

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC HEARING

+ + + + +

Tuesday

June 17, 2008

+ + + + +

The Public Hearing convened in Room 220 South, 441 4th Street, N.W., Washington, D.C., pursuant to notice, at 9:30 a.m., Ruthanne G. Miller, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

RUTHANNE G. MILLER, Chairperson
MARC D. LOUD, Vice Chairman
MARY OATES WALKER, Board Member
SHANE L. DETTMAN, Board Member

ZONING COMMISSION MEMBER PRESENT:

GREGORY N. JEFFRIES, Vice Chairman
MICHAEL G. TURNBULL, FAIA, Commissioner
(OAC)

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary
TRACEY W. ROSE, Sr. Zoning Specialist
JOHN NYARKU, Zoning Specialist

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

SHERRY GLAZER, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

JOEL LAWSON
MATT JESICK
STEPHEN VARGA
LAINE CIDLOWSKI
ARTHUR JACKSON
JOHN MOORE
KAREN THOMAS

The transcript constitutes the minutes from the Public Hearing held on June 17, 2008.

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P R O C E E D I N G S

(10:01 a.m.)

BZA CHAIR MILLER: Good morning.

This hearing will come to order.

This is the June 17th, 2008 public hearing of the Board of Zoning Adjustment of the District of Columbia.

My name is Ruthanne Miller. I am the Chair of the BZA. To my right is Mr. Marc Loud. He's our Vice Chair, and next to him is Mr. Michael Turnbull, sitting with us from the Zoning Commission. To my left is Mary Oates Walker, Board Member; Shane Dettman, Board Member; and Tracy Rose from the Office of Zoning.

Copies of today's hearing agenda are available to you and are located to my left in the wall bin near the door.

Please be advised that this proceeding is being recorded by a court reporter and is also Webcast live. Accordingly, we must ask you to refrain from

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1 any disruptive noises or actions in the
2 hearing room.

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

10 All persons planning to testify
11 either in favor or in opposition are to fill
12 out two witness cards. These cards are
13 located to my left on the table near the door
14 and on the witness tables. Upon coming
15 forward to speak to the Board, please give
16 both cards to the reporter sitting to my
17 right.

18 The order of procedure for special
19 exceptions and variances is as follows:

20 First, statement and witnesses of
21 the Applicant:

22 Second, government reports,

1 including Office of Planning, Department of
2 Public Works, DDOT, et cetera;

3 Third; report of the Advisory
4 Neighborhood Commission;

5 Four, parties or persons in
6 support;

7 Fifth, parties or persons in
8 opposition;

9 Sixth, closing remarks by the
10 Applicant.

11 Pursuant to Sections 3117.4 and
12 3117.5 of our zoning regulations, the
13 following time constraints will be maintained:
14 the Applicant, persons and parties except an
15 ANC in support, including witnesses, 60
16 minutes collectively; persons and parties,
17 except an ANC, in opposition, including
18 witnesses, 60 minutes collectively;
19 individuals, three minutes.

20 These time restraints do not
21 include cross examination and/or questions
22 from the Board. Cross examination of

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1 witnesses is permitted by the Applicant or
2 parties.

3 The ANC within which the property
4 is located is automatically a party in a
5 special exception or variance case.

6 Nothing prohibits the Board from
7 placing reasonable restrictions on cross
8 examination, including time limits and
9 limitations on the scope of cross examination.

10 The record will be closed at the
11 conclusion of each case, except for any
12 materials specifically requested by the Board.
13 The Board and the staff will specify at the
14 end of the hearing exactly what's expected and
15 the date when the person is supposed to submit
16 the evidence to the Office of Zoning.

17 After the record is closed, no
18 other information will be accepted by the
19 Board.

20 The Sunshine Act requires that the
21 public hearing on each case be held in the
22 open before the public. The Board may,

1 consistent with its rules of procedure and the
2 Sunshine Act, enter executive session during
3 or after the public hearing on a case for
4 purposes of reviewing the record or
5 deliberating on the case.

6 The decision of the Board in these
7 contested cases must be based exclusively on
8 the public record. To avoid any appearance to
9 the contrary, the Board requests that persons
10 present not engage the members of the Board in
11 conversation.

12 Please turn off all beepers and
13 cell phones at this time so as not to disrupt
14 these proceedings.

15 The Board will now consider any
16 preliminary matters. Preliminary matters are
17 those which relate to whether a case will or
18 should be heard today, such as requests for
19 postponement, continuance or withdrawal, or
20 whether proper and adequate notice of the
21 hearing has been given.

22 If you're not prepared to go

1 forward with a case today or if you believe
2 that the Board should not proceed, now is the
3 time to raise such a matter.

4 Does the staff have any
5 preliminary matters?

6 MS. ROSE: No, Madam Chair.

7 BZA CHAIR MILLER: Okay. Then
8 let's proceed with the agenda, and first off,
9 would all individuals who wish to testify
10 today in any of the cases on the agenda this
11 morning please rise to take the oath? And Ms.
12 Rose will administer the oath.

13 MS. ROSE: Please raise your right
14 hand.

15 (Whereupon, the witnesses were
16 duly sworn.)

17 MS. ROSE: You may be seated.

18 BZA CHAIR MILLER: Thank you.

19 And then we're ready for the first
20 case when you are.

21 MS. ROSE: The first application
22 is 17782 of Jeff Moore, pursuant to 11 DCMR

1 3104.1, for a special exception to construct
2 a two-story rear addition to an existing one-
3 family row dwelling under Section 223, not
4 meeting the lot occupancy, Section 403, open
5 court, Section 406, and nonconforming
6 structure requirements, Subsection 2001.3, in
7 the R-4 District at premises 903 North
8 Carolina Avenue, S.E., Square 943, Lot 31.

9 BZA CHAIR MILLER: Good morning.
10 Would you introduce yourself for the record,
11 please?

12 MS. FOWLER: Hi. I'm Jennifer
13 Fowler, 1742 D Street, S.E.

14 MR. MOORE: Good morning. I'm
15 Jeff Moore, 903 North Carolina Avenue, S.E.

16 BZA CHAIR MILLER: Thank you.

17 Is the ANC in this case here
18 today? Okay. I know that they have weighed
19 in in support. I just wanted to recognize
20 them if they were here, as they are an
21 automatic party in the case.

22 Okay. Ms Fowler, this is a pretty

1 full application. I think if you could just
2 address a couple of highlights, one, being
3 that there's not an adverse impact on
4 neighboring properties. I think there's a lot
5 of support in the record, but there's also a
6 vacant property, I believe, that's affected,
7 and there hasn't been any response regarding
8 that property, correct?

9 MS. FOWLER: That's correct. The
10 other property has been vacant for other ten
11 years, and we did send notification to the
12 owner of record, which is actually listed as
13 living at that premises, but there's no
14 mailbox. But we did send plans and didn't
15 receive any response from them.

16 BZA CHAIR MILLER: Did you know if
17 the mail is picked up from that house?

18 MS. FOWLER: Do you?

19 MR. MOORE: To tell you the truth,
20 I don't typically see mail on the front steps.
21 I mean, the property has been boarded for as
22 long as I've owned my property, but the

1 address of record, the owner of record, we did
2 send by registered to that.

3 BZA CHAIR MILLER: So that's a
4 different address than the house; is that
5 right, or is that the same address?

6 MS. FOWLER: No, the owner of
7 record is listed at that address.

8 BZA CHAIR MILLER: Okay. So you
9 sent this, but you don't see it piling up on
10 the doorstep.

11 MS. FOWLER: I'm not sure where it
12 goes.

13 MR. MOORE: We don't know where it
14 goes. Did it get returned? It didn't get
15 returned to you.

16 MR. MOORE: It was not returned to
17 me. No, it was not.

18 BZA CHAIR MILLER: I think what I
19 wanted to just ask you then, I mean, there's
20 a lot of support from other properties, and we
21 know that they believe it's not impacting. At
22 some point perhaps that property that's vacant

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1 now may be developed. So I just wonder if you
2 might just highlight a little bit the addition
3 that's being done and perhaps address why you
4 don't think that property will be adversely
5 impacted to the extent that it should defeat
6 relief being granted in your case. Okay.

7 MS. FOWLER: Yeah, the existing or
8 currently there's a fence that's almost a two
9 level fence that is in the approximate
10 location of the addition, and it comes out
11 about the length of the addition and then it
12 steps down, and both sections of the fence are
13 higher than standard.

14 So we will be removing that fence,
15 but we feel like this has already been
16 blocking some of the light and some of the
17 air, and it has been there for several years.
18 So the new addition is going to add to some
19 height in the initial section of where the
20 taller fence is, but we're also moving the
21 lower section.

22 So I feel like we're not really

1 impacting the light and air substantially to
2 that property.

3 Also, the property at 102 Ninth
4 Street, as you can see on the site plan, it's
5 already tucked behind. It's kind of really
6 crammed into that corner, and it is already
7 being impacted by the party wall at 903 North
8 Carolina, and a lot of the light is already
9 being blocked by 104 Ninth Street as well.

10 So building out as we are towards
11 the south with the sun angles as they are,
12 we're not going to be increasing the shadows
13 substantially on this property because the
14 light is pretty much already being blocked in
15 the morning and the evening, you know, late
16 afternoon and early morning, and then the
17 midday when they do get sunlight into that
18 space, that sun is not going to be obstructed
19 at all.

20 So it's a unique property, unique
21 situation with this corner. In fact, the
22 corner at North Carolina, 901, is completely

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1 blocked in. There's not even any access back
2 there, and everybody else seems to be fine
3 with the project.

4 BZA CHAIR MILLER: Okay. Any
5 other questions from Board members?

6 MEMBER DETTMAN: Good morning, Ms.
7 Fowler. I'm just wondering. I'm looking at
8 the photos that you submitted into the record.

9 MS. FOWLER: Right.

10 MEMBER DETTMAN: On the third
11 page, where you can see 102 and you can also
12 see the fence, can you just also explain using
13 this photo what part of the fence is going to
14 go away and also the extent to which the
15 addition is going to sort of go past the
16 existing deck? I think it may be a foot and
17 a half or two feet past the existing deck.

18 And so just sort of paint the
19 picture.

20 MS. FOWLER: Yeah. So the
21 addition is approximately the length of the
22 tall section of fence. The tall section of

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1 fence is about one story high, and the
2 proposed addition will be two stories. So
3 we're going to be extending that fence in
4 essence ten feet up higher.

5 Then the lower section, which is
6 kind of the square that's above the main fence
7 line, that will be removed, and so we're
8 reducing the amount of light and air being
9 impacted in that section there.

10 So we're increasing the height of
11 the obstruction here, but we're also reducing
12 it here.

13 And then the fence will be
14 approximately the same height, and then the
15 proposed deck that's going to be down, it will
16 be down below four feet, the new deck that's
17 beyond the addition. So that won't have any
18 impact on anybody.

19 Is that helpful? Thanks.

20 And the property that you see in
21 the corner, that is 102, the tall red brick
22 structure. That's not 901. That's 102. I

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1 don't know. It's hard to tell because 901 is
2 actually beyond that structure, but you can
3 see that 102 is actually a three-story
4 structure. So they have quite a few windows
5 up above that are not going to be impacted at
6 all because it's a lot higher than 903 North
7 Carolina.

8 BZA CHAIR MILLER: Any other
9 questions?

10 COMMISSIONER TURNBULL: Madam
11 Chair, I just had a question. On D-1 of your
12 drawings, it shows the existing area way.

13 MS. FOWLER: Right.

14 COMMISSIONER TURNBULL: How far
15 off the property line is that?

16 MS. FOWLER: The area way is five
17 feet wide clear from brick to brick. So it
18 has not been counted against the lot
19 coverage.d

20 COMMISSIONER TURNBULL: And on D-2
21 it sort of shows that the existing cache goes
22 up to the property line, but it doesn't

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1 really --

2 MS. FOWLER: No, in fact, it
3 doesn't. That's correct. It's set 18 inches
4 over.

5 COMMISSIONER TURNBULL: It's 18
6 inches back from that.

7 MS. FOWLER: Yes. The 18 inches
8 is due to an easement that's in the deed
9 that's allowing access to the properties that
10 are landlocked in the back.

11 COMMISSIONER TURNBULL: Oh, okay.

12 MS. FOWLER: That's why we're
13 asking for the 18 inch setback on that side.

14 COMMISSIONER TURNBULL: Oh, so
15 there is an existing easement?

16 MS. FOWLER: Yes, there's an
17 easement of 18 inches on 903 North Carolina
18 side, and then on the backs of all the
19 properties on Ninth Street they all have an 18
20 inch easement.

