

DISTRICT OF COLUMBIA  
HISTORIC PRESERVATION REVIEW BOARD

MEETING ON CASE NO. HPA 08-141

900 16TH STREET, NW.

Washington, D.C.

Thursday, July 24, 2008

1 PARTICIPANTS:

2 Board Members:

3 TERSH BOASBERG, Chairman

4 ANDREW AURBACH

5 CATHERINE BUELL

6 ROBERT SONDERMAN

7 JOSEPH TAYLOR

8 JOHN VLACH

9 Staff:

10 DAVID MALONEY

11 ANNE BROCKETT

12 STEVE CALLCOTT

13 TIM DENNEE

14 JONATHAN MELLON

15 AMANDA MOLSON

16 Witnesses:

17 TOM BOWER

18 RICHARD BUSCH

19 MATT CROSBY

20 JACK JACOBSON

21 GEORGE R. KEYS

22 DARREN KIRKPATRICK

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1 PARTICIPANTS (CONT'D):

2 Witnesses:

3 TERRANCE LYNCH

4 REBECCA MILLER

5 CHARLES ROBERTSON

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

2 (4:45 p.m.)

3 MR. BOASBERG: Okay, the last case  
4 on the agenda is the Third Church of Christ,  
5 Scientist at 900 16th Street. If you could  
6 get set up.

7 MR. KANE: Mr. Chairman, I'm going  
8 to recuse myself from that case.

9 MR. BOASBERG: Thank you. Okay,  
10 Mr. Reporter, would you show that Mr. Kane is  
11 recusing himself? And Jim, would you ask  
12 Katherine to come back?

13 (Pause)

14 MR. BOASBERG: Mr. Reporter, would  
15 you note that Ms. Casarella has also recused  
16 herself.

17 (Pause)

18 MR. BOASBERG: So we have seven  
19 members of the Board. And if you'll note  
20 their names, that would be fine.

21 Let's see, Mr. Mayes, if you could  
22 both identify yourselves for the record, that

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1 would be very helpful.

2 MR. KIRKPATRICK: Certainly, I'm  
3 Darren Kirkpatrick. With me is George Keys  
4 from the Third Church of Christ Scientist.  
5 It's 900 16th Street, Northwest. With me is  
6 George Keys, our long time attorney and  
7 friend of the church.

8 MR. BOASBERG: Hi, Mr. Keys. Nice  
9 to see you. Okay, let me just get an idea --  
10 we do have a little bit of time. Have others  
11 in the audience come to testify on this case?  
12 Okay. Let me just say at the outset that  
13 this is a kind of a technicality in terms of  
14 our statute.

15 The church was landmarked in  
16 December along with the Christian Science  
17 Monitor building in the complex with the  
18 plaza. So the three elements of the  
19 landmarking were the church, the plaza, and  
20 the Christian Science Monitor building.

21 There was a long discussion on the  
22 landmarking and there was reams of material

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1 in favor of the landmarking from deans of  
2 architecture, architectural critics of  
3 newspapers, and architects and architectural  
4 historians, blah, blah, blah. At the time,  
5 this Board realized this was a difficult  
6 thing they were underdoing because the  
7 congregation had complained that they didn't  
8 have enough money to maintain the church.  
9 And the Board, I think, tried to be extremely  
10 sympathetic to the needs of the congregation  
11 by suggesting that we hope that the  
12 landmarking was only a first stage of the  
13 process, and that the second stage would be  
14 to try to find an architectural design  
15 solution which could accommodate the church's  
16 needs and still retain the status of the  
17 church as a landmark. And the Board has  
18 worked very successfully with other churches  
19 when they needed additions, when they needed  
20 additional funds, and we mentioned the  
21 Western Methodist Church on Mount Vernon  
22 Square, we mentioned Southwest Baptist,

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1 Friendship Baptist Church, Calvary Baptist  
2 Church on 8th Street, and the Board has a  
3 long history of working with churches. And I  
4 want to restate that as much as I can because  
5 we have tried to engage the church, we've  
6 tried to engage the attorneys for the church,  
7 the developer, in conversation about  
8 alternatives, and we have not been successful  
9 in getting your attention. I can't make you  
10 come and see us. I can't make you discuss  
11 alternatives, obviously. But I just want you  
12 to know that we care a great deal about our  
13 churches. We care about them surviving in  
14 the modern atmosphere of downtown, and so  
15 forth. And we have probably over 100  
16 churches that are either landmarked or in  
17 historic districts which add a great deal to  
18 the city and to the cityscape.

19           So just in the spirit of  
20 cooperation, in the spirit of accommodation,  
21 I would like to make that offer again. And I  
22 know the offer has been made in writing by

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1 David Maloney.

2           So with that as a stage, let me  
3 just say that, as you know, this Board is  
4 advisory only when it comes to permits. We  
5 have no power to grant a permit. Only the  
6 mayor's agent can do that. And we cannot  
7 consider matters extraneous to the statute,  
8 so the proper place to bring up concerns of  
9 5th Amendment, 1st Amendment, RIUPA,  
10 finances, hardship, is in front of the  
11 mayor's agent. And I'm sure that you will be  
12 going to the mayor's agent at some point.

13           So this forum can only consider  
14 whether or not the demolition permit with the  
15 request, whether it is consistent with the  
16 purposes of our act. We are (off mike)  
17 cannot get into the financial issues, the 1st  
18 Amendment, 5th Amendment issues.

19           So with that as kind of a backdrop,  
20 let me ask David if he would kind of  
21 introduce the matter, then we will give you a  
22 chance to say whatever you would like and

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1 then we'll hear from everybody else.

2           And I'm just hoping we don't see  
3 you on the steps of the Supreme Court  
4 sometime because that's going to be a long  
5 ways away.

6           Okay, Mr. Maloney?

7           MR. MALONEY: Mr. Chairman, I have  
8 really relatively little to add to that. I  
9 think, as you said at the beginning, from the  
10 point of view of the action the Board is  
11 being asked to take today, it's a relatively  
12 simple matter. I think it's perfectly clear  
13 that the demolition of a landmark structure  
14 is not consistent with the purposes of the  
15 preservation law as expressed in the law. So  
16 in this case the staff feels that the Board  
17 should follow it's normal practice and rule  
18 that such a demolition would not be  
19 consistent with the purposes of the law.

20           One thing that does make this  
21 situation a little bit unusual is that the  
22 church owns only a portion of the property.

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1 They only own the building of this complex  
2 that was designated, so they do not own the  
3 plaza or the office building. And those  
4 features are not part of the application for  
5 demolition, so they would not be affected by  
6 the Board's action today or the mayor's  
7 agent's action on this permit application.

8           And the last thing I guess I wanted  
9 to add was, in reference to your comment  
10 about our attempts to engage the church, we  
11 have certainly tried to do that in the past  
12 year since the designation, since January and  
13 the designation in December. And the  
14 response, essentially, that we received from  
15 the church, if I could characterize it, was  
16 that they did not feel that further  
17 discussion would be productive.

18           And because they have taken that  
19 position, I did think it was maybe  
20 appropriate to put on the record the kinds of  
21 changes that we think might be reasonable to  
22 this building.

