going to go back. I think it's a heavy lift for  
10 me right now. I think you really have got to take a hard  
11 look at it because right now I think you've got a big lift.

12 That's just this commissioner speaking but there  
13 is still a heavy lift involved in that. We have our  
14 regulations and I would like to be able to look at this and  
15 not change it and reverse certain things that we've already  
16 done in the past.

17 I hate creating a lot of special exceptions for  
18 different things. I want you to take a hard, long look at  
19 where you're going and what you want to provide, what you  
20 want to submit to the Commission. Thank you.

21 CHAIRMAN HOOD: Okay. Anything else up here?  
22 Okay.

23 All right. Ms. Schellin, do we have any dates?

24 Are you okay with everything? You fine?

25 MR. RACHAL: I'm okay.

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1 CHAIRMAN HOOD: Turn your mic on.

2 MR. RACHAL: I'm okay. I'm fine. I just need  
3 some leeway in terms of a schedule to get back to the  
4 Commission.

5 CHAIRMAN HOOD: How much time do you need? Six  
6 months? A year? Two weeks? Ms. Schellin can help you with  
7 that. Ms. Schellin will help you.

8 MR. RACHAL: Thirty days. We'll get back to you  
9 sooner if we can gather it all.

10 CHAIRMAN HOOD: Let's work those dates out right  
11 now.

12 MS. SCHELLIN: We have to schedule it now.

13 CHAIRMAN HOOD: Yeah, let's work those out right  
14 now.

15 MS. SCHELLIN: So I will just remind you to look  
16 at Subtitle X, Section 308.8 through 308.19. That's what you  
17 need to go by as far as the proffers and conditions that were  
18 mentioned. There are actual set time limits in there of  
19 providing certain information on the proffers and conditions.

20 Then we'll shoot for the second meeting in March  
21 which is March 25th, which would give you more than 30 days  
22 so that you would have to make your submission by March 11th.  
23 3:00 p.m. on March 11th. If the ANC, being the only party  
24 to the case, wishes to respond, they would have until 3:00  
25 p.m. on March 18th.

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1           And OP, if they choose to provide a response, they  
2 could also provide a response by 3:00 p.m. on the 18th. And  
3 draft findings, facts, and conclusions of law would be due  
4 by 3:00 p.m. on the 11th. That's it.

5           CHAIRMAN HOOD: Okay. Are we all on the same  
6 page? Is there anything else?

7           COMMISSIONER SHAPIRO: That's all.

8           CHAIRMAN HOOD: Okay. So with that I want to  
9 thank everyone for your participation tonight and this  
10 hearing is adjourned.

11           (Whereupon, the above-entitled matter went off the  
12 record at 9:12 p.m.)

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C E R T I F I C A T E

This is to certify that the foregoing transcript


In the matter of: Public Hearing

Before: DC Zoning Commission

Date: 2-4-19

Place: Washington, DC

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