21 COMMISSIONER TURNBULL: Okay.

22 MS. FOWLER: So as a result

1 there's a 36 inch wide walkway, and actually
2 his garage lines up with that line as well.

3 COMMISSIONER TURNBULL: Thank you.

4 MS. FOWLER: One other thing to
5 note, the proper at 905 North Carolina has
6 done the same addition. People get C-5. That
7 property, which I imagine they probably all
8 had back porches at one point, including 903.
9 I imagine they had a covered two-story porch
10 that was removed, and so 905 I imagine
11 probably enclosed that porch at one point.

12 So you can kind of see the massing
13 and size of the -- it's similar to what we're
14 proposing. So we'll be going out
15 approximately the same length.

16 BZA CHAIR MILLER: Okay. Anything
17 else from the Board?

18 And do you have anything else you
19 want to add at this time?

20 (No response.)

21 BZA CHAIR MILLER: Okay. Why
22 don't we go to the Office of Planning?

1 MR. LAWSON: Madam Chair, members
2 of the Board, my name is Joel Lawson with the
3 D.C. Office of Planning, and I'm here simply
4 to have the pleasure of introducing one of our
5 new staff members to you. It's his first case
6 before the Board. His name is Steve Varga,
7 and he'll be presenting the case to you.

8 Thank you.

9 MR. VARGA: Thank you, Joel.

10 Again, Stephen Varga, Development
11 Review Specialist, Office of Planning.

12 The Applicant is applying for a
13 special exception relief under 223 to
14 construct a two-story addition to the rear of
15 an existing one family row dwelling at 903
16 North Carolina Avenue, S.E., and Office of
17 Planning recommends approval of the special
18 exception request requested pursuant to 223.

19 Pleased to answer any questions
20 you may have regarding the case. Thank you,
21 Madam Chair.

22 BZA CHAIR MILLER: Thank you and

1 welcome to the BZA.

2 MR. VARGA: Thank you very much.

3 Pleased to be here.

4 BZA CHAIR MILLER: And if this is
5 your report, it's really an excellent report.

6 MR. VARGA: Thank you.

7 I think I have Joel to thank for
8 editing it quite a bit.

9 BZA CHAIR MILLER: Okay.

10 MR. VARGA: But thank you.

11 BZA CHAIR MILLER: I think I
12 probably speak for the Board in saying that
13 these tables are really very helpful. They
14 were just so clear and quick to look at.

15 So I don't really have any
16 specific questions, except we were talking
17 about that one piece of property that seems to
18 be unrepresented, and so the vacant property.
19 Whether you have an opinion about the impact
20 on that property.

21 MR. VARGA: Well, I just would
22 like to say, Madam Chair, we did do a site

1 visit, and what the Applicant is representing
2 is absolutely true. The property is boarded
3 up and that's all I'd like to say. If you
4 have any other questions.

5 BZA CHAIR MILLER: And you did a
6 site visit, and based on your observations
7 there is not substantial adverse impact on
8 light and air on any of the properties that
9 would arise as a result of this project?

10 MR. VARGA: That's right. There's
11 a negligible impact to light and air, and I
12 don't know if the Applicant mentioned also,
13 but they are not proposing any windows facing
14 any of those southern facing or those southern
15 properties, as well.

16 BZA CHAIR MILLER: So there's not
17 an impact on privacy.

18 MR. VARGA: No, there's not an
19 impact on privacy.

20 BZA CHAIR MILLER: Okay. Okay.
21 Any questions from Board members?

22 MEMBER DETTMAN: Just one quick

1 question, and welcome, again, to the BZA.

2 I'm looking at Drawing A-4 that
3 was submitted by the Applicant and this very
4 much is a technicality. Is it a two story or
5 three story addition? It doesn't affect the
6 relief. I'm just wondering.

7 MR. VARGA: To the best of my
8 knowledge it's a two-story addition.

9 MS. FOWLER: Can I respond to
10 that?

11 Yeah, it's two stories. There's a
12 brick foundation that's creating like an
13 enclosed crawl space that's basically from
14 grade to the bottom of the framing on the
15 first floor. This is just going to be about
16 three feet high just for lawn mowers and
17 things like that.

18 MEMBER DETTMAN: Thank you.

19 BZA CHAIR MILLER: Okay. Any
20 other questions from the Board for Office of
21 Planning?

22 (No response.)

1 BZA CHAIR MILLER: Ms. Fowler,
2 does the Applicant have a copy of the Office
3 of Planning report?

4 MS. FOWLER: Yes, we do.

5 BZA CHAIR MILLER: And do you have
6 any questions for the Office of Planning?

7 MS. FOWLER: No, we don't. Thank
8 you.

9 BZA CHAIR MILLER: Okay. Just
10 checking in the event that someone has walked
11 in since I asked earlier, is there anybody
12 here from the ANC to testify in this case?

13 (No response.)

14 BZA CHAIR MILLER: Not hearing
15 from anybody, is there anybody here who wishes
16 to testify in support of this application?

17 (No response.)

18 BZA CHAIR MILLER: Anybody here
19 who wishes to testify in opposition to this
20 application?

21 (No response.)

22 BZA CHAIR MILLER: Okay. Any

1 final questions from Board members?

2 (No response.)

3 BZA CHAIR MILLER: Not hearing
4 any, any closing remarks from the Applicant?

5 MS. FOWLER: I'd just like to
6 thank you for your time and thank Mr. Varga
7 for his thorough report.

8 BZA CHAIR MILLER: Okay. I would
9 like to note for the record since the ANC is
10 not here they did submit a report, a letter
11 reflecting that they had a meeting on May 13,
12 2008 with a quorum present in which they
13 considered this application, and they voted
14 eight-zero-zero to support the application.

15 They noted the letters of support
16 from adjacent and affected neighbors, and they
17 stated that they didn't perceive that the
18 addition would have an adverse impact on the
19 use and enjoyment of any abutting or adjacent
20 dwelling or property, and felt that it met the
21 criteria of 223. They even mentioned that
22 they also considered the impact of the vacant

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1 property at 102 Ninth Street, S.E., as they
2 thought that it could be impacted, but as best
3 as they could determine, they didn't believe
4 that it would be additionally impacted as the
5 addition replaced fence that Ms. Fowler was
6 talking about earlier.

7 And this letter is in the record
8 at Exhibit 22.

9 We also have several letters that
10 were submitted in support of the application
11 by adjacent neighbors, 104 Ninth Street, S.E.,
12 106 Ninth Street, S.E., 108 Ninth Street,
13 S.E., and 901 North Carolina Avenue, S.E., and
14 905 North Carolina Avenue, S.E.

15 And those are our Exhibit 9.

16 Okay. I think the record is full
17 on this case. There's no opposition, and
18 therefore, I would move at this time to
19 approve Application No. 17782 of Jeff Moore,
20 pursuant to 11 DCMR Section 3401.1, for a
21 special exception to construct a two-story
22 rear addition to an existing one-family row

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1 dwelling under Section 223, not meeting the
2 lot occupancy, Section 403; open court,
3 Section 406; and nonconforming structure,
4 Subsection 2001.3 requirements, at premises
5 903 North Carolina Avenue, S.E.

6 Do I have a second?

7 MEMBER WALKER: Second.

8 BZA CHAIR MILLER: Okay. I think
9 that this record is quite full, and the Office
10 of Planning has addressed it in addition to
11 the Applicant quite fully. I think that we
12 can pretty much adopt the Office of Planning's
13 support in support of this application, but I
14 think that we can highlight that it is an
15 addition that falls within the lot occupancy
16 requirements for a special exception. It
17 comes in under the 70 percent threshold. It
18 comes in at 69 percent.

19 There's great evidence in the
20 record that it will not adversely impact the
21 light and air of neighboring properties. We
22 have letters of support from about all of the

1 properties, except the vacant one which has
2 been addressed here. And in that case the
3 addition is replacing a fence which is already
4 obstructing some light and air, and there
5 aren't going to be windows, and Office of
6 Planning found that it wouldn't affect privacy
7 of abutting properties as well, and is in
8 harmony with the zone plan.

9 ANC is in support.

10 Do people want to make any other
11 comments?

12 (No response.)

13 BZA CHAIR MILLER: Okay. Then all
14 those in favor say aye.

15 (Chorus of ayes.)

16 BZA CHAIR MILLER: All those
17 opposed?

18 (No response.)

19 BZA CHAIR MILLER: All those
20 abstaining?

21 (No response.)

22 BZA CHAIR MILLER: And would you

1 call the vote, please?

2 MS. ROSE: Staff would record the
3 vote as five to zero to zero to grant the
4 application. The motion was made by Ms.
5 Miller, seconded by Ms. Oates Walker, with Mr.
6 Loud, Mr. Dettman, and Mr. Turnbull in support
7 of the motion.

8 And would that be a summary order?

9 BZA CHAIR MILLER: Yes. There are
10 no parties in opposition. This should be a
11 summary order.

12 Thank you.

13 MS. ROSE: Thank you.

14 BZA CHAIR MILLER: Thank you.

15 MS. ROSE: The next application is
16 17781 of John E. Myles, Jr., pursuant to 11
17 DCMR Section 3103.2, for variances from the
18 lot area and lot width requirements under
19 Section 401.3, to construct a new one-family
20 detached dwelling in the R-1-A District, at
21 premises 4613 Colorado Avenue, N.W., Square
22 2659, Lot 836.

1 BZA CHAIR MILLER: Good morning,
2 and would you identify yourselves for the
3 record, please?

4 MR. SNOWDEN: Good morning. My
5 name is Jeff Snowden of 15830 Point Lookout
6 Road, St. Inigoes, Maryland, and I'm here with
7 my wife, Matriona Snowden.

8 MS. SNOWDEN: Hi. I'm Matriona
9 Snowden from 15830 Point Lookout Road, St.
10 Inigoes, Maryland.

11 MR. SNOWDEN: And additionally, my
12 father-in-law and my mother-in-law, Mr. John
13 myles and Ms. Daisy Myles, are sitting behind
14 us.

15 BZA CHAIR MILLER: Welcome. I
16 mean, your application is also quite full and
17 pretty straightforward. I mean, basically the
18 lot area and width is too small now under the
19 current regulation, and it was in existence
20 prior to the zoning regulations; isn't that
21 correct?

22 MR. SNOWDEN: Yes, ma'am, that's

1 correct.

2 BZA CHAIR MILLER: I just have a
3 question with respect to the abutting
4 property, which is, I guess, your father's or
5 father-in-law's?

6 MR. SNOWDEN: My father-in-law's,
7 yes, ma'am.

8 BZA CHAIR MILLER: Okay.

9 MR. SNOWDEN: Mr. John Myles
10 behind me.

11 BZA CHAIR MILLER: There is an
12 issue under the regulations about, you know,
13 if the two properties could be combined you
14 might need variance relief, and just to paint
15 the picture more, if I understand it, there's
16 already a house on that property; is that
17 right?

18 MR. SNOWDEN: That's correct.

19 BZA CHAIR MILLER: Okay, and the
20 Office of Planning has also stated that it
21 would be a very unusual lot to combine these
22 two.

1 Okay. Is there anything else you
2 would want to tell us about the lot that's not
3 in the record? There's, you know, a three-
4 pronged test whether it's an exceptional
5 situation that gives rise to a practical
6 difficulty and there's no adverse impact, you
7 know, if we grant you the relief.

8 MR. SNOWDEN: Ma'am, I believe
9 everything is in the record now. I will tell
10 you that the home that we plan to construct
11 there will meet all of the other requirements,
12 all of the rest of the setbacks for the side,
13 rear.

14 So I believe we have provided all
15 of the information in the packet itself.

16 BZA CHAIR MILLER: Okay. Any
17 other questions from Board members?

18 (No response.)

19 BZA CHAIR MILLER: Okay. Why
20 don't we go to the Office of Planning then?

21 MR. LAWSON: And it's me again,
22 Madam Chair. Once again for the record, Joel

1 Lawson of the Office of Planning, and again
2 I'm here with the pleasure of introducing yet
3 another new staff member. Laine Cidlowski
4 joined us recently. You'll know her and
5 Stephen's work mostly from their work on the
6 rather massive zoning review project, but
7 they're also going to be handling the
8 occasional case before the BZA. So I'm
9 pleased to introduce Laine to you right now,
10 and she'll present our case to you.

11 Thank you.

12 MS. CIDLOWSKI: Good morning. My
13 name is Laine Cidlowski with the Office of
14 Planning.

15 We're here to present the case on
16 the 401.3 minimum lot width and minimum lot
17 area request. The Office of Planning is
18 recommending approval. It meets the three-
19 prong test and would be in keeping with the
20 similar character of the other structures and
21 lots in the square.