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1           Certainly the question of entry to  
2     the building has been a problem from the  
3     church's point of view. They have expressed  
4     that. I think we certainly could see adding  
5     an entry at the corner, at 16th and I  
6     Streets, adding an entry pavilion at the  
7     corner of 16th and I Streets, adding more  
8     glass to the facade, filling in the area  
9     between the church and the west property line  
10    that could be used for additional mechanical  
11    stair egress, elevators, things like that,  
12    any other functional needs that the church  
13    might have. Constructing a rooftop addition  
14    I think would be possible. That's possibly a  
15    means of getting additional income for the  
16    property, and of course any alterations to  
17    the interior as a matter of rights, since  
18    there is no landmark designation on the  
19    interior.

20           And those are things that we  
21    frankly have not discussed in any detail with  
22    the church. Our discussions with the church

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1 on the problems with the building have been  
2 very general in nature and we have not ever  
3 had a real discussion about specific  
4 alterations that might be done to the  
5 building to accommodate their needs.

6 MR. BOASBERG: Okay. And I think  
7 those offers that you have made toward  
8 accommodation are to be interpreted as offers  
9 which would need to be explored, but are  
10 illustrative of a really wide range of design  
11 solution, additional space, additional  
12 conveniences, to make the property more  
13 productive and to help the church with its  
14 burden. I just want to make that very, very  
15 clear.

16 Then I'm sure the church  
17 understands that and certain things in life,  
18 obviously, we can't control and the church is  
19 certainly within its rights to do whatever it  
20 feels that it needs to do and I don't  
21 disparage that at all. I'm just saying, we  
22 want to be as accommodating as we possibly

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1 can, so with that, and Mr. Keys, I'm sure you  
2 understand what the legal issues are  
3 involved. The floor is yours.

4 MR. KIRKPATRICK: I'll start, Mr.  
5 Chairman.

6 MR. BOASBERG: Sure.

7 MR. KIRKPATRICK: Just a word about  
8 my background, I guess. I introduced Mr.  
9 Keys. I'm an engineer by profession. I  
10 headed the Navy Departments Urban Planning  
11 Organization for the National Capital Region  
12 and represented the Navy before the NCPC and  
13 the Commission of Fine Arts for two years and  
14 was its technical witness on military  
15 construction before the Congress for four  
16 years. However, what's more relative today's  
17 hearing is that I'm a native Washingtonian,  
18 joined the Third Church Sunday School in  
19 1936. My grandmother, mother, four of my  
20 aunts have been members, and now my wife and  
21 I are members.

22 My professional activities have

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1 taken me away from D.C. and Third Church over  
2 the years, but I've been back as a member for  
3 the last six years and just completed service  
4 as First Reader, and that's the person who  
5 conducts the Sunday and two Wednesday  
6 services. It's from this perspective that I  
7 offer comments today.

8 I'm going to get away from my  
9 prepared remarks for a minute, if I may, Mr.  
10 Chairman. I want to comment on a couple of  
11 things that have been said. I'd love to  
12 start this off positive and I will try to,  
13 but I'm not sure.

14 A comment's been made about money  
15 being the issue. Money has never been the  
16 issue. We can always use more money, any  
17 church can, I understand. There was a  
18 comment made about reams and favor, I just  
19 want to make one brief comment. I don't want  
20 to relive the landmark but I want to make one  
21 brief comment. Those reams in favor we were  
22 told were as many as 20 or 30 letters we

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1 received from the HPO, letters and a blog  
2 sheet, and later through efforts of a foyer  
3 request, we picked up one more letter. Maybe  
4 that's reams. I would like to thank Mr.  
5 Maloney here for his comments, the ideas that  
6 he has, but I think when I get through here,  
7 you will see that we've explored a lot of  
8 these ideas and you'll see where we're going  
9 or not going with them.

10 Our rationale for demolition is  
11 simple and straightforward. The structure  
12 does not meet our worship needs and has to be  
13 replaced with a church that does. Moreover,  
14 federal law, including the 1st Amendment to  
15 religious land use, and Institutional Persons  
16 Act and the Religious Freedom Restoration  
17 Act, gives the membership, which has  
18 worshipped in this community, always within  
19 six blocks of where we are today for 90 years  
20 and which contributed all the funds for the  
21 structure, we feel those federal statutes  
22 give us the right to do so. At the

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1 conclusion -- and I want to address the  
2 communications issue here a little bit. It's  
3 a sensitive issue. I understand that, but at  
4 the conclusion of the December hearing in  
5 which the HPRB voted to landmark Third  
6 Church, several members offered to help us in  
7 exploring alternatives for adaptive reuse --  
8 adaptive reuse -- to solve the many problems  
9 which they and other preservationists agree  
10 exist with the structure. We were  
11 appreciative of those offers but adaptive  
12 reuse has proven impractical.

13 Earlier dialogues did not prove  
14 useful. Let me illustrate. I'll try to be  
15 brief here but there is a history. From '91  
16 to '93, immediately after the application for  
17 landmarking was filed without our knowledge  
18 or consent, we had substantive discussions  
19 with the applicant. We thought we had made  
20 some progress based on a letter from the  
21 Committee of 100 which stated, "We have also  
22 stated explicitly that it is not our

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1 intention to save physical things if so doing  
2 means the loss of the activities that give  
3 them life." Also, there was a willingness  
4 expressed by the applicant in a member in a  
5 meeting of '91 to withdraw the application if  
6 the church felt the designation interfered  
7 with their mission. However, the application  
8 was never withdrawn despite our protest --  
9 several letters of protest.

10 In late 2005 through 2007,  
11 substantive meetings took place this time,  
12 including HPO. There was no agreement. Our  
13 impression of those latter discussions and  
14 the unwillingness of the applicant to  
15 consider our needs is best characterized by a  
16 suggestion of an applicant's representative  
17 that if the church was unable to maintain its  
18 stewardship of the edifice and preserve and  
19 maintain it as a landmark, maybe it should  
20 consider a transfer of the ownership to a  
21 government entity which would have the deeper  
22 pockets for such an effort.

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1           Two more brief illustrations here  
2           on communications, if I may. Further, in a  
3           meeting requested by the applicant to share  
4           their plans for the site a week before the  
5           November 2007 hearing, there was no progress.  
6           We were actually hopeful. They had requested  
7           the meeting. But upon arrival at the meeting  
8           two days before the hearing, the first words  
9           they uttered after introductions were,  
10          "You're going to be landmarked. We'll be at  
11          the hearing and we're going to win." Then  
12          they asked for our plans for the site which  
13          is mystifying as plans had been offered and  
14          refused on the basis that the issue was all  
15          about landmarking, not future plans.

16                 We're also mindful of two proposals  
17                 offered by HPO more recently. Neither the  
18                 one fully encasing the site in glass at the  
19                 height of a (off mike) building nine stories  
20                 tall and running some 150 feet long with some  
21                 connections between the buildings, nor the  
22                 one of adding market activities to the plaza

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1 met our religious needs.

