

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 cited 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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