22 So I'm happy to answer any

1 questions you have about the report or about
2 the case.

3 Thank you.

4 BZA CHAIR MILLER: Okay. Again,
5 this one is also an excellent report.

6 What do you mean when this is
7 characterized as a parcel in a tax lot, but
8 not a lot of record?

9 MS. CIDLOWSKI: The lot as platted
10 in 1952 is platted as a parcel. It was not
11 yet platted as a lot of record, but it is a
12 tax lot owned by Mr. Myles. So the zoning
13 regulations don't technically define which
14 particular type of body you have to have in
15 order to proceed with your case. So it was
16 platted at that time, but it's not yet a lot
17 of record. It is a tax lot; it is a parcel,
18 not a lot of record.

19 BZA CHAIR MILLER: Is it something
20 -- will it become a lot of record?

21 MS. CIDLOWSKI: I think that's
22 something -- it's my understanding it's

1 something the Applicant will have to apply for
2 before applying for the building permit, but
3 I think it's a relatively simple process.

4 BZA CHAIR MILLER: Could you
5 address the issue that you raise on page 3
6 about combining the two lots?

7 MS. CIDLOWSKI: Sure. There is a
8 section that says that if you have an
9 adjoining piece of property that could
10 potentially meet the existing zoning
11 requirements, you should first join them if
12 it's possible.

13 But we're not recommending that
14 that be pursued because to join those two
15 adjoining property tax lots would create a lot
16 that's extremely out of character with the
17 existing lots in the square and the existing
18 character of that area.

19 BZA CHAIR MILLER: Unless there's
20 another one, 401.2 talks about that, but it
21 talks about that in terms of unimproved lots.

22 MS. CIDLOWSKI: Right.

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1 BZA CHAIR MILLER: And the other
2 lot is improved. So isn't that why that
3 wouldn't apply here?

4 MS. CIDLOWSKI: Un-huh.

5 BZA CHAIR MILLER: Okay. Any
6 other questions from Board members?

7 Let me ask you also. We're not
8 looking at any plans. We're just talking
9 about relief from the lot size. Will the
10 project that goes forward on this property be
11 subject to other review?

12 MS. CIDLOWSKI: Yes, it will be
13 subject to the Commission of Fine Arts review
14 because the property is adjoining the Rock
15 Creek Park property or adjacent to. My
16 correction.

17 BZA CHAIR MILLER: Okay. Any
18 other questions?

19 (No response.)

20 BZA CHAIR MILLER: Do you have a
21 copy of the Office of Planning Report?

22 MR. SNOWDEN: Yes, ma'am.

1 BZA CHAIR MILLER: And do you have
2 any questions for the Office of Planning?

3 MR. SNOWDEN: No, ma'am.

4 BZA CHAIR MILLER: Okay. Thank
5 you.

6 Is there anybody here from the ANC
7 in this case?

8 (No response.)

9 BZA CHAIR MILLER: Okay. Not
10 seeing anybody here from the ANC, I would like
11 to have the record reflect that we do have a
12 letter from ANC-4A dated April 3rd, 2008.
13 That reflects that they had a meeting on
14 April 1st, 2008 and considered the project or
15 the application, and that there was no
16 opposition expressed at the meeting, and that
17 they voted unanimously to approve, and there
18 were six present at the meeting and they have
19 eight Commissioners total. So they had a
20 quorum. Five constitute a quorum Okay.

21 All right. Is there anybody here
22 who wishes to testify in support of this

1 application?

2 (No response.)

3 BZA CHAIR MILLER: Anybody here
4 who wishes to testify in opposition?

5 (No response.)

6 BZA CHAIR MILLER: Any final
7 questions from the Board?

8 (No response.)

9 BZA CHAIR MILLER: Any closing
10 remarks from the Applicant?

11 MR. SNOWDEN: Ma'am, I'd just like
12 to thank you all for your time today. Do
13 appreciate you all hearing this particular
14 case, and hopefully we'll be able to move
15 forward with the building of our home.

16 Thank you.

17 BZA CHAIR MILLER: Okay.

18 MS. FOWLER: Thank you.

19 BZA CHAIR MILLER: You're welcome.

20 Okay. All right. Then I think we
21 can go forward with deliberation on this
22 application as well. I would move approval of

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1 Application No. 17781 of John E. Myles, Jr.,
2 pursuant to 11 DCMR Section 3103.2, for
3 variances from the lot area and lot width
4 requirements under Section 401.3, to construct
5 a new one-family detached dwelling at premises
6 4613 Colorado Avenue, N.W.

7 And do I have a second?

8 VICE CHAIR LOUD: Second, Madam
9 Chair.

10 BZA CHAIR MILLER: Okay. And this
11 is a variance. I think it's a pretty
12 straightforward one. It only goes to the lot
13 size. It goes to the lot area and lot width,
14 that this property doesn't meet those
15 requirements under the current zoning
16 regulations, but it has been recognized as an
17 exceptional situation that this lot existed
18 prior to the regulations going into effect.

19 And in this context also I believe
20 it's only one of two now that is not
21 developed, and all the other lots have the
22 same dimensions. So there's a practical

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1 difficulty in building on this because they
2 can't change the lot with an area. They can't
3 combine under 401.2 because there's already a
4 home on that abutting property, and there's no
5 adverse impacts as a result of granting the
6 relief as this is in harmony with all of the
7 other lots in this area.

8 And we haven't heard any evidence
9 of adverse impact. So we have the support of
10 the ANC and the Office of Planning.

11 Others?

12 (No response.)

13 BZA CHAIR MILLER: Okay. Then all
14 those in favor say aye.

15 (Chorus of ayes.)

16 BZA CHAIR MILLER: All those
17 opposed.

18 (No response.)

19 BZA CHAIR MILLER: All those
20 abstaining.

21 (No response.)

22 BZA CHAIR MILLER: And would you

1 call the vote, please.

2 MS. ROSE: Staff would record the
3 vote as five to zero to zero to grant the
4 application. The motion was made by Ms.
5 Miller, seconded by Mr. Loud, with Mr.
6 Dettman, Ms. Oates Walker and Mr. Turnbull in
7 support of the motion.

8 BZA CHAIR MILLER: And this will
9 be a summary order as well as there's no party
10 in opposition.

11 Okay. You're welcome.

12 MS. ROSE: The last application of
13 the morning is 17777 of Brad for the City,
14 Inc., pursuant to 11 DCMR Section 3104.1, for
15 a special exception from the historic resource
16 parking requirements under Subsection 2120.6,
17 to allow the expansion of an existing medical
18 clinic in the C-2-A District at premises 1525
19 Seventh Street, N.W., Square 445, Lots 198,
20 199, 200 and 217.

21 thank you.

22 BZA CHAIR MILLER: Good morning,

1 and would you introduce yourselves for the
2 record, please?

3 MS. RODDY: My name is Cristine
4 Roddy, and I'm with Pillsbury, Winthrop, Shaw,
5 Pittman.

6 MR. JONES: And I'm George Jones,
7 Executive Director of Bread for the City.
8 We're at 1525 Seventh Street, N.W., 20001.

9 BZA CHAIR MILLER: Okay, and you
10 have witnesses here or no?

11 MS. RODDY: We actually were just
12 planning on having Mr. Jones testify.

13 BZA CHAIR MILLER: Okay.

14 MS. RODDY: And we have all of our
15 consultants available for questions.

16 BZA CHAIR MILLER: Okay, and is
17 the ANC here in this case, just to know?

18 (No response.)

19 BZA CHAIR MILLER: Not yet. Okay.
20 One thing. You know, you're free to present
21 your case. This is a little bit different
22 from the earlier cases which were more

1 straightforward, but not that this isn't that
2 straightforward, but the parking requirements,
3 you know, the regulations are new, and what
4 we're interested in first off is how you
5 calculated what the requirements actually are
6 under the new regulations.

7 MS. RODDY: Sure. The new
8 regulations really affected this application
9 because it allowed us to do a special
10 exception. The Historic Preservation Review
11 Board designated the site as a historic
12 landmark, and I believe that order was in the
13 submissions.

14 And the way we calculated the
15 space was solely for the addition. That is
16 what generated the new space requirement, and
17 we used the regulations in Chapter 21 for a
18 medical clinic, which basically takes the
19 requirement for an office use at this site and
20 doubles it.

21 We did that as the most
22 conservative measure in the event we don't

1 anticipate using the entire space as medical
2 clinic, but we would like to have the
3 flexibility to have that parking relief in the
4 event they did.

5 So that's how we came up with our
6 parking requirement. It was 33 spaces. We're
7 providing seven. With the addition there are
8 15 spaces that are currently existing. So
9 we'll have a total of 22 spaces.

10 BZA CHAIR MILLER: I guess that's
11 where my question comes. Like how do you
12 factor in the 15 that exist? Do they apply to
13 the other structure, you know, as opposed to
14 the new addition or what?

15 MS. RODDY: We're going to be
16 subdividing this property. So it's one lot,
17 and it will be all one property. As we
18 understand it, those 15 spaces are
19 grandfathered in really for that use, and it's
20 just solely the addition, and given the size
21 of the addition that's what we use then to
22 calculate the new parking requirement.

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1 Does that help?

2 BZA CHAIR MILLER: Okay. So when
3 we're looking at this, so basically we're just
4 looking at the new addition, what that
5 requires, correct?

6 MS. RODDY: Yes.

7 BZA CHAIR MILLER: Okay. Are
8 there any other initial questions?

9 (No response.)

10 BZA CHAIR MILLER: Okay. I mean,
11 I think your case what I'm going to let you do
12 is present your case basically.

13 MS. RODDY: Well, good morning.
14 As I said, my name is Cristine Roddy, and I'm
15 with Pillsbury, Winthrop, and with me is
16 George Jones, who is the Executive Director of
17 Bread for the City.

18 And as I mentioned, we have
19 Kendall Dorman who is the project architect;
20 Marty Wells, who is the traffic engineer; and
21 Andrew Spencer, who is the community liaison.
22 They are all available should you have any

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1 questions.

2 As a preliminary matter, I would
3 like to note that we filed a traffic study on
4 June 10th, and we would just like to have that
5 accepted into the record.

6 BZA CHAIR MILLER: Oh, that's
7 right. That's a preliminary matter in this
8 case.

9 The Applicant filed a traffic
10 study in less than the 20 days required by our
11 zoning regulations. So I would suggest that
12 we waive our rules and allow the traffic study
13 in as there's no prejudice to anyone, and it's
14 actually just useful to all.

15 Any objections?

16 (No response.)

17 BZA CHAIR MILLER: Okay. So we
18 accept the traffic report.

19 MS. RODDY: Thank you.

20 BZA CHAIR MILLER: Can I ask you
21 also? It might be a question more for your
22 consultant, but did you have any consultation

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1 with DDOT?

2 MS. RODDY: No. We had forwarded
3 the study to DDOT and followed up with them,
4 but to my knowledge, there was --

5 BZA CHAIR MILLER: You need to
6 come to the mic if you're going to be on the
7 record.

8 MR. WELLS: For the record, I'm
9 Marty Wells with Wells & Associates.

10 We did submit copies to DDOT. We
11 did call them, and we did not, however, have
12 a substantive conversation between them and
13 us.

14 BZA CHAIR MILLER: When did they
15 get the report?

16 MR. WELLS: It was --

17 MS. RODDY: June 10th.

18 MR. WELLS: -- June 10th.

19 BZA CHAIR MILLER: Okay. Thank
20 you.

21 MS. RODDY: Well, we are seeking
22 special exception relief for the Bread for the

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1 City location at 1525 Seventh Street, N.W.
2 The property is located in the C-2-A zoned
3 district in the Shaw neighborhood. The
4 property lines Seventh Street between P and Q
5 Streets, N.W.

6 Bread for the City is expanding
7 its existing facilities which will increase
8 the parking requirement for the project. We
9 are seeking special exception relief rather
10 than variance relief for the property because
11 it was designated as an historic landmark, as
12 I mentioned before.

13 The standard for special exception
14 relief is to establish that the proposed
15 project is in harmony with the general purpose
16 and intent of the zoning regulations and
17 zoning maps, and that relief can be granted
18 without adversely affecting neighboring
19 properties.

20 Section 2120.6 further provides
21 that the Board of Zoning Adjustment may grant
22 relief from parking requirements if the owner

1 of the property demonstrates that as a result
2 of the nature or location of the historic
3 resource, providing the parking will result in
4 significant architectural or structural
5 difficulty in maintaining the historic
6 integrity and appearance of the historic
7 resource.