2           Now, I want to clarify, Mr. Maloney  
3 and others, maybe just Mr. Maloney, has  
4 talked about the developer and so forth and  
5 so on. Let me make very clear. We are here  
6 today on our own. We're the owners of the  
7 church. We have spent a lot of members' time  
8 that could have been better placed on our  
9 mission and we have spent a considerable  
10 amount of church funds in hiring  
11 professionals we respect to assist us. As  
12 the builder and owner for the entire 37-year  
13 life of the church and the ones whose  
14 theology and religious exercise must be  
15 satisfied by the structure, we think we are  
16 in a sound position to make the necessary  
17 judgments. However, to support our decision  
18 making process, we have supplemented our  
19 expertise. Our team consists of the design  
20 award-winning Kerns Group Architects, one of  
21 the country's leading ecclesiastical design  
22 firms; Vanderville Associates, an engineering

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1 firm involved in sorting out serious  
2 difficulties in the mechanical systems in  
3 1971 I.M. Pei design Harvard Towers in  
4 Boston; and Robert Sillman Associates, a  
5 structural firm, also involved in work on  
6 I.M. Pei structures and currently involved in  
7 the AIA efforts to make their 1973 Walter  
8 Gropius building sustainable in a way it can  
9 qualify for the National Register of History  
10 Places thereby establishing parameters,  
11 criteria for the industry, making modernist  
12 structures sustainable.

13 Our collective determination is  
14 that it would be effectively impractical to  
15 both maintain the structure and to maintain  
16 our religious exercise. We must have a new  
17 structure to meet our religious exercise  
18 needs and therefore we seek demolition.

19 Now, we don't intend to belabor the  
20 1st Amendment issue or certainly relive the  
21 landmark hearing, but we do think it's  
22 important that the Board, particularly the

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1 new members, understand the religious burden  
2 placed on us by the landmark. Attached to  
3 the remarks which I'll pass out here is our  
4 full statement on that and I won't go through  
5 that but I would like to summarize a half a  
6 dozen points on that so that I think you will  
7 see what we're getting at.

8           Scripture and direction from our  
9 denomination's founder are vital to our  
10 church. The 25th Chapter of Matthew in being  
11 identifiable and available to the stranger,  
12 Proverbs 31 and reaching out to the needy  
13 with a Sunday lesson which our founder tells  
14 us, "A lesson which the prosperity of  
15 Christian Science largely depends."

16           The members of Third Church believe  
17 that the features of their edifice  
18 individually and together prevent us from  
19 exercising those beliefs. A few examples:  
20 The main entrance is hidden from three of the  
21 four directions from which one approaches the  
22 building. This location conveys the

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1 erroneous impression that we're not open to  
2 strangers or newcomers which directly  
3 impinges on our religious mission and  
4 practice; the massive 60- foot- high concrete  
5 exterior walls with no windows or doors on  
6 the sides facing the streets and sidewalks  
7 and a barren streetscape give a forbidding  
8 and secretive appearance to the average  
9 passerby; the plaza terminates in a high  
10 grade plain vertical reinforced concrete wall  
11 that is imposing and unwelcoming to the  
12 passerby; the cavernous auditorium seating  
13 400 is 250 more than needed and presents a  
14 dark, enclosed environment, which is not  
15 lessened by two skylights and one narrow  
16 window. These never give enough light to  
17 conduct a service and depending on the time  
18 of day and position of the sun, may go  
19 completely unnoticed, certainly not  
20 consistent with "He that followeth may he  
21 should not walk in darkness, but shall have  
22 the light of life" from the Gospel of John.

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1           The electric lighting, which fully  
2 covers the ceiling and must be used for our  
3 services, and serviced at least once a year  
4 at great cost, further detracts from the  
5 feeling of communion with God or man.

6           Two others, briefly, and then I'll  
7 move on. To meet accreditation standards for  
8 a church, there must be a reading room -- for  
9 a Christian Science church, I'm speaking of,  
10 of course -- there must be a reading room  
11 open to the public. It satisfies the  
12 biblical charge to take in the stranger, heal  
13 the sick, and give freely. The lease for our  
14 current reading room located in the building  
15 across the plaza from us will not be renewed.  
16 Our vision is to consolidate it with a new  
17 church having a single entry on this very  
18 visible, active, downtown corner.

19           And the last illustration, water  
20 penetrating the exterior porous concrete  
21 surfaces caused deterioration of the  
22 reinforcement, continued (off mike) and

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1 eventually structure weakening of the main  
2 bearing walls. The porous quality is  
3 responsible for poor insulation and radical  
4 changes of temperature and humidity through  
5 loss of heat in winter and cooling in the  
6 summer. The HVAC system, there's only one,  
7 must operate 24/7 in the summer, normal  
8 temperatures cannot be maintained in all  
9 spaces at once or zoned to match space use.  
10 The situation results not only in a burden to  
11 the congregation, but also in resource usage  
12 which is environmentally irresponsible and  
13 certainly not in keeping with our founder's  
14 direction, "God requires wisdom, economy, and  
15 brotherly love to characterize all the  
16 proceedings of the members."

17 Now, moving on. Please remember  
18 that this building is monolithic, reinforced  
19 concrete designed fusion. One can't just  
20 reroute utilities, walls, and amenities. The  
21 building, through its architecture, is  
22 sending the wrong message to our community

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1 and inhibits our ability to interact with the  
2 community. We need to be a visible,  
3 welcoming presence, on a living corner. It's  
4 central to who we are. Nothing is more basic  
5 to a church than being able to express its  
6 religious exercise through its architecture.

7 Under RFRA and R-LUIPA, we think  
8 it's incumbent upon any government body, and  
9 we may have a disagreement here, I understand  
10 that, but where we're coming from, let me  
11 make clear, under RFRA and R-LUIPA, we think  
12 it's incumbent upon any government body to  
13 consider the rights of religious exercise no  
14 matter what the governing laws and  
15 procedures.

16 Several statements were made by the  
17 HPRB during the December 6th hearing that our  
18 case is not a 1st Amendment issue. We  
19 sincerely and respectfully disagree.

20 In an effort to make today's  
21 hearing not a judicial proceeding, but an  
22 informed governmental review, I'd like George

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1 Keys to make a few brief comments here and  
2 then I've got about a minute and a half to  
3 wrap up.

4 MR. BOASBERG: Thank you, Captain.  
5 Mr. Keys.

6 MR. KEYS: Mr. Chairman, members of  
7 the Board, my name is George Keys. I've been  
8 with the church, representing the church,  
9 since about the late 1980s. We asserted in  
10 November and December, and we assert today,  
11 that the act of designation of the church as  
12 a historical landmark over its objection, and  
13 the actions that this Board may take to  
14 recommend the denial of a demolition permit,  
15 that these actions have imposed a substantial  
16 burden on the church. And that burden  
17 represents a violation, as Darrell has  
18 mentioned, of the 1st Amendment to the  
19 Constitution and to these two federal  
20 statutes, and I'm not going to elaborate, but  
21 particularly for the members who didn't take  
22 part in the case, I wanted to put in front of

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1 you the Religious Land Use and  
2 Institutionalized Persons Act. Unlike a lot  
3 of legislation, it's really quite simple in  
4 declarative English. And if you look at the  
5 opening section, page 1, Section 2000(c)(C),  
6 it simply states that no government -- and  
7 the definition of government if you look at  
8 the sources for the statute, certainly  
9 includes the District of Columbia -- "no  
10 government shall impose or implement a land  
11 use regulation" and let's stop here and look  
12 at the last stage, because that's where your  
13 definitions occur.

14           The definition of "land use  
15 regulation" means a zoning or a landmarking  
16 law, or the application of such a law that  
17 limits or restricts a claimant use or  
18 development of land including a structure  
19 affixed to the land if the claimant has an  
20 ownership interest in the regulated land.  
21 Now, back to the general purpose, if that  
22 regulation imposes a substantial burden on

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1 the religious exercise of an institution, at  
2 that point, where the church alleges a  
3 substantial burden on its religious freedom  
4 at that point the government must then find a  
5 compelling interest that justifies the  
6 intrusion on 1st Amendment rights. That is  
7 the strict scrutiny standard that's  
8 appropriate because, ladies and gentlemen,  
9 this is civil rights legislation. This is  
10 not a piece of vague federal law that's  
11 floating out there. This is an elaboration  
12 of our fundamental rights as American  
13 citizens. Congress felt the need to  
14 elaborate it in the same way that congress  
15 felt the need through the equal rights  
16 statutes and the civil rights statutes to  
17 elaborate the meaning of the 14th and 15th  
18 Amendments, to protect racial discrimination  
19 and discrimination based on gender.

20 I'm presenting this to you as lay  
21 people not because I expect you to cogitate  
22 the significance of all of this but for you

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1 to be aware that we are in the exact  
2 circumstance this regulation contemplates.  
3 This church has alleged and sustained a  
4 substantial burden, not a burden measured in  
5 dollars, necessarily, but a burden measured in  
6 the limitations on its ability to put its  
7 faith in action through this building. It's  
8 the edifice that creates the burden.

9 Now, there's very little law on  
10 landmarking under R-LUIPA. The statute was  
11 passed in 2000. There's been very little  
12 development of case law, but if you look in  
13 the country there are -- from states like  
14 Massachusetts, Kansas, and Washington -- very  
15 active judiciaries that are intent on making  
16 real 1st Amendment protections, and they're  
17 using the same argument and the same  
18 standards that R-LUIPA has enacted.

19 Let me give you an example.  
20 Society of Jesus of New England versus the  
21 Boston Landmark Commission. It's a 1990 case  
22 decided by the Supreme Court of

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1 Massachusetts. I think this case is  
2 interesting because that the commission did  
3 was it landmarked the interior of the church,  
4 the Church of the Immaculate Conception, and  
5 then denied the Jesuit's renovation plan.  
6 The Jesuits then submitted a second plan  
7 which the commission approved and the Jesuits  
8 went to work to implement that plan. But the  
9 Jesuits then challenged the landmarking, the  
10 landmarking, on 1st Amendment and state  
11 constitution grounds and the court looked at  
12 the state constitution, which really is  
13 another implementation of our 1st Amendment,  
14 and the court decided that landmarking the  
15 interior is an intrusion on religious worship  
16 by the government as it puts the government  
17 in a position of regulating the arrangement  
18 of a church's actual worship space.

19 Now I mention this because it  
20 speaks about the interior of a church and you  
21 might think, well why would I mention this in  
22 the context of Third Church because it's not

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1 the interior that's landmarked here, but I  
2 offer it because if you think back to the  
3 testimony about the nature of this building  
4 and the nature of brutalist architecture, if  
5 the exterior is landmarked, because of the  
6 unitary nature of the construction of  
7 brutalist architecture, it's a de facto  
8 designation of the interior. Those spaces  
9 are inflexible.

10 MR. BOASBERG: I'm just saying, we  
11 cannot make --

12 MR. KEYS: No, you choose not to  
13 make.

14 MR. BOASBERG: -- these legal  
15 decisions. We don't have the power to make  
16 these legal decisions and those decisions and  
17 that eloquent argument would be made in front  
18 of the mayor's agent. We are an advisory  
19 body only. We do not determine the permit.

20 MR. KEYS: We have no avenue before  
21 the mayor's agent. The mayor's agent is  
22 entitled only to hear projects of special

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1 merit, consistency with the historic scheme,  
2 and economic infeasibility that's measured in  
3 rate of return on investment. None of those  
4 arguments are available to us.

5 MR. BOASBERG: The 1st Amendment  
6 arguments and relief arguments are always  
7 available in any court. They're available to  
8 you in any court. You can challenge the  
9 landmarking in whatever grounds in whatever  
10 court of your choice at the time. The  
11 landmarking is over. The landmarking is  
12 done. And the arguments that you're making  
13 here to an advisory body are really out of  
14 place. Our power is only to recommend to the  
15 mayor's agent whether or not the demolition  
16 permit should proceed based on our statutory  
17 grounds. We are not a court of law. We do  
18 not have lawyers advising us here. We have  
19 not read briefs. I mean, this would not be  
20 what we could do today, sir, but these  
21 arguments would be available to you in front  
22 of the mayor's agent or in front of any

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1 court.

2 MR. KEYS: Mr. Boasberg, I would  
3 like to go back to your decisional document.  
4 Your decisional document contains this  
5 statement, "As noted above, the Board  
6 believes the act of designation in itself  
7 does not constitute an undue burden on the  
8 property owners either because of financial  
9 hardship or the exercise of religious  
10 liberties." If I'm not mistaken, that's a  
11 conclusion as to what our legal rights are  
12 and that's far beyond what you're now  
13 indicating is the scope of the Board's  
14 jurisdiction.

15 Shall I read further?

16 MR. BOASBERG: I said that those  
17 issues for us were not involved in the  
18 designation issue. Now we've gone ahead and  
19 we've designated. We are not here to  
20 reconsider the designation. The designation  
21 is done. There are proper avenues to  
22 challenge the designation.

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1           MR. KEYS: I'm not asking you to  
2 reconsider the designation, I'm asking you to  
3 consider what you're going to do next because  
4 I believe if you look at the situation of  
5 where we are and what this Board can do, you  
6 have the ability to recommend demolition. In  
7 recognizing the fact that this church has  
8 already been aggrieved by this Board in the  
9 findings that you made that you now say are  
10 not within your power to make.

11           MR. BOASBERG: Mr. Keys, with all  
12 due respect, those are arguments you can make  
13 in front of the mayor's agent. There are  
14 attorneys present with the mayor's agent.  
15 You have the right of cross-examination, you  
16 have proofs, you have everything else. We  
17 don't have any of that. We're just an  
18 advisory body which has to act in terms of  
19 the statute. The only thing that is really  
20 in front of us is, is it within the purposes  
21 of the act to create this demolition verdict.  
22 That's all we can decide and all we can do is

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1 recommend in an advisory capacity to the  
2 mayor's agent. We can't do anymore than  
3 that. We're not set up to do anymore than  
4 that. We just can't do it.

5 MR. KIRKPATRICK: We understand  
6 what you're saying, Mr. Chairman. Again, we  
7 respectfully disagree, but we'll move on.

8 MR. BOASBERG: I understand you  
9 disagree and you have a very eloquent person  
10 making those arguments, and Captain, you  
11 don't do a bad job yourself either, so we  
12 hear what you're saying and we think there is  
13 a forum for you to say that and have it  
14 considered.

15 MR. KIRKPATRICK: I have about two  
16 paragraphs but I want to ad lib just a little  
17 bit if I may. We would love to see you  
18 recommend demolition and let the landmark  
19 stand, but demolish it. We certainly would  
20 support any kind of studies of the building,  
21 donate our model, but we don't think it  
22 should be a living museum to -- as Mr. Dennee

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1 called it -- the low bar of brutalism.