8 It requires the Applicant to
9 address the following: the maximum number of
10 individuals that may be on the site at any one
11 time; the amount of traffic that the site may
12 generate; the quantity of alternative parking
13 that is available on site or off site; and the
14 proximity of public transportation.

15 The addition the Applicant is
16 proposing will require 33 spaces. There are
17 currently 15 spaces on site, and the Applicant
18 will be providing seven additional spaces for
19 a total of 22 spaces.

20 Nevertheless, given the nature of
21 the business, we believe that there will be
22 sufficient on-site parking for staff,

1 volunteers and clients.

2 George Jones will be the only
3 witness to testify on behalf of Bread for the
4 City today, and I will turn it over to him
5 then.

6 MR. JONES: Good morning. Again,
7 I'm George Jones, Executive Director of Bread
8 for the City. I'm pleased to be here to
9 testify on behalf of the agency.

10 Bread for the City has a long
11 history in this city. We've been providing
12 services to low income families since 1974.
13 We've been at the current location, at the
14 1525 Seventh Street location, since 1994.

15 We run four programs from the
16 center: a food pantry, a medical practice
17 which is the program that's being expanded in
18 this case, legal services and social work
19 program.

20 We currently have 30 people on the
21 staff at the building or at least 30 people in
22 that building on the staff. We actually have

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1 60 people on our entire staff. We have a
2 center in Southeast D.C. also, and
3 approximately 12 volunteers who are there on
4 a given day, and roughly 100 clients who come
5 in during the course of a day. So that's our
6 current sort of volume of activity and people
7 in the building.

8 In this expansion, we anticipate
9 those numbers going up probably 40 staff. So
10 right now we'll go from 30 to 40 staff, is
11 what we're projecting. Volunteers, only up a
12 small amount, probably to 18 people
13 volunteering on a given day. And we will see
14 up to 200 clients coming through during the
15 course of a day is what we're projecting, and
16 we are anticipating, and we have sort of
17 projected this fairly conservatively that
18 we'll have as many as 128 people in the
19 building at a given time, most of those being
20 clients, of course.

21 And one of the things I wanted to
22 point out was that it is not uncommon. We

1 have a parking lot now on the site, and it's
2 not uncommon to come by and find spaces
3 available. Most of our clients, we estimate
4 that maybe five percent of the clients to come
5 to us actually drive when they come. Most use
6 public transportation or walk. Many of our
7 staff walk or use public transportation.
8 Bread for the City actually subsidizes the
9 transportation for our staff. We provide at
10 least 25 percent monthly subsidy to people who
11 use the Metro, 25 percent of the cost, that
12 is.

13 And, again, I think we anticipate
14 just a handful of more volunteers coming
15 through, and there is two-hour parking
16 available on both sides of the street on the
17 block. We're on Seventh Street, and we're in
18 between P and Q, and I was estimating that if
19 in an eight-hour day we have 200 people there,
20 your typical client would stay probably
21 actually less than an hour ideally for
22 services, and so you might have 25 people, you

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1 know, in a given time just from the client
2 base.

3 So the number we gave really was
4 very conservative and sort of was the worst
5 case scenario that you'd have that many people
6 at a given time, but my guess is that you
7 could have probably far fewer than 100 in the
8 building at one time typically.

9 I think that we also were
10 delighted that we got the support of the ANC
11 for this exception, and so I think that's all
12 I'll say for now, but I'm delighted to answer
13 any questions.

14 MS. RODDY: Can I ask Mr. Jones a
15 question?

16 Is Bread for the City located near
17 any Metro stations?

18 MR. JONES: A good point. Thank
19 you for that cue.

20 Yes, in terms of public
21 transportation we are -- the Howard-Shaw Metro
22 stop is only roughly two blocks to the north

1 of our center and to the south is the Mount
2 Vernon Square Metro stop, which is like three,
3 between three and four blocks, and again,
4 people, regularly, both our staff, volunteers
5 and clients, regularly use those Metro stops.

6 They also use the bus. We have a
7 bus stop that is essentially on our block,
8 maybe at the corner of P and Seventh that,
9 again, many of our clients use to get to and
10 from the center.

11 One other thing. We put this in
12 the report, but one other thing is at our last
13 count half of the people who come to us to our
14 center clients actually live in the 20001 zip
15 code in and around that. So, again, it's
16 convenient for them to actually walk in the
17 center, and that's pretty common.

18 Thank you.

19 BZA CHAIR MILLER: Thank you.

20 Who exactly are your clients?

21 MR. JONES: Good question. Again,
22 we serve low income residents of the District.

1 These are people who are medically under
2 served. They usually have no insurance or
3 have insurance that only partially covers
4 their health care.

5 We serve people who also are at
6 risk of hunger or food security, and so in
7 fact, that's one of the larger programs we
8 have. So we have families who are eligible
9 for our supplemental food groceries. Once a
10 month they can come in.

11 We have people who have
12 disabilities, oftentimes mental, sometimes
13 physical, who rely on our social work services
14 to work on any number of sort of psychosocial
15 issues they have to deal with, going from
16 finding housing to finding psychiatric support
17 or care to applying for benefits, be they food
18 stamps or Medicaid or Medicare, that kind of
19 thing.

20 And then we have a legal services
21 program that oftentimes helps people with
22 housing issues, folks who are at risk of

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1 eviction or people or we have gotten involved
2 in a number of full-scale housing developments
3 where the tenants were looking to purchase --
4 low income tenants were looking to purchase
5 their homes. So that's another service we
6 provide to the residents in the District.

7 We provide family law services,
8 and we also provide disability law, helping
9 people apply for or re-apply really, sort of
10 appeal disability decisions by the Social
11 Security Administration.

12 So, again, you're talking about
13 basically low income people, mostly housed.
14 We would have a segment of our population
15 that's homeless, but the majority of our
16 people live in low income housing developments
17 in and around the city.

18 BZA CHAIR MILLER: And how many --
19 so this particular site only does the medical
20 clinic, doesn't do the other legal services or
21 anything like that?

22 MR. JONES: No, we do.

1 BZA CHAIR MILLER: You do?

2 MR. JONES: So this site has those
3 four programs, legal --

4 BZA CHAIR MILLER: Oh, they're all
5 four there?

6 MR. JONES: Yeah, legal, medical,
7 food, and social work are the four programs.
8 In our southeast center we actually have a
9 fifth program which is clothing over there.
10 So.

11 BZA CHAIR MILLER: Okay, and how
12 many people come a day now?

13 MR. JONES: Roughly 100 clients.

14 BZA CHAIR MILLER: Clients, yes,
15 because we know how many staff you're going to
16 have. So the other is a projection. So you
17 expect it to double. Is that what you said,
18 from 100 to 200?

19 MR. JONES: Yes.

20 BZA CHAIR MILLER: But that's very
21 conservative?

22 MR. JONES: We think that's

1 conservative, and again, they wouldn't all be
2 there at one time certainly. So, but yeah, we
3 think it could double because the size of the
4 practice is going to grow that much.

5 BZA CHAIR MILLER: So the doubling
6 really comes from the ability to have staff to
7 serve more people. Is that it?

8 I mean, the demand isn't changing,
9 is it?

10 MR. JONES: And the space. The
11 demand actually unfortunately hasn't changed.
12 Right now for medical care, and that is the
13 program that is growing, right now we only
14 meet less than two percent of the needs of the
15 medically under served are being met in that
16 area, and that was what really drove us to
17 seek this expansion.

18 But what we needed for the
19 expansion was the additional space. So we're
20 increasing the number of exam rooms. We're
21 also going to bring on another physician and
22 a nurse practitioner ultimately, and so the

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1 demand was always there. It's a constant, and
2 so we just anticipate being able to serve more
3 people from that center.

4 BZA CHAIR MILLER: I just guess my
5 question goes to how you come up with a
6 projection of 200. Is it basically based on
7 how many you're going to be able to serve
8 given the increase in staff and space?

9 MR. JONES: Yes, it is limited by
10 the number of staff we increase it to. So,
11 yes, the number could have been larger had we
12 had more staff and more space, but so that
13 number is sort of a number that we believe we
14 can accommodate with the additional staff and
15 the additional space that we're able to afford
16 because that's the other restriction. We
17 probably could have built a larger facility
18 had money been no object.

19 BZA CHAIR MILLER: Other
20 questions?

21 (No response.)

22 BZA CHAIR MILLER: I'm just

1 curious. You know, it sounds like you're
2 going to be able to serve all of these people
3 because of the increase in space and
4 everything for the medical needs. So is the
5 clientele going to grow with respect to the
6 other services or not really?

7 MR. JONES: Well, it's a good
8 question. My board asks me that question at
9 every board meeting, I guess. We actually
10 have -- one of the strategies is going to be
11 in terms of how we grow the medical practices.
12 We have more people in our food pantry who
13 attend -- come to our food pantry than we have
14 in our medical practice. So we are going to
15 actually initially look inward and try to get
16 access for health care for more of the people
17 who come into our food pantry.

18 Right now, for instance, about
19 2,500 unique people will come to our food
20 pantries during the course of a month, whereas
21 we only have right now roughly 600 medical
22 visits per month. And so those medical visits

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1 are likely to go, you know, somewhere between
2 1,200 and 1,800 visits, and initially we're
3 going to look inward to see if there are more
4 people who want to come from our food program,
5 for instance, to our medical practice.

6 One of the reasons that we believe
7 that's a feasible strategy is that many of the
8 people who come to our food pantry are
9 eligible for Medicaid, for instance, which is
10 one of the groups that we serve. Many people
11 who have Medicaid now do not have a physician
12 because there are not enough providers
13 available in the city.

14 So, again, this is our attempt to
15 increase our ability to serve people, first
16 and foremost, who already come to us and then
17 the second tier are people we anticipate would
18 be people who will come in from the community
19 who also are in need of access to care.

20 BZA CHAIR MILLER: Okay. I'm
21 going to ask you another question.

22 MR. JONES: Sure.

1 BZA CHAIR MILLER: Just about the
2 type of care you can get at this clinic. You
3 know what's the ranges?

4 MR. JONES: It is primary care.
5 So well visits, sick visits. Unfortunately
6 most of our people come sick. The chronic
7 illnesses tend to be, you know, three major
8 ones: hypertension, diabetes, and asthma,
9 three chronic illnesses that we see a lot of
10 oftentimes in combinations.

11 But we also provide job physicals
12 for people looking for work, and it's
13 something that we do sort of throughout the
14 year. One of the things that we'd like to do,
15 one of the things that we haven't done
16 historically is provide as much care to
17 children and adolescents, and so we anticipate
18 providing access.

19 And that's the other thing we
20 think will make it more user friendly for the
21 people using our food program who tend to have
22 children, that they can bring their kids to

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1 the clinic is one of the new sort of
2 populations that we hope to serve when we
3 expand the clinic.

4 BZA CHAIR MILLER: So you do like
5 immunizations for the kids and stuff?

6 MR. JONES: Absolutely, that's
7 something that we do for the handful that come
8 to us now, but we anticipate that kind of
9 scope of work to increase with this expansion.

10 BZA CHAIR MILLER: And do you do
11 psychiatry there, too, or no?

12 MR. JONES: We do not. We refer
13 out. We have quite a few people who need
14 assistance in that way, but our social workers
15 are there. We do general counseling, but when
16 someone really needs a psychiatric visit or
17 ongoing psychiatric services, we refer out for
18 that.

19 BZA CHAIR MILLER: And I think
20 this is in our report, but just to refresh,
21 the majority of the clients don't drive to the
22 site; is that right?

1 MR. JONES: That's right. We
2 estimated about five percent drive, but most
3 of them do not. Some get rides there, but
4 typically the rides sort of leave.

5 And there's parking on the street
6 and typically you can pull up and find a
7 parking space at any given time in the day.

8 I use those spaces a lot myself
9 because I'm out of the building so often. I
10 sort of pull up, go in and run in, as I did
11 this morning before I came here.

12 BZA CHAIR MILLER: Do you use the
13 street parking just to leave the spaces for
14 the clients or for others or what?

15 MR. JONES: Well, I use it because
16 I'm so often out of the building. In fact,
17 one of the other things I wanted to point out
18 that we didn't put in our report is of the 30
19 staff who are on staff now, four are
20 attorneys, and they also are out of the
21 building quite a bit.

22 And so, again, our numbers are

1 somewhat conservative because people aren't
2 really there. Even staff aren't really there
3 all day long.