2 And second, I want to come back  
3 again to this point that we are here on our  
4 own. Mr. Maloney talked about communications  
5 with the developer and whatever, we are here  
6 alone. We've been operating on our lone for  
7 a little bit of time now.

8 Okay, let me wrap it up. And one  
9 last little bit of legal and then I'm on the  
10 way.

11 In confronting the issue head on,  
12 the Supreme Court of the State of Washington  
13 said, "The possible loss of significant  
14 architectural elements is a price we must  
15 accept to guaranty the paramount right of  
16 religious freedom." We certainly agree that  
17 historic preservation is a legitimate goal  
18 for the District, but it can't outweigh  
19 fundamental 1st Amendment rights. We're  
20 convinced that the team we have had and will  
21 continue to develop, will complement the 16th  
22 Street Historical District, the L'Enfant Plan

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1 with the city, be consistent with this brand  
2 new National (off mike) Framework Plan, which  
3 has just recently been approved by the NCPC  
4 and the Commission of Fine Arts, particularly  
5 with regard to streetscape which they  
6 emphasize, and we feel it will meet the  
7 requirements of what we know would be a  
8 rigorous review by your distinguished Board.

9 With that, we'd be happy to take  
10 any questions or comments or explore it any  
11 way you like.

12 MR. BOASBERG: Okay, I'd like to  
13 get the rest of the testimony out and I just  
14 want to assure you I'm very familiar with the  
15 law. I'm a professor of law at Georgetown. I  
16 teach this. I teach these courses, I teach  
17 the cases that you mentioned and so -- it's  
18 not through ignorance that we're acting.

19 MR. KIRKPATRICK: We have to  
20 disagree.

21 MR. BOASBERG: Okay, well, it's  
22 just a question of we may disagree on the

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1 merits but agree on the merits, but the  
2 merits are not in front of us in terms of the  
3 issues of the 1st, 5th, or R-LUIPA.

4           So others who have come to testify  
5 -- and lets, again, try to limit ourselves to  
6 the issue before us. Should a demolition  
7 permit issue under our statute? That's the  
8 question. Who'd like to go first? Mr.  
9 Busch, Mr. Bowers, anyone else? Ms. Miller,  
10 Mr. Lynch. Okay, (off mike). Okay. Why  
11 don't you all come forth here. And again,  
12 I'm going to be a little bit tough in terms  
13 of what we can address ourselves to because  
14 all these issues can be addressed in the  
15 proper forum. So who would like to start?  
16 And David, could you check on our physical  
17 availability here? We have a room -- problem  
18 our members of the district government and so  
19 forth. (off mike), so who would like to  
20 start?

21           MS. MILLER: I'm happy to start.

22           MR. BOASBERG: Yes, Ms. Miller.

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1                   MS. MILLER: Great. Thank you. My  
2 name's Rebecca Miller. I'm the executive  
3 director of the D.C. Preservation League and  
4 with me is Matt Crosby from McKenna, Long &  
5 Aldridge. We'll start by thanking you for  
6 the opportunity to present today. I know I  
7 saw you earlier. You're probably sick of  
8 seeing me, but we are here in opposition of  
9 the raze permit for the Third Church of  
10 Christ, Scientist, the church building that's  
11 located within the Third Church of Christ,  
12 Scientist complex at 900 16th Street,  
13 Northwest.

14                   The structure under review is a  
15 modernist church that was designed by Araldo  
16 Cossutto of the acclaimed I.M. Pei & Partners  
17 architectural firm. In 1974, just three  
18 years after its completion, the church was  
19 included in the Guide to Architecture in  
20 Washington D.C., published by the American  
21 Institute of Architects. It also earned  
22 awards from the Washington Board of Trade and

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1 the Washington Building Congress.

2 In December of 2007, the Historic  
3 Preservation Review Board recognized that the  
4 church building met the statutory criteria  
5 for landmark designation by unanimously  
6 granting its landmark status. While some  
7 within the community opposed the landmark  
8 designation, most notably the trustees of the  
9 church and a commercial developer that owns  
10 the land underlying the church, others  
11 strongly supported its preservation. In  
12 fact, dozens of letters in support of the  
13 designation were received from architects,  
14 architectural historians, heads of  
15 architecture schools and historic  
16 preservation programs, and organizations  
17 focusing on preservation of the recent past.

18 The divergent views regarding the  
19 church's landmark designation can be put  
20 aside today because the only matter before  
21 the Board is a discreet issue of just -- that  
22 is just as clear cut as the landmark

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1 designation. That issue is simply whether  
2 demolition of the church is compatible with  
3 the purposes of the District of Columbia  
4 Historic Preservation Act. The Act itself  
5 makes this purpose clear. They are to retain  
6 and enhance historic properties, encourage  
7 the adaptive reuse of historic properties for  
8 current use, and ensure that changes to the  
9 designated properties are compatible with  
10 their historic character.

11 The raze permit application before  
12 the Board requests demolition of a designated  
13 historic landmark. The application is  
14 therefore totally incompatible with the  
15 purposes of the Act. Accordingly, DCPO urges  
16 the Board to adopt the Historic Preservation  
17 Office Staff Report and deny the raze permit  
18 application.

19 MR. BOASBERG: Okay, thanks. Mr.  
20 Crosby. Is there anything you wanted to add?

21 MS. MILLER: I'm not done.

22 MR. BOASBERG: Oh, sorry.

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1                   MS. MILLER: In closing, DCPO  
2                   comments that the District's preservation law  
3                   encourages the adaptation of landmarks for  
4                   current use, yet since the church's  
5                   designation no plan or proposal aside from  
6                   their request to completely demolish the  
7                   structure has been submitted to the Historic  
8                   Preservation Office for review. Given its  
9                   location and modern architectural  
10                  significance, the building has potential for  
11                  a variety of uses whether it be spiritual,  
12                  charitable, community, commercial, mixed or  
13                  otherwise. DCPO respectfully encourages the  
14                  representatives of the church and the  
15                  developers to meet with HPO staff to explore  
16                  opportunities for adaptive reuse on the site.  
17                  Thank you.

18                  MR. BOASBERG: Thank you. Mr.  
19                  Crosby, anything you wish to add?

20                  MR. CROSBY:: No, Mr. Chairman.

21                  MR. BOASBERG: Okay. Thank you.  
22                  Next. Down at that end. ANC? Right. Hi.

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1 MR. JACOBSON: Hi there.

2 MR. BOASBERG: Good to see you.

3 MR. JACOBSON: Mr. Chairman,  
4 members of the Board, thank you for the  
5 opportunity to testify here today in support  
6 of Third Church of Christ, Scientist's  
7 application for a raze permit. My name is  
8 Jack Jacobson and I'm a commissioner on the  
9 DuPont Circle Advisory Neighborhood  
10 Commission. We are not new to this struggle,  
11 but some of you are, including myself, and I  
12 welcome you to this discussion.

13 The primary issue here is of  
14 federal civil rights law and at the close of  
15 the landmark hearing, one of my fellow  
16 commissioners got into a heated argument with  
17 a then Board member who argued incorrectly  
18 that churches are no different than any other  
19 building in the eyes of the law in  
20 preservation and land use matters. That is  
21 not correct.