4 BZA CHAIR MILLER: Okay. Thank
5 you.

6 Others?

7 MEMBER WALKER: So how many of
8 your 30 current staff members support the
9 clinic function?

10 MR. JONES: We have a physician.
11 I'll do the math in my head. Nine roughly.
12 One doctor, one nurse practitioner, one RN and
13 then about six people who support the clinic,
14 who are sort of more or less administrative
15 staff.

16 MEMBER WALKER: And so the ten
17 additional staff members that you'll bring on
18 will all support the clinic?

19 MR. JONES: Most of them. I think
20 all of them probably. Again, there's a
21 doctor. There's a nurse practitioner
22 projected, maybe an R.N., and then support

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1 staff.

2 One of the interesting things
3 about these clinics is they become more
4 efficient with support staff so that the
5 physicians can do just the actual patient
6 visits and not have to do a lot of the
7 administrative work. So often times there's
8 two support staff for one physician or one
9 provider.

10 So yes. And the other thing about
11 -- and our support staff tends to be younger.
12 These are the people who oftentimes -- most of
13 those people do not drive. Many of them don't
14 even own cars, and they tend to -- we tend to
15 subsidize their transportation in and out of
16 the building.

17 MEMBER WALKER: So you gave us an
18 estimate of the number of clients that you
19 serve who drive. Do you have a sense of how
20 many of your staff members drive to the site?

21 MR. JONES: Probably fewer than
22 half, is what we estimate. I mean, again,

1 we've got 15 spots now, which are not always
2 full, but I think it's fair to say maybe half
3 of the 30 drive, maybe a little fewer than
4 that.

5 Forty percent is what I guess our
6 study showed. In fact, we did have a traffic
7 study and they looked at that. I think it's
8 40 percent of it. So that's what I would have
9 guessed.

10 VICE CHAIR LOUD: Good morning and
11 congratulations on your project and your great
12 work at Bread for the City, and
13 congratulations to your counsel in a great
14 application.

15 I just wanted to ask a quick
16 question about one of the requirements under
17 the new 2120 for special exception relief for
18 parking, and I believe you cover in your
19 submission, but I just wanted to see if you
20 wanted to lift it up for the record before we
21 move to OP.

22 The requirement reads that in

1 addition to the other things that the
2 Applicant has to demonstrate, that you have to
3 demonstrate the quantity of existing public,
4 commercial or private parking, other than curb
5 parking, on the property or in the
6 neighborhood that can reasonably be expected
7 to be available when the redevelopment is
8 complete.

9 Now, I believe you in your parking
10 study submitted by Wells & Associates make
11 reference to it, but I also believe you
12 indicated that the only testimony this morning
13 would be the Executive Director.

14 So if you wanted to lift that up
15 for our record this morning.

16 MS. RODDY: We would just like to
17 say there is parking available along Seventh
18 Street, and I believe it's available along P
19 and Q as well.

20 VICE CHAIR LOUD: That's correct.
21 I think your report says about 35 on-street
22 parking on Seventh between P and Q and then

1 ten on Q Street within a block of Seventh
2 Street.

3 So, again, for our record so that
4 it's as full as we can make it this morning,
5 I just wanted to flesh that out before we get
6 to OP because I know in OP's report they
7 mention that you had no addressed that issue.

8 MS. RODDY: Would you like us to
9 go into further depth or did that respond to
10 your question?

11 VICE CHAIR LOUD: I think for me,
12 just taking a look at the report and having
13 you respond on the record is sufficient.

14 MS. RODDY: Okay.

15 VICE CHAIR LOUD: But if you'd
16 like to elaborate, you can.

17 MS. RODDY: No, I think we just
18 want to make sure that there is available
19 street parking in addition to what -- we have
20 the spaces provided on site, but as you point
21 out, the code does require discussing other
22 available parking and there is --

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1 VICE CHAIR LOUD: I think you've
2 also said through your Executive Director that
3 the combination of the parking that will be
4 available from the site, that the site would
5 yield, and the fact that you've got both a
6 clientele and employee population that does
7 not own cars, in some cases doesn't drive a
8 lot will result in more than adequate parking
9 for what you do over there.

10 MR. JONES: Yes. I would like to
11 reiterate that those parking spaces, I didn't
12 know the number and didn't remember the
13 number, but, yeah, that certainly sounds like
14 the right number of parking spaces on Seventh
15 and, you know, on Q.

16 My sense about it -- and I've been
17 at that site for 12 years -- is that Bread for
18 the City, again, to sort of support the notion
19 that we don't do a lot of the driving in that
20 neighborhood -- Bread for the City does not
21 use the majority of those parking spaces. I
22 mean, they are used and oftentimes they are

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1 unfilled during the course of a day, but there
2 seem to be plenty of spaces there when one is
3 needed.

4 Again, me, for instance, again, I
5 use them to pull up and go in and run in the
6 office and then head out, but I very rarely
7 find myself unable to find a space in one of
8 the outside parking spaces.

9 VICE CHAIR LOUD: Thank you. I
10 appreciate it.

11 MEMBER WALKER: So are there
12 commercial parking lots in the area or not?

13 MR. JONES: I don't know what the
14 study found. None that comes to mind. I do
15 know that the O Street Market and a
16 development that is coming up plans to create
17 some parking that might be available for
18 commercial use, but I don't believe they use
19 it for that now. I mean, right now there's a
20 grocery store there that people in theory need
21 to be going to the grocery store to use.

22 BZA CHAIR MILLER: Why don't we

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1 have Mr. Wells come up to the table for a
2 minute since there are parking questions
3 related to his study?

4 Did you look at this, that
5 question, other lots in the area --

6 MR. WELLS: Yes.

7 BZA CHAIR MILLER: -- even if
8 they're necessary? I don't know if they're
9 necessary, but --

10 MR. WELLS: They're not necessary,
11 and we did not find in close proximity a
12 commercial parking lot, a lot that was not
13 associated with some other use. For example,
14 I would not consider grocery store parking
15 available for these clients, in all due
16 respect.

17 So the short answer is we believe
18 there is none available.

19 I agree with the testimony about
20 the on-street parking. By the regulations
21 we're not supposed to count that, but as a
22 practical matter, it is available, and anyone

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1 with a quarter can park in those metered
2 spaces if there's a space available, and we
3 did find vacant spaces available throughout
4 the day, just as Mr. Jones has represented.

5 BZA CHAIR MILLER: When we started
6 out the hearing, I mean, I was asking about
7 what's the requirement and what number of
8 spaces are we looking at. I have a question
9 from an historical point of view as to, you
10 know, you've had enough spaces for the
11 building and the clients that, you know,
12 you're using right now, but what was the
13 requirement do you know for the building?

14 It was waived because it's an
15 historic structure, I know, but if it weren't
16 waived, what would the requirement be for the
17 building that exists? Do you know that?

18 I mean, there are 15 spaces now.
19 My guess is that's less than what would be
20 required.

21 MR. WELLS: The way we approached
22 parking is we looked at the sources of demand,

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1 staff, volunteers, and clients, and we
2 investigated how many of each of those groups
3 would be present who are present today and who
4 would be present in the future, what
5 percentage each of those groups commutes by
6 automobile either as a passenger or a driver,
7 what the average vehicle occupancy is, and
8 then we calculated the demand.

9 Now, that's an engineering study.
10 That's not a study of your zoning regulations.
11 So I'll leave it to the lawyers to figure out
12 what your regulations say, but we went to the
13 sources of demand and calculated that.

14 BZA CHAIR MILLER: So, I mean,
15 would you say that this situation is very
16 different from the typical medical clinic upon
17 which our zoning regs. are based that, you
18 know, call for so many parking spaces?

19 MR. WELLS: I think in our
20 calculations and Mr. Jones' way of approaching
21 this, we've been conservative at every turn.
22 Considering the entire building as a clinic

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1 obviously is a conservative assumption because
2 a good portion of the building functions more
3 as an office building than it does a clinic.

4 Office buildings have less of a --
5 are less parking intense than are medical
6 clinics, and we've assumed that at some point
7 in the day all of the staff will be there at
8 some point in the day, all of the volunteers
9 would be there, and that may be true from time
10 to time, but as a general matter, some people
11 are out on business or whatever.

12 BZA CHAIR MILLER: So there's not
13 enough parking for all of the volunteers and
14 all of the staff, is there?

15 MR. WELLS: There is at the --

16 BZA CHAIR MILLER: I mean, if you
17 include street parking or what?

18 MR. WELLS: No, as we understand
19 the auto mode split, mind you most of these
20 folks either walk or take the bus or walk from
21 Metro, which is there are two Metro stations.
22 One is two blocks away; another is three

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1 blocks away. This is a very accessible
2 location by public transportation.

3 So you've got relatively small
4 numbers of people taking -- a relatively high
5 proportion taking public transportation. So
6 the numbers do work.

7 BZA CHAIR MILLER: Right. So this
8 is enough parking for everyone who drives,
9 just not for everyone because they don't have
10 a way.

11 MR. WELLS: Well, there's no --

12 BZA CHAIR MILLER: That's what I
13 meant.

14 MR. WELLS: No, no, no, there is
15 not for everyone. If everyone were to drive,
16 Corina Ricks would be very angry at me if I
17 would encourage that to happen. If everyone
18 were to drive, there would not be enough
19 parking spaces, and that could be said for a
20 lot of different -- that could be said for
21 this building, too.

22 BZA CHAIR MILLER: And why did you

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1 do a study on the signalized intersection?

2 MR. WELLS: Well, as we understand
3 it, your second criterion in considering this
4 parking variance is the amount of traffic
5 congestion existing and/or that redevelopment
6 of the historic resource can reasonably be
7 expected to add to the neighborhood. I could
8 have said I think there is no congestion here,
9 but usually you rely on objective evidence,
10 and that's what we produced in this case.

11 BZA CHAIR MILLER: Okay. I was
12 wondering what we were supposed to glean from
13 all of these tables, as lay people come, you
14 know. That's what they show.

15 MR. WELLS: We took your four
16 criteria very seriously and addressed each one
17 of the four.

18 COMMISSIONER TURNBULL: I wonder
19 if I might ask a question about the alley.
20 The alley is ten feet wide?

21 MR. WELLS: I'm not quite sure.
22 It's a fairly narrow alley, and there is a

1 driveway to the parking lot right for the
2 city, but most of the traffic, almost all of
3 it, in fact, comes in and out off of Seventh
4 Street.

5 COMMISSIONER TURNBULL: And
6 Seventh Street is one way going north.

7 MR. WELLS: Seventh Street, I
8 believe, is two ways.

9 COMMISSIONER TURNBULL: It is two
10 ways?

11 MR. WELLS: Yes.

12 COMMISSIONER TURNBULL: Okay. I
13 notice that you have at least three parking
14 spaces existing on the alley.

15 MR. WELLS: Right. The alley is
16 one way southbound.

17 COMMISSIONER TURNBULL: The alley
18 is one way southbound.

19 MR. WELLS: Correct.

20 COMMISSIONER TURNBULL: And I
21 noticed that I'm looking at the OP photo on
22 page 2 that looks like there's a couple of

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1 buildings that are right behind the proposed
2 building. There's probably maybe eight
3 parking spaces on one building, and then it
4 looks like there's either a -- I'm not sure if
5 there's a parking garage going down or not,
6 and all of the new spaces are going to park on
7 the alley, the seven spaces.

8 MR. WELLS: That's seven more
9 spaces than are there now.

10 COMMISSIONER TURNBULL: Yeah.

11 MR. WELLS: From a traffic point
12 of view that's, frankly, inconsequential.

13 COMMISSIONER TURNBULL: Okay. I
14 was just worried about radiuses and turning
15 axis. It looks like it's a narrow alley. I
16 just wondered --

17 MR. WELLS: It is.

18 COMMISSIONER TURNBULL: -- if you
19 have a comfort level with people getting in
20 and out and backing in and out.

21 MR. WELLS: Life in the city, it
22 works.

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1 COMMISSIONER TURNBULL: Okay.

2 Thank you.

3 BZA CHAIR MILLER: The pedestrian
4 volume survey, does that go to congestion or
5 what is that for?

6 MR. WELLS: Forgive us. We're in
7 the mode of whenever we count cars, we count
8 pedestrians because we think pedestrians are
9 just as important as automobiles, and it is a
10 parameter used in our capacity analyses.

11 BZA CHAIR MILLER: Is it something
12 we should be considering in our analysis
13 somehow, some finding that you made in that?

14 MR. WELLS: There is no finding.

15 BZA CHAIR MILLER: There isn't.
16 You just took counts.

17 MR. WELLS: Again, we do that as a
18 matter of course. DDOT likes this information
19 for good reason. I guess no good deed goods
20 unpunished.

21 BZA CHAIR MILLER: I just want to
22 make sure that, you know, if there's something

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1 in here that's important that I get it.

2 The site generated traffic, how do
3 you calculate that? You know you have a
4 certain number of people that it's going to
5 generate a certain amount of traffic?

6 MR. WELLS: We stationed people at
7 the driveways so we know what is coming in and
8 out. We know how many people are in the
9 building. We know how many trips are coming
10 in and out. It's primarily in in the morning,
11 out in the afternoon. So we can relate people
12 and vehicles, a certain number of trips per
13 person.

14 So if we have a higher number of
15 people in the future, we can translate that
16 into additional car trips. That is standard
17 engineering practice. We didn't just make it
18 up.

19 BZA CHAIR MILLER: Any other
20 questions for Mr. Wells?

21 (No response.)

22 BZA CHAIR MILLER: Thank you.

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1 MR. WELLS: Thank you very much.

2 MEMBER WALKER: Madam Chair, I
3 have another question for Mr. Jones.

4 Who are your volunteers and what
5 function do they support?

6 MR. JONES: Our volunteers range.
7 We've got a lot of lay people who come in from
8 the community. Even some of our clients
9 sometimes volunteer to help us pack grocery
10 bags for those families picking up grocery
11 bags. It ranges from there all the way up to
12 people who come by to volunteer in the clinic,
13 medical students and that kind of thing. Many
14 of them, again, used in public transportation
15 from GW or from Georgetown or from Howard, and
16 everything in between.

17 We have some attorneys who also
18 volunteer in the legal practice. So they come
19 from a range of places.

20 One of the things I think on one
21 of the days that the study was done, when we
22 had actually the 18 people in the building, it

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1 helped us sort of get a handle on what
2 typically happens on a day. About nine of
3 those people actually came in one van. In
4 fact, they're developmentally disabled
5 volunteers who live in the assisted living
6 program, but they come to Bread for the City
7 to volunteer there.

8 So there are two things to say
9 about that. One is it's the kind of outreach
10 we try to do in the community to be supportive
11 of so that the entire community, but also it
12 was another example of how little
13 transportation or how little -- how few
14 vehicles were involved in actually getting the
15 people to our site.

16 MEMBER WALKER: Thank you.

17 BZA CHAIR MILLER: And finally,
18 you haven't had any parking problems during
19 the time that you've been there, you know,
20 with the building that you have; is that
21 right?

22 MR. JONES: That's right. I have

1 not had any complaints from community members
2 or neighbors about parking, none that come to
3 mind. And, again, obviously there were a room
4 full of community members the night we
5 presented before the ANC, and they were
6 largely supportive of us. The ANC was
7 unanimously supportive, but even the community
8 members were supportive of the idea that we
9 were going to be doing more of the work we do
10 on Seventh Street.

11 BZA CHAIR MILLER: Okay. Any
12 other questions?

13 (No response.)

14 BZA CHAIR MILLER: Is there
15 anything further from the Applicant at this
16 point?

17 MS. RODDY: No, thank you.

18 BZA CHAIR MILLER: Okay. Why
19 don't we turn to Office of Planning then?

20 Good morning.

21 MR. JESSICK: Good morning, Madam
22 Chair.

1 Good morning. Good morning,
2 members of the Board. My name is Matt
3 Jessick.

4 As has been stated, the Applicant
5 is seeking parking relief under Section 2120
6 of the zoning regulations, which allows fewer
7 parking spaces by a special exception if the
8 Applicant is building an addition to an
9 historic building, and the criteria of that
10 section include not only the general special
11 exception criteria, but the more specific
12 criteria that we've already discussed.

13 Now, in regards to the general
14 special exception criteria, we feel that this
15 application is in conformance with the intent
16 of the zoning regulations. It is just this
17 situation that Section 2120 contemplated. The
18 Applicant is building an addition to a
19 historic landmark and providing the full
20 parking for that addition would perhaps even
21 endanger the landmark.

22 Whether the special exception

1 would adversely affect neighboring properties,
2 we feel that it will not. There will not be
3 significant increases in traffic or
4 significant increases in parking demand. As
5 has been testified to this morning, many of
6 the clients and staff and volunteers will use
7 public transportation.

8 The more specific criteria ask
9 about parking resources available in the
10 neighborhood, the amount of expected traffic
11 congestion, et cetera. I feel that the most
12 important criteria is the proximity of public
13 transportation to the site. As we've heard,
14 there are two Metro stops within easy walking
15 distance of the property, and many of the
16 staff take advantage of that.

17 The Applicant is also providing a
18 Metro incentive to their employees, helping to
19 pay for their commute.

20 There are also four bus lines on
21 Seventh and P Streets, which are very close to
22 the site, and also Seventh Street has recently

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1 been restriped to provide a bike lane on both
2 sides of the street, and that's another way
3 for people to get to this location, is by
4 bicycle.

5 So we feel that the Applicant has
6 met all of the criteria spelled out in Section
7 2120, and we are happy to support the
8 application, and I'd be happy to take any
9 questions from the Board.

10 MEMBER DETTMAN: Just a question.
11 I noticed on page 3 of your report that you
12 note that no information was submitted
13 regarding the height of the new structure, but
14 according to the Applicant, the Applicant
15 stated that it would be similar in height to
16 the existing structure.

17 And I noted that we don't have any
18 elevations in the record, but we do have sort
19 of a roof plan that's showing a stair tower
20 providing access, and I was just wondering if
21 you, even though we don't have the elevations
22 and don't exactly know what the height of the

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1 structure will be, did you look at the roof
2 plan that we do have in the record with
3 respect to 411?

4 MR. JESSICK: I believe because
5 that stair tower is on a party wall that it
6 would not be subject to the setback
7 restrictions of 411, if that's what you're
8 referring to, the one to one setback. I think
9 that's been the interpretation of OAG on that
10 matter. So I think they're okay as far as the
11 setbacks go.

12 MEMBER DETTMAN: So I don't
13 believe that the adjacent building is there,
14 right? But what you're saying is because that
15 wall is sort of built on a lot line, you're
16 considering a party wall and that's consistent
17 with how DCOP has defined it in the past?

18 MR. JESSICK: I'm pretty sure. I
19 should have said lot line wall instead of a
20 party wall. I believe that they do not
21 require a setback in that case, but I'd be
22 happy to double check that if the Board would

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1 like.

2 I don't think the Office of
3 Planning would object to granting relief in
4 that case because it would have no visual
5 impact on the street or the neighborhood.

6 MEMBER DETTMAN: I don't
7 necessarily think it's something that DCOP
8 needs to follow up on, and I raise it here,
9 although it is unrelated to the relief
10 requested before the Board today. So I don't
11 believe it's going to prevent us from going
12 forward.

13 To me it seems like it's a lot
14 line wall. It's not a party wall, according
15 to the definition that's especially put in the
16 Kalorama case that was put forth by DCOP.

17 And so maybe it's something that
18 maybe the Applicant addressed as well and has
19 thought about. I'm not sure, just raising it
20 as something that I noticed on the roof plan.

21 MS. RODDY: We would be happy to
22 ask for that relief now if you thought it was

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1 necessary. I would just like to note, I
2 guess, in a previous case that was before this
3 Board about a month ago, the Camden case, it
4 had a similar situation where there's a
5 rooftop structure that was not set back from
6 the lot line wall, and I don't believe relief
7 was required in that instance because it was
8 determined that as a party wall, since the
9 neighboring property could build to that
10 height, it was not required to be set back.

11 BZA CHAIR MILLER: Basically, the
12 relief that Mr. Dettman is talking about, I
13 think he's like flagging it, but it's not
14 something that I believe we could just add to
15 today because it's variance relief. It's
16 totally different from parking. I think you
17 would have to advertise.

18 And so if you were concerned about
19 it, you know, you'd have different options.
20 You know, you could ask us to leave the record
21 open and then you could go advertise it and
22 bring it in, or you could, you know, just

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1 bring a separate case, but it sounds like you
2 may not think it's required, and this is self-
3 certified. So it's really kind of, you know,
4 we don't really need to deal with it at all,
5 you know.

6 If you don't think it's required,
7 you bring it to the Zoning Administrator, you
8 know. It's not really an issue, but Mr.
9 Dettman was concerned about it so he wanted to
10 flag it for you at least, and then you can do
11 as you like.

12 But you know, sometimes when we're
13 talking about area variances or something and
14 they're very connected, we can just add it,
15 but this is so different that we can't just
16 add it today.

17 MS. RODDY: Okay. I appreciate
18 that, and I appreciate that as well. So if we
19 do determine that we need it, then we can
20 advertise this and come back for that relief.
21 Just based on our past experience, I don't
22 know that is an issue, but we will certainly

1 look at it.

2 BZA CHAIR MILLER: Yeah. I would
3 also say I think that this case does not seem
4 that complicated, and I think that we will
5 likely finish it today and could very well
6 deliberate on it today, unless you were to ask
7 us to, you know, leave the record open for
8 this other issue.

9 MS. RODDY: No, and I'm sorry.
10 What I meant by re-advertise is we will come
11 back.

12 BZA CHAIR MILLER: As a separate
13 application if you need to.

14 MS. RODDY: Right, right.

15 BZA CHAIR MILLER: Okay. Okay.

16 Mr. Jessick, did you confer with
17 DDOT on this application at all?

18 MR. JESSICK: I did manage to
19 speak with DDOT late yesterday, and they
20 indicated no objection to the reduction in
21 parking. They were very happy to see that
22 actually.

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1 BZA CHAIR MILLER: Because it has
2 been a policy of DDOT lately to actually
3 encourage less parking spaces in many
4 instances, right?

5 MR. JESSICK: That's correct.
6 Along with OP, they very much encourage Metro
7 use and bicycle use and bus use. So they're
8 very happy to see this application.

9 BZA CHAIR MILLER: Okay. Any
10 other questions from the Board?

11 COMMISSIONER TURNBULL: Madam
12 Chair, it's not really a question. I just
13 have a comment that, again, it's nothing
14 related to the relief which you're asking for,
15 but as Mr. Dettman has noted on the roof plan,
16 on A-105, you show this elevated deck with ADA
17 ramp on it. It sounds like you're looking for
18 handicapped access on the roof, but there's no
19 elevator that goes up to the roof on any of
20 the plans that we see.

21 Again, it's nothing that's related
22 to what you're looking for. It's just a

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1 curiosity. Oftentimes when we see plans,
2 they're totally complete. I don't know if
3 they're totally complete or not, but it's just
4 a question that when you go before the Zoning
5 Administrator that the plans do reflect
6 exactly what you are implying that you're
7 going to build.

8 MS. RODDY: Okay. We will look at
9 that. Our architect is here if you'd like to
10 discuss it. That is something that we can
11 look at.

12 COMMISSIONER TURNBULL: Again, it
13 was only a comment. I see tables and chairs
14 and a note saying elevated deck with ADA ramp,
15 but the stair tower that goes up that Mr.
16 Dettman was referring to is simply a stair
17 tower. It's not a standard elevator.

18 The elevator is actually located
19 near where you have a longer stair in this
20 area designated as light box. That's where
21 probably an elevator might be coming up in the
22 corner, but that's somewhere in the middle

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1 there. So it's just an issue that in looking
2 at it we just see some incongruities with what
3 you're drawing. You see an elevator on the
4 first and second floor. So, again, if you're
5 going to the roof, it's not indicated right
6 now.

7 BZA CHAIR MILLER: Okay. Well, we
8 will be sure to look at that.

9 COMMISSIONER TURNBULL: Thank you.

10 MEMBER DETTMAN: Madam Chair,
11 actually I'll withdraw my comment. Just
12 quickly looking over what's typically defined
13 as a party wall in the Kalorama case and the
14 Camden case that counsel alluded to and the
15 fact that the neighboring property can build
16 someday, eventually build to that height and
17 deeper into their property, I would agree that
18 this can be considered a party wall.

19 BZA CHAIR MILLER: Okay. Any
20 other questions for Office of Planning?

21 (No response.)

22 BZA CHAIR MILLER: Does the

1 Applicant have a copy of the Office of
2 Planning's report?

3 MS. RODDY: Yes, we do

4 BZA CHAIR MILLER: And do you have
5 any questions for Office of Planning?

6 MS. RODDY: No, we don't.

7 BZA CHAIR MILLER: Okay.

8 MR. JONES: None from me.

9 BZA CHAIR MILLER: What?

10 MR. JONES: None from me either.

11 BZA CHAIR MILLER: Okay. Is the
12 ANC here?

13 (No response.)

14 BZA CHAIR MILLER: Okay. Not
15 seeing anyone come forward, I would like to
16 state that they did submit a letter actually
17 which is attached to the Applicant's
18 prehearing statement, which is our Exhibit No.
19 27, in which it's reflected that on March 5th,
20 2008, ANC-2C with a quorum present voted
21 unanimately to support the application. They
22 find that it wouldn't adversely affect

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1 neighboring properties, and they say that most
2 of the Bread for the City's clients take
3 public transportation to the site, and many of
4 the staff also take public transportation.
5 And they are convinced that the number of
6 spaces will be sufficient for Bread for the
7 City's needs.

8 Okay. That's the ANC. Is anybody
9 here who wishes to testify in support of the
10 application?

11 (No response.)

12 BZA CHAIR MILLER: Anybody here
13 who wishes to testify in opposition to the
14 application?

15 (No response.)

16 BZA CHAIR MILLER: Not seeing
17 anybody, final remarks from -- well, any other
18 questions from the Board for the Applicant?

19 (No response.)

20 BZA CHAIR MILLER: No. Okay.
21 Final remarks from the Applicant.

22 MS. RODDY: We would just like to

1 say that in light of the Office of Planning's
2 support, as well as the ANC support, we would
3 like to request a bench decision and a summary
4 order.

5 MR. JONES: And I'd just like to
6 thank the Board for hearing our testimony
7 today and considering our application.

8 Thank you.

9 BZA CHAIR MILLER: Well, I think
10 that we can give you a bench decision today.
11 So just bear with us for a minute.

12 (Pause in proceedings.)

13 VICE CHAIR LOUD: Good afternoon,
14 again, members of the Board and Applicants.

15 With respect to Application No.
16 17777 of Bread for the City for special
17 exception relief under Subsection 2120.6 and
18 DCMR 3104.1, I'm going to be voicing support
19 for that application and will share briefly
20 the reasons why, but first I'd like to move
21 approval of Application No. 17777 of Bread for
22 the City.

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1 Is there a second?

2 BZA CHAIR MILLER: Second.

3 VICE CHAIR LOUD: All right. This
4 is a relatively straightforward case in terms
5 of the facts presented to the Board. Bread
6 for the City is an historic building. It's in
7 the C-2-A. They plan an 11,861 square foot
8 addition for medical facility. Said addition
9 will bump up the parking requirements so that
10 they will have to supply 33 parking spaces
11 under Section 2101, which is a doubling of the
12 requirement for parking, one space per every
13 600 square feet above 2,000 square feet. It's
14 a doubling of that formula.

15 The project proposes seven parking
16 spaces, however, which is the reason why they
17 are appearing before us for special exception
18 relief. Under Section 2120.6, the standard
19 that they have to meet is as follows: that
20 the application conforms with the intent of
21 the zoning provisions; that there's no adverse
22 impact to neighbors; that essentially the same

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1 standards that one would have for 3104 special
2 exception relief, in addition to which there's
3 some requirements that are unique to historic
4 districts that were a part of the newly passed
5 2120.6.

6 The record is fairly full and OP
7 turned in a very extensive report that went
8 point for point into each of the required
9 elements of relief, and I'm just going to very
10 briefly go over some of those.

11 First, with respect to -- and I'm
12 reading from our Exhibit 29 -- with respect to
13 the special exception being in harmony with
14 the general purpose, and at ten of the zoning
15 regs., it's the intent of the new Provision
16 2120 to allow reduced parking for additions to
17 historic structures. This obviously is one.

18 So the proposed relief is
19 consistent with the intent of the new
20 regulation. The special exceptions will not
21 tend to adversely affect the use of
22 neighboring property. There's no testimony

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1 today that the relief requested will adversely
2 affect any neighboring properties.

3 In fact, the proposed number of
4 parking spaces are sufficient to accommodate
5 the demand. The property is located very
6 close to two Metro stations. Bread for the
7 City actually offers subsidized mass transit
8 relief for employee. A number of it
9 employees, as a matter of fact, either don't
10 own cars or if they do they take advantage of
11 public transportation.

12 There are also about four bus
13 lines that are directly serving the historic
14 structure.

15 The property is an historic
16 structure. Congratulations. May 2008 it
17 sounds like you were historically declared an
18 historic structure. So you meet that element
19 of the required relief.

20 Let me skip forward to 2120.6.
21 The Board of our organization, BZA, can grant
22 the relief if the owner of the property

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1 demonstrates that as a result of the nature or
2 location of the historic resource providing
3 the parking required will result in
4 significant architectural and structural
5 difficulty.

6 We heard testimony from the Office
7 of Planning that the size of the addition is
8 necessary to serve, as well as Bread for the
9 City, serve their client population, which I
10 think was about 1,200 for food and I think
11 about 600 for medical care -- 2,500. I'm
12 sorry. Double that. Twenty-five hundred for
13 food and about 600 for medical care, and so
14 that they needed a facility of this size to be
15 able to continue serving the current
16 population and, in fact, want to increase at
17 some point services for the medical component
18 of what they do.

19 There would be no real way to
20 provide the required parking absent altering
21 the existing structure or settling on a very
22 expensive solution like structured parking or,

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1 as I said, making the building smaller, which
2 would defeat the mission, the whole purpose of
3 the expansion.

4 With respect to the specific
5 things that you have to show under 2120 that
6 came out of the recent Zoning Commission
7 order, that's covered very well in the Office
8 of Planning report. The testimony indicates
9 the number of people that will be on site at
10 any one time. I think the record shows about
11 5,500 people, including staff volunteers and
12 clients.

13 There was a traffic report which
14 was our Exhibit -- I believe it was our
15 exhibit. Somebody help me out if you can, and
16 we heard a bit of an exchange -- our Exhibit
17 28 -- and we heard some exchange on the record
18 regarding the number of available parking
19 spaces in the surrounding area, apparently not
20 a lot of commercial parking spaces available,
21 but nonetheless, when you take into
22 consideration the proximity of the project to

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1 Metro and some other mass transit pieces,
2 there's no concern here that there will be an
3 excess of demand over supply upon completion
4 of the project.

5 There's testimony from the Office
6 of Planning that while DDOT did not submit an
7 official report, that they are supportive of
8 the project and it's consistent with their
9 policy of promoting sort of smart growth, use
10 of public transportation assets.

11 So I think they meet each element
12 of the provision of 2120, as well as the
13 general special exception relief, and I'll
14 defer to colleagues to address it as well.

15 BZA CHAIR MILLER: Thank you.

16 I think you very thoroughly went
17 through the requirements under the new
18 regulations. I just want to make a few
19 comments.

20 And one is, I mean, in this case
21 it is an historic structure and as the regs.,
22 I think, reflect, and that's why this is a

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1 special exception, it's often very difficult
2 to add parking for historic structures when
3 you're doing an addition. The space is
4 limited. You have to work around an historic
5 structure, et cetera.

6 And you know, I was looking at the
7 text preamble for the regulations, and because
8 my recollection is on the BZA if we had seen
9 this application earlier, prior to the new
10 regulations, we would, I believe, have
11 interpreted this as being exempt from the
12 regulations as an addition to an historic
13 structure.

14 But I do recognize that part of
15 the reason they were at these new regulations
16 was there were differences in interpretation
17 whether a variance would be required or not.

18 But in any event, I think the
19 Board saw in most cases it was extremely
20 difficult to add the required parking to an
21 historic site, and I think this case is
22 compounded by the fact that the clients

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1 clearly -- there's a history, a record that
2 they don't drive so that there is no need for
3 so many parking. It's so difficult from the
4 typical medical clinic that the regs. were
5 written for., and it was good to hear from the
6 Office of Planning that actually DDOT was
7 pleased with this application, and it is in
8 accordance with their policy of not providing
9 too much parking so that people aren't
10 encouraged to drive.

11 So anyway, there's clearly no
12 adverse impacts in this case, and as Mr. Jones
13 said, at the community meeting whereas you
14 sometimes hear communities concerned about,
15 you know, traffic or parking whenever parking
16 is reduced, that's not the case here.

17 So that's just my little
18 commentary. Anybody else have any other
19 comments?

20 (No response.)

21 BZA CHAIR MILLER: Okay. We have
22 a motion. It has been seconded. All those in

1 favor say aye.

2 (Chorus of ayes.)

3 BZA CHAIR MILLER: All those
4 opposed?

5 (No response.)

6 BZA CHAIR MILLER: All those
7 abstaining?

8 (No response.)

9 BZA CHAIR MILLER: And would you
10 call the vote, please?

11 MS. ROSE: Staff would report the
12 vote as five to zero to zero to grant the
13 application. The motion was made by Mr. Loud,
14 seconded by Ms. Miller, with Mr. Dettman, Ms.
15 Oates Walker, and Mr. Turnbull in support of
16 the motion.

17 BZA CHAIR MILLER: And this will
18 be a summary order if there's no party in
19 opposition, and thank you very much and thank
20 you for providing such great service to the
21 city.

22 And do we have anything else on

1 the agenda, Ms. Rose, for this morning?

2 MS. ROSE: No, Madam Chair, that's
3 it for the morning.

4 BZA CHAIR MILLER: Okay. Then
5 this hearing is adjourned, and we will come
6 back at one o'clock.

7 Thank you.

8 (Whereupon, at 11:39 a.m., the
9 public hearing was recessed for lunch, to
10 reconvene at 1:00 p.m., the same day.)

1 Please be aware that this
2 proceeding is being recorded by a court
3 reporter and is also Webcast live.
4 Accordingly, we must ask you to refrain from
5 any disruptive noises or actions in the
6 hearing room.

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

14 All persons planning to testify
15 either in favor or in opposition are to fill
16 out two witness cards. These cards are
17 located to my left on the table near the door
18 and on the witness tables. Upon coming
19 forward to speak to the Board, please give
20 both cards to the reporter sitting to my
21 right.

22 The order of procedure for special

1 exceptions and variances is as follows:

2 One, statement and witnesses of
3 the Applicant:

4 Two, government reports, including
5 Office of Planning, Department of Public
6 Works, DDOT, et cetera;

7 Three; report of the Advisory
8 Neighborhood Commission;

9 Four, parties or persons in
10 support;

11 Five, parties or persons in
12 opposition;

13 Six, closing remarks by the
14 Applicant.

15 The order of procedure for appeal
16 applications is as follows:

17 One, statement and witnesses of
18 the Appellant;

19 Two, the Zoning Administrator or
20 other government official's case;

21 Three, case for the owner, lessee
22 or operator of the property involved if not

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1 the Appellant;

2 Four, the ANC within which the
3 property is located;

4 Five, intervenor's case, if
5 permitted by the Board;

6 Six, rebuttal and closing
7 statement by Appellant.

8 Pursuant to Sections 3117.4 and
9 3117.5 of the zoning regulations, the
10 following time constraints will be maintained:
11 the Applicant, Appellant, persons and parties
12 except an ANC in support, including witnesses,
13 60 minutes collectively; Appellees, persons
14 and parties, except an ANC, in opposition,
15 including witnesses, 60 minutes collectively;
16 individuals, three minutes.

17 These time restraints do not
18 include cross examination and/or questions
19 from the Board. Cross examination of
20 witnesses is permitted by the Applicant or
21 parties.

22 The ANC within which the property

1 is located is automatically a party.

2 Nothing prohibits the Board from
3 placing reasonable restrictions on cross
4 examination, including time limits and
5 limitations on the scope of cross examination.

6 The record will be closed at the
7 conclusion of each case, except for any
8 materials specifically requested by the Board.
9 The Board and the staff will specify at the
10 end of the hearing exactly what is expected
11 and the date when the persons must submit the
12 evidence to the Office of Zoning.

13 After the record is closed, no
14 other information will be accepted by the
15 Board.

16 The Sunshine Act requires that the
17 public hearing on each case be held in the
18 open before the public. The Board may,
19 consistent with its rules of procedure and the
20 Sunshine Act, enter executive session during
21 or after the public hearing on a case for
22 purposes of reviewing the record or

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1 deliberating on the case.

2 The decision of the Board in these
3 contested cases must be based exclusively on
4 the public record. To avoid any appearance to
5 the contrary, the Board requests that persons
6 present not engage the members of the Board in
7 conversation.

8 Please turn off all beepers and
9 cell phones at this time so as not to disrupt
10 these proceedings.

11 The Board will make every effort
12 to conclude the public hearing as near as
13 possible to 6:00 p.m. If the afternoon cases
14 are not completed at six, the Board will
15 assess whether it can complete the pending
16 case or cases remaining on the agenda.

17 At this time, the Board will now
18 consider any preliminary matters. Preliminary
19 matters are those which relate to whether a
20 case will or should be heard today, such as
21 requests for postponement, continuance or
22 withdrawal, or whether proper and adequate

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1 notice of the hearing has been given.

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

6 Does the staff have any
7 preliminary matters?

8 MS. ROSE: The staff has a minor
9 preliminary matter on the second case of the
10 afternoon, but it can be handled when we call
11 the case.

12 BZA CHAIR MILLER: Okay. Let's do
13 that.

14 Would all individuals who are
15 planning to testify today on any of the cases
16 that are on the agenda for this afternoon,
17 please rise to take the oath now, and Ms. Rose
18 will administer it.

19 MS. ROSE: Please raise your right
20 hand.

21 (Whereupon, the witnesses were
22 duly sworn.)

1 MS. ROSE: You may be seated.

2 Thank you.

3 The first case this afternoon is
4 Application 17780 of Benco Center, LLC, as
5 amended, pursuant to 11 DCMR Section 3104.1,
6 for a special exception pursuant to Section
7 2108 for the reduction in the number of
8 required parking spaces and a special
9 exception to locate required parking spaces on
10 an adjacent lot under Subsection 2116.5,
11 serving a group of existing retail businesses
12 in the C-3-A District at premises 4510 through
13 4528 Benning Road, S.E., Square 53 46, Lot 11.

14 BZA CHAIR MILLER: Good afternoon.
15 Would you introduce yourselves for the record,
16 please?

17 MS. RODDY: Yes. My name is
18 Cristine Roddy, and I'm with the law firm of
19 Pillsbury, Winthrop, Shaw, Pittman, and with
20 me is Chris Lopiano, and he's a representative
21 of the Applicant.

22 BZA CHAIR MILLER: Okay. My

1 understanding of this case in a nutshell is
2 that basically there's an existing lot that's
3 out of compliance and you want to come into
4 compliance.

5 Could you explain is the owner a
6 new owner or just that you want to come into
7 compliance at this point?

8 MR. LOPIANO: We are a new owner.
9 We acquired this center in June of last year,
10 and our due diligence revealed that the
11 special exception had expired in 1966, and
12 we're trying to bring that up to compliance.

13 COMMISSIONER TURNBULL: I was just
14 curious. There's no relationship then between
15 Benco Center, LLC and Benco, Incorporated?

16 MR. LOPIANO: Benco Center, LLC is
17 the entity that we were a partner in that owns
18 it. There is no relationship now.

19 COMMISSIONER TURNBULL:
20 Relationship.

21 MR. LOPIANO: The previous owner
22 was a REET by the name of Urban America out of

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1 New York City, and we have absolutely no
2 relationship with them whatsoever.

3 COMMISSIONER TURNBULL: I just
4 happened to go back and see the application or
5 the appeal in 59. It just mentions Benco,
6 Incorporated, which sort of -- just curious.

7 Thank you.

8 BZA CHAIR MILLER: I don't know
9 how you want to present your case. I think,
10 you know, certainly addressing the regulations
11 that you need to meet, to reduce the parking
12 and then to have the accessory lot.

13 MS. RODDY: Okay. Well, as a
14 preliminary matter I would like to note that
15 we had submitted that parking, a revised
16 parking plan into the record. I believe we
17 filed it yesterday, and you'll note that we do
18 not comply with the screening requirement
19 under Section 352, and so as a lot in a
20 residential district and the screening
21 requirement -- that's also under Section 352
22 -- we would like to seek relief pursuant to

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1 that section.

2 BZA CHAIR MILLER: Is this
3 submission supposed to show all of the
4 landscaping and everything that meets those
5 requirements? I mean, is this as a final
6 plan?

7 MS. RODDY: The color version,
8 yes, is our most updated plan. That includes
9 the landscaping that they're proposing.

10 BZA CHAIR MILLER: This is for,
11 since we're jumping into this a little bit,
12 but this is for the accessory lot?

13 MS. RODDY: Yes.

14 BZA CHAIR MILLER: Do you have
15 landscaping for the main lot?

16 MS. RODDY: We don't have
17 landscaping completed at this time. We don't
18 have the plan put together for the main lot.
19 Mr. Lopiano can explain that we've been going
20 through some due diligence with the surface
21 waters, and they need to complete that study
22 first before they're able to resurface that

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1 lot.

2 BZA CHAIR MILLER: What about
3 having a plan for the lot with respect to
4 landscaping?

5 MS. RODDY: We can have something
6 put together. We were hoping that we could
7 move forward today since the landscaping and
8 those are all requirements of the zoning
9 regulations, that we would need to have those
10 in place for a certificate of occupancy as it
11 is. So our hope, I guess, was that having
12 those plans here today wouldn't hold up any
13 action on this specific case.

14 BZA CHAIR MILLER: You're out of
15 compliance with respect to landscaping as well
16 on the main lot; is that correct or not?

17 MS. RODDY: No.

18 BZA CHAIR MILLER: You're in
19 compliance?

20 MS. RODDY: Correct. We have -- I
21 believe five percent of that lot is dedicated
22 to the landscaping.

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1 BZA CHAIR MILLER: Oh, how much?

2 MS. RODDY: Five percent.

3 BZA CHAIR MILLER: Okay.

4 MS. RODDY: At least five percent,
5 which would be the requirement.

6 VICE CHAIR LOUD: Madam Chair, I
7 don't know if this is the time or not, but I
8 would like to hear what the landscaping five
9 percent consists of that's on site right now.

10 MR. LOPIANO: Just so I'm clear,
11 are we talking about the accessory lot that's
12 the subject of this? Are you talking about
13 the existing lot?

14 Well, the existing lot, you know,
15 there has been no alterations to that since it
16 was built. The only landscaping that's on
17 that lot is a triangular island at the
18 entrance at the corner of Benning and East
19 Capitol that is landscaped and also contains
20 the pylon sign for the center.

21 We've recently upgraded that
22 landscaping with ornamental grass, additional

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1 bushes and flowers.

2 BZA CHAIR MILLER: And I guess
3 we'll certainly get to this with Mr. Jackson
4 from Office of Planning, but I guess I'm under
5 the impression that at least there's some
6 noncompliance with the main lot besides the
7 number of spaces because you're here seeking
8 a reduction in the required spaces. But I
9 guess on the surface, is that where it's also
10 in noncompliance?

11 MR. LOPIANO: I'm not aware of
12 where it's in noncompliance besides the number
13 of spots. We'd gladly address that.

14 BZA CHAIR MILLER: Okay. Let's
15 wait until we get to Mr. Jackson's report
16 then.

17 MS. RODDY: Okay. Well, we're
18 here this afternoon, as you know, for a
19 special exception relief for the Benco
20 Shopping Center located at the corner of
21 Benning Road and East Capitol Street in Ward
22 7.

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1 The shopping center is located in
2 the C-3-A zoned district, while the surface
3 parking lot that will be used for accessory
4 parking is located in the R-5-A zoned
5 district.

6 The adjacent lot has been used as
7 accessory parking for the shopping center for
8 nearly 50 years. More recently though, it has
9 not been available for use to the public. It
10 has been gated and we'll be removing a portion
11 of that fencing.

12 The shopping center was
13 constructed in 1958, and at that time the
14 property owners secured BZA approval to use
15 the adjacent lot as accessory parking to help
16 satisfy the parking requirement for the
17 shopping center.

18 Property owners secured approval
19 to continue using the lot for accessory
20 parking on two more occasions, but those
21 approvals lapsed in 1966.

22 The Applicant recently purchased

1 the property and the adjacent lot and
2 discovered the deficiency, and as you know, it
3 now seeks to reestablish the use of the
4 adjacent lot as accessory parking for the
5 shopping center, and seeks special exception
6 approval to reduce the required number of
7 parking spaces to be provided from 56 to 52,
8 with 13 of those spaces to be located on the
9 accessory parking lot.

10 In order to provide parking on a
11 lot other than where the primary use is
12 located, the Applicant must demonstrate that,
13 one, locating the spaces on another lot is
14 more practice; that, two, parking is located
15 in a preferred location; and, three, that the
16 proposed location furnishes reasonable and
17 convenient parking facilities for the
18 occupants of the building that it serves.

19 In this case, locating the parking
20 spaces across an alley is more practical
21 because there simply is no room on the main
22 lot to provide additional parking spaces.

1 Further, the location of the
2 spaces remains convenient since it is simply
3 across the alley and adjacent to the main lot
4 where the commercial center is located.

5 Further, because the adjacent
6 property is located in the R-5-A zoned
7 district, the Applicant must also demonstrate
8 that the spaces are located in an open area
9 that is within 200 feet, that they are
10 separated from the main lot by only an alley.
11 The lot will be surfaced and maintained with
12 appropriate materials; that all vehicles will
13 be located within lot lines; that the premises
14 is used for no other uses or improved with any
15 other buildings; no vehicular entrances
16 located within 40 feet of an intersection.
17 Any --

18 BZA CHAIR MILLER: I'm sorry.
19 Could you just reference for us what
20 regulations you're reading from?

21 MS. RODDY: That's from Section
22 352.

1 BZA CHAIR MILLER: That was 352.

2 MS. RODDY: Right.

3 BZA CHAIR MILLER: Okay. And
4 previously you were reading from?

5 MS. RODDY: That was Section 2116.

6 BZA CHAIR MILLER: Okay. Thank
7 you.

8 MS. RODDY: And also in Section
9 352, at least five percent of the lot must be
10 landscaped, and there must be appropriate
11 screening from the neighboring residential
12 use. And as I mentioned, we don't have that
13 screening. We will be retaining the existing
14 fence along that line. Mr. Lopiano will
15 testify, but there's a very limited amount of
16 space, and to provide the required screening
17 would require smaller spaces or a smaller
18 drive aisle, which would make both of those
19 noncompliant.

20 And then finally the standard for
21 reducing the required number of spaces, which
22 would be Section 2108, the Board must consider

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1 the nature and location of the structure, the
2 maximum number of customers who are expected
3 to use the commercial area, the amount of
4 traffic congestion that the existing or the
5 structure can reasonably be expected to create
6 in the neighborhood, the quantity of existing
7 alternative parking on the property or in the
8 neighborhood, and the proximity of the public
9 transportation.

10 Again, we believe that the
11 application satisfies the standard,
12 particularly in light of the fact that it is
13 near the Benning Road Metro station, as well
14 as several bus lines and has been operating
15 under the existing conditions for nearly 50
16 years.

17 The Applicant only has one witness
18 testifying on its behalf today, and that's Mr.
19 Lopiano, and he will now testify to the
20 satisfaction of the special exceptions.

21 BZA CHAIR MILLER: Okay. I just
22 want to make sure that -- I don't know about

1 the other Board members, but you know, where
2 you're citing 352?

3 MS. RODDY: That refers back to
4 the R-1 District, and I would have to look up
5 the reference in the R-1, but the 352, it
6 refers back to both R-1 and Chapter 23, is
7 also one of the requirements. I can find out
8 for you right now.

9 BZA CHAIR MILLER: Okay. Because
10 I want to see where there's authority for us
11 to waive it or if it's a variance or what.

12 MS. RODDY: I believe it's 214.

13 BZA CHAIR MILLER: Okay. I see
14 214.5 where it gives the Board some authority
15 to waive some conditions, but I mean, if you
16 could just point out the requirement and then,
17 you know, where we have authority to waive
18 that requirement because you're asking us to
19 waive a requirement for screening, right?

20 MS. RODDY: Correct, and I believe
21 that 214.5 does. That refers to Chapter 23
22 where the screening requirement is in place.

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1 BZA CHAIR MILLER: Okay. So the
2 screening requirement is in Chapter 23.

3 MS. RODDY: That is correct.

4 BZA CHAIR MILLER: Do you know
5 where it is in Chapter 23?

6 MS. RODDY: Yes. That was 2303.2.

7 BZA CHAIR MILLER: Okay. So
8 2303.2 sets forth the requirement for
9 screening and 214.5 gives the Board authority
10 to modify or waive the conditions set forth in
11 2303.2. Okay. Good.

12 So just on that point, it says we
13 can waive it where compliance would serve no
14 useful purpose. Do you want to address it
15 while we're looking at this?

16 MS. RODDY: Well, I think one of
17 the main points is that it has been an
18 existing condition since 1958. So it has been
19 something that has been in place in the
20 community adjacent to the residential
21 building, and given the fact that it is an
22 existing condition and that complying with it

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1 would create such a difficulty, that would
2 result in noncomplying parking spaces or
3 noncomplying drive