22 MR. BOASBERG: That's exactly why

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1 we can't hear this, because we are not  
2 judges. We are not (off mike), we are just  
3 here as the Historic Preservation Board, so  
4 we're not going to go into the legal issues  
5 of 1st Amendment, 5th Amendment or R-LUIPA,  
6 so I want, just as I was fairly strict with  
7 Ms. Miller and with Mr. Key, I cannot let you  
8 go into the merits of this because we can't  
9 consider it. It's just not appropriate.

10 MR. JACOBSON: Thank you. Forgive  
11 me a bit of housekeeping then. The Staff  
12 Report on the demolition request references  
13 the landmarking process in its final  
14 paragraph and during that process, the  
15 applicant submitted a series of statements  
16 about schools of architecture that may or may  
17 not exist, the supposed history of certain  
18 anniversaries that were never celebrated, and  
19 interpretations on how a building expressed  
20 theology that were flat out wrong. When  
21 challenged by the church on the accuracy and  
22 truthfulness of all of that, the applicant

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1     withdrew those assertions pleading nolo  
2     contendere.

3                 In place of that part of the  
4     application they submitted what the chairman  
5     described in this room as "20 or 30 letters  
6     by the finest architects and architectural  
7     critics" as to the worth of the building, but  
8     that number of letters was never entered into  
9     the record.

10                After the hearing, the chairman  
11    went on the radio and said there may have  
12    been 30 or 40. The church had asked to see  
13    all correspondence reviewed by the Board  
14    before the hearing, but received only 14  
15    letters and a blog sheet from HPO.

16                The Beckett Fund for Religious  
17    Liberty, on behalf of the church, filed a  
18    follow-up Freedom of Information Act to see  
19    the others. Only one additional letter was  
20    provided.

21                Mr. Chairman, when will they obey  
22    the law and allow the church to see all the

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1 submissions in the case? Mr. Dennee and Mr.  
2 Maloney, we respectfully ask where the other  
3 letters are and when will we be allowed to  
4 review them?

5 MR. BOASBERG: Okay. Mr. Jacobson,  
6 let me just say I think one of the problems  
7 here is that there were letters received when  
8 the application was first going to be heard  
9 17 years ago and those letters were -- I  
10 don't know if those letters were technically  
11 in the file or were in the previous file and  
12 then there were maybe 14 letters or whatever,  
13 other letters, for this hearing. So when I  
14 was talking about 30 letters or whatever, I  
15 was thinking of all the things that I've  
16 seen, so I have seen all those. I will check  
17 with them to make sure if there are other  
18 things that may get to your hands.

19 MR. JACOBSON: I appreciate that  
20 and I appreciate the clarity.

21 MR. BOASBERG: I'm sorry for the  
22 confusion.

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1                   MR. JACOBSON: No worries. I  
2 appreciate that, Mr. Chairman. On another  
3 matter involving our councilman, Mr.  
4 Chairman, at the landmark hearing, you  
5 testified on the record that Councilman  
6 Everett supported the landmarking, but you  
7 were referencing a letter he supported in  
8 1991. And Jack Evans had recently sent to us  
9 and to you a letter in opposition. Somehow  
10 that letter didn't make it into the record at  
11 the time of the hearing, yet the councilman's  
12 constituent services director sent us a  
13 letter e-mailing, stating, "We sent a letter  
14 against landmarking it. It was sent to Tersh  
15 Boasberg. I e-mailed it, faxed it, and  
16 mailed it."

17                   Mr. Chairman, was the councilman's  
18 letter eventually included in the record, and  
19 was --

20                   MR. BOASBERG: I don't know,  
21 because I don't prepare the record, but I  
22 will make sure it is included in the record,

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1 and I certainly saw it but I didn't see it  
2 until after the hearing.

3 MR. JACOBSON: Thank you, sir. I  
4 appreciate that. Mr. Chairman, the DuPont  
5 Circle ANC has unanimously passed a  
6 resolution regarding Third Church and it  
7 speaks directly to the matter on hand. It  
8 says that churches play a vital role in our  
9 community and the sense of the community is  
10 that they should not be subjected to undue  
11 burdens by the District Government to  
12 continue their mission. And by churches, Mr.  
13 Chairman, we mean the heart and soul of these  
14 organizations, that is the congregation, the  
15 community of faith. You cannot kill the  
16 church congregation in order to save the  
17 church building.

18 Our resolution points out that the  
19 church has provided evidence to us that the  
20 architect overrode their concerns and built a  
21 structure that does not meet with their  
22 religious mission with no public doors or

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1 windows on either 16th or I Streets.

2           They have convinced us that it is  
3 too large and expensive for their modest  
4 congregation to maintain and they can't have  
5 a daycare in their facility because it is  
6 impossible to maintain a constant temperature  
7 and that these problems will become more  
8 serious with age, and it points out that they  
9 are steadfast in their mission to serve the  
10 downtown area. With \$8,000 to change a light  
11 bulb, the sunlight blinding the organist  
12 three months a year, these combine to create  
13 a case that merits approval of their request  
14 under the undue burden provision of R-LUIPA.  
15 And we have yet to find any compelling  
16 government interest in stopping the church  
17 from exercising its right to demolish its own  
18 structure.

19           Mr. Chairman, no one is tearing  
20 down the National Cathedral here to build a  
21 K-Mart. Perhaps the most evocative passage  
22 in the bible is one of the shortest from the

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1 Book of John: Jesus wept. Certainly the  
2 most evocative moment of this process, as the  
3 Chairman called it last year, was in the  
4 landmarking hearing when a young lady was  
5 testifying before you about how all of the  
6 money being spent on this building could be  
7 used instead for mission activities --  
8 healing the sick and blessing the world --  
9 and like Jesus, she wept. She had to  
10 interrupt her testimony.

11           Maybe you don't consider financial  
12 hardship in your decisions, but we in the  
13 community do especially when government  
14 decisions become a tax that cripples and  
15 destroys a church and makes it impossible for  
16 congregations to fulfill their mission.  
17 Federal law here is clear. Forcing the  
18 church to preserve a building that clearly  
19 impedes its religious mission, places an  
20 undue burden --

21           MR. BOASBERG: Okay, Mr. Jacobson,  
22 I'm going to knock you again. On federal

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1 law, we can't do that. Nor can we consider  
2 the monetary argument here. It's not within  
3 our providence. The mayor's agent considers  
4 hardship cases, not this board.

5 MR. JACOBSON: Thank you much. We  
6 urge you, in closing, and beg you to follow  
7 the dictates of applicable federal civil  
8 rights law and approve the demolition  
9 request. Thank you.

10 MR. BOASBERG: Thank you, Mr.  
11 Jacobson, and you're always welcome to attend  
12 and we appreciate how strongly you represent  
13 your neighborhood. That's a very good sign.

14 Now, talk about another strong  
15 person, Dr. Lynch, what's on your mind today?

16 MR. LYNCH: Well, before I forget,  
17 I want to let you know, the Jeff Lee Livery  
18 Service delivered me here and urged me to  
19 express his best regards to the Chairman, so  
20 before I forget, Jeff Lee says hello.

21 I want to thank you all so much for  
22 your time this afternoon and for your

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1 service. I don't think you hear enough about  
2 -- I as a citizen feel that both personally  
3 and professionally, it's such a sacrifice to  
4 serve on this commission as so many other  
5 civic commissions and I just want to express  
6 my personal appreciation for your time and  
7 service, so I want to say thank you very much  
8 for what you're doing.

9 MR. BOASBERG: Thank you. I  
10 appreciate your words.

11 MR. LYNCH: I want to align myself,  
12 of course, with the ANC and the congregation  
13 and I think it's fully within this Board's  
14 authority, legally, statutorily to support  
15 this application. You've already heard most  
16 eloquently how the building fails  
17 dramatically to allow the church to express  
18 its religious freedom and its worship both  
19 internally and externally, both in its  
20 worship services within the facility and its  
21 expression of its faith and worship to the  
22 surrounding neighborhood because of the

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1 nature of the design of the building. That's  
2 been spoken to quite clearly.

3 MR. LYNCH: You understand, of  
4 course, the structured self, even with the  
5 maintenance that's above and beyond the call,  
6 over time this building will probably  
7 collapse unto its own self even if they  
8 exercise due diligence and reasonable  
9 maintenance.

10 You've heard the religious  
11 arguments which the Chairman has responded to  
12 and I cannot speak more eloquently to them as  
13 has already been done.

14 It is certainly within this Board's  
15 purview to support this raze application.

16 Let me speak practically. All we  
17 have here -- what we're looking at is at a  
18 train wreck. I think the seeds of this train  
19 wreck started when we had an applicant  
20 outside of the congregation apply for the  
21 designation. That was furthered by the years  
22 of inactivity that should have been decided

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1 on on a timely basis. It was all made worse  
2 by failures of communication by city agencies  
3 as well as other parties. I don't want to  
4 see this train wreck happen.

5 This Board has an opportunity  
6 within its purview to act responsibly and  
7 supporting this application does that. So I  
8 would urge your strong support for this raze  
9 application. Thank you.

10 MR. BOASBERG: Thanks, Mr. Lynch.  
11 I appreciate it.

12 Others who have come to testify on  
13 this application? Again I want to limit  
14 your comments to the statute in front of us.

15 Mr. Robertson, we recognize the  
16 distinguished former Board Member. Mr.  
17 Lynch's words would apply to you as well, Mr.  
18 Robertson, I'm sure. Go ahead.

19 MR. ROBERTSON: Charles Robertson  
20 representing the Committee of 100 on the  
21 Federal City and a trustee of that  
22 organization. The Committee of 100 was one

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1 of the co-sponsors of the application for  
2 designation those many years ago and it was  
3 actually the church who requested that the  
4 hearing not be held.

5 MR. BOASBERG: I don't want to get  
6 too much into what happened in the past. The  
7 building is designated.

8 MR. ROBERTSON: The building was  
9 designated and so much of the testimony we've  
10 heard here is totally irrelevant. We're not  
11 revisiting the designation, as you said.  
12 There can be a legal appeal from the  
13 designation, and that has not been done. So  
14 really the only test here is whether the raze  
15 is incompatible with the act and Ms. Miller  
16 has quoted the act, the Chairman has quoted  
17 the act, and so that's the only decision to  
18 be made here. So I really hope the Board  
19 will ignore the irrelevant testimony which  
20 unfortunately has been allowed into the  
21 record here. Thank you, Mr. Chairman.

22 MR. BOASBERG: Okay. Thanks, Mr.

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1 Robertson. Mr. Bower?

2 MR. BOWER: I'm Tom Bower. I'm  
3 president of the (off mike) Historic District  
4 Conservancy. We have two historic  
5 preservation issues for which we believe it's  
6 important that the Third Church of Christ,  
7 Scientist be maintained. We believe that in  
8 its present situation, and its siting,  
9 provide important open space for the District  
10 in a very crowded area of the District and  
11 noting the fact that 16th Avenue -- or among  
12 the alternate names for 16th Avenue, is the  
13 Avenue of Churches. This building performs  
14 an important part as part of that  
15 architectural conversation that goes the  
16 entire length of that street of a great  
17 variety of church architecture. Thank you.

18 MR. BOASBERG: Okay. Mr. Reporter,  
19 Mr. Aurbach is not present here. I hope  
20 you'll note that in the record. I'm not sure  
21 when he left, but he would not be in  
22 consideration of this matter.

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1 MR. BOASBERG: Okay, Mr. Busch?

2 MR. BUSCH: My name is Richard  
3 Busch. I'm representing the DuPont Circle  
4 Conservancy. The Conservancy supported the  
5 landmark nomination of Third Church of  
6 Christ, Scientist when it came before the  
7 Board in December. We oppose the requested  
8 raze permit as being inconsistent with the  
9 city's historic preservation law. Thank you.

10 MR. BOASBERG: Thank you, Mr.  
11 Busch. You get a metal for -- anyone else  
12 who's come to testify? Third Church? Anyone  
13 else?

14 Okay. David, why don't you come on  
15 back up here? And I think I feel more keenly  
16 than anyone else that we certainly don't want  
17 to have a train wreck and I don't think  
18 there's any need to have a train wreck. I do  
19 think that, Captain, that the instances that  
20 you talked about before with the applicant --  
21 and by that I think you meant the Committee  
22 of 100, not the Historic Preservation Office

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1 -- and I think just listening to the concerns  
2 that you have about the practice of the  
3 religion, I understand those concerns. I  
4 understand what you're saying. Some of them  
5 may be helped by an architectural solution,  
6 some of them may be helped by finances, but I  
7 think that you owe it to yourself and to the  
8 congregation to at least sit down with David  
9 Maloney and try to discuss to see if there is  
10 a possibility that we could work something  
11 out in terms of an architectural solution.  
12 And I just want to say from the Board's  
13 standpoint that the Board is willing to bend  
14 over backwards to offer accommodation.

15           Now, we also have a job and our job  
16 is to interpret our statute and to protect  
17 our historic resources, so we will do that  
18 consistent with our job, but we have just  
19 allowed so many additions and so many  
20 alterations, additional space, additional  
21 money, saving and financial burdens,  
22 relieving to churches, and to others, that

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1 we, at least, would like you to consider  
2 that.

3 I understand your past and you have  
4 to be guided by your counsel, but I would  
5 just say that from just a person-to-person  
6 respect.

7 Now, let me just say that our Board  
8 has a -- again -- a very limited role here.  
9 We can only consider whether or not, under  
10 the purposes of the act, the demolition  
11 permit is consistent with those purposes of  
12 the act. We are not the right forum for a  
13 R-LUIPA or a 1st Amendment or 5th Amendment  
14 discussion. Again, you have the mayor's  
15 agent open to you, you have the courts open  
16 to you, where those discussions are more  
17 appropriate and we will do everything  
18 possible to cooperate with you in setting up  
19 a mayor's agent hearing as quickly as  
20 possible.

21 I do want to note for the record  
22 that the delays which occurred since the

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1     landmarking -- just confirm for the record --  
2     were all delays at the request of the  
3     developer and Mr. Key's request in June that  
4     it not be heard until July, that this office,  
5     in no way, was trying to delay a hearing on  
6     this demolition permit. I just want to state  
7     that for the record.

8                   MR. KIRKPATRICK: We agree with  
9     that statement.

10                   MR. BOASBERG: I'm going to ask if  
11     there is discussion the Board Members might  
12     have, discussions the Board Members may have  
13     and then we'll take a vote on the application  
14     to (off mike) and get out. I'm sure  
15     everybody is tired.

16                   Is there anything you wanted to  
17     add?

18                   MR. KIRKPATRICK: I'll try to be  
19     very brief.

20                   MR. BOASBERG: Yes, sure.

21                   MR. KIRKPATRICK: I just want to  
22     point out that the last two schemes that came

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1 to us came from HPO and they were not  
2 satisfactory. Again, I appreciate Mr.  
3 Maloney's list of things he mentioned. I  
4 can't say that we've looked at all those, but  
5 we've looked at most of them with the team  
6 that I described. And let me say, we're not  
7 guided by our counsel. I love this man, but  
8 we're guided by the dictates of our  
9 membership. That's all sir.

10 MR. BOASBERG: Okay, thank you.  
11 Thank you very much. Again, we appreciate  
12 your good sense and your even mindedness and  
13 fair mindedness. We do appreciate that. I  
14 understand it's a difficult time for the  
15 congregation.

16 MR. MALONEY: Mr. Chairman, if I  
17 could just briefly respond to that.

18 MR. BOASBERG: Yes.

19 MR. MALONEY: I think that I agree  
20 that the staff did suggest a number of  
21 options including the two that were referred  
22 to about putting the church in an atrium and

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1 building on the plaza, but the point is that  
2 those options were made to the developer.  
3 They were intended to cater to the  
4 developer's interest and, frankly, the staff  
5 thought it was productive that the church has  
6 now found itself in a situation of  
7 representing themselves. Virtually all the  
8 discussions that the staff had on this  
9 property were with the developer and they  
10 were intended to try to respond to the  
11 developer's desires. The staff has not had  
12 the opportunity to talk to the church  
13 directly, alone, about the church's desires  
14 and the church's needs and that's why I did  
15 send a letter to Mr. Keys when he notified me  
16 that he was now representing the church to  
17 suggest that it would be very important, the  
18 staff felt, to make sure that we and the  
19 church had the opportunity to make sure that  
20 we were communicating without the developer  
21 being an intermediary.

22 MR. BOASBERG: Okay. Thank you.

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1 Thank you and thank you both for -- I think I  
2 appreciate that, Mr. Maloney. That clarifies  
3 something.

4 All right, Board Members, questions  
5 that you might have? Anyone?

6 MS. BUELL: I just have a question.

7 MR. BOASBERG: Yes.

8 MS. BUELL: Was there any  
9 additional information submitted by the  
10 church to support the demolition or the raze  
11 permit application?

12 MR. KIRKPATRICK: Just the  
13 application itself and we do have our  
14 statements.

15 MS. BUELL: Do you have a copy of  
16 the application that you submitted?

17 MR. KIRKPATRICK: Yes, I do.

18 MR. KEYS: It's not in the file?

19 MS. BUELL: No.

20 MR. BOASBERG: It's not, but -- oh,  
21 I don't know. It wasn't in our packet.

22 MR. KIRKPATRICK: I've got one

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1 here.

2 MR. BOASBERG: I don't think any --  
3 it's just the church itself is my  
4 understanding. And let me just clarify  
5 something. You are the owners of the church,  
6 is that --

7 MR. KIRKPATRICK: Yes, sir.

8 MR. BOASBERG: The building, you  
9 own it, and I don't know whether --

10 MR. KIRKPATRICK: We own the  
11 church. We have whatever agreements we need  
12 to tear down and build, we simply need the  
13 approvals, of course, to raze.

14 MR. BOASBERG: Right. Okay.  
15 Katherine?

16 MS. BUELL: And the reason that I  
17 ask is that typically when we're making a  
18 decision, there is a set of information  
19 that's placed before the Board. And I know  
20 that your attorney sited a case in  
21 Massachusetts, which I will defer to Tersh  
22 and say that it's a little bit outside of our

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1 purview, but typically we have information to  
2 make a decision. And what I'm struggling  
3 with is while I am very sympathetic to the  
4 church's issues, is that there's not a lot of  
5 information presented to us that would allow  
6 us to approve the raze application.

7 And so for that reason, while I'm  
8 very sympathetic and I would really encourage  
9 the church to work with the Historic  
10 Preservation Office, I just don't see any  
11 information that would justify us approving  
12 the application.

13 MR. BOASBERG: Other comments?

14 MS. BACON: Mr. Chairman, it sounds  
15 as though from -- that our purview and what  
16 we can act on is a very, very limited kind of  
17 decision making that's either within the  
18 purposes of the act or not.

19 But I was concerned, since I have  
20 great respect and admiration for Mr. Lynch,  
21 that he was saying it is within our purview.  
22 And so I just wondered, we've checked with

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1 counsel and -- I just wanted for you to  
2 restate exactly what we can act on and on  
3 what basis, if you would, please.

4 MR. BOASBERG: Okay. I'm just  
5 acting on the staff report, and the issue  
6 before us -- Mr. Lynch is obviously entitled  
7 to his own opinion.

8 Mr. Lynch is not a Board member nor  
9 am I aware that Mr. Lynch is an attorney, but  
10 he certainly is experienced in many of these  
11 things and he's entitled to his own opinion.  
12 But my own feeling is that, as I said, the  
13 Board is an advisory board to the mayor's  
14 agent. The Board cannot issue the permit.  
15 The Board does not have the power to issue  
16 the permit, and there is an appeal from all  
17 permitting decisions to the mayor's agent.  
18 And if there are other problems that for some  
19 reason the mayor's agent feels that he can't  
20 deal with, then there's always an appeal to  
21 the courts on issues. But for this Board  
22 itself, this Board cannot resolve complex

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1 legal issues of the 1st Amendment, 5th  
2 Amendment, R-LUIPA, on this kind of  
3 application.

4 MR. KEYS: But Mr. Boasberg, you  
5 already have. Your decisional document  
6 states that what we have presented does not  
7 constitute an undue burden --

8 MR. BOASBERG: Mr. Keys, I --

9 MR. KEYS: You conclude that we  
10 have no financial hardship and that this case  
11 doesn't involve religious liberty.

12 MR. BOASBERG: Excuse me, sir.  
13 Excuse me, sir. I did not say that. I said  
14 what I have just said which is that we do not  
15 have the authority to consider these issues.  
16 These are more properly brought before the  
17 mayor's agent and before the courts. Not us.  
18 We do not. We do not act in that capacity.  
19 You can challenge that decision if you wish,  
20 but that is what my belief is.

21 Mr. Maloney, was there something  
22 that you wish to add? Okay. Is there a

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1 motion then to adopt the staff's report?

2 MR. VLACH: So moved.

3 MR. BOASBERG: It has been moved  
4 that we adopt the staff report. Is there a  
5 second to that?

6 MR. TAYLOR: Second.

7 MR. BOASBERG: Okay. Is there  
8 further discussion? All in favor signify by  
9 saying aye. Aye. Opposed? Do you have all  
10 six names, Mr. Reporter?

11 (Vlach, Bacon, Taylor, Boasberg,  
12 Sonderman, & Buell all voted in  
13 favor of the motion.)

14 MR. BOASBERG: Okay, thank you.  
15 Thank you very much. We look forward to  
16 trying to work out, if we possibly can, some  
17 kind of design solution, economic solution,  
18 to the problems mentioned by the captain.  
19 Thank you.

20 (Whereupon, at 5:46 p.m., the  
21 PROCEEDINGS were adjourned.)

22 \* \* \* \* \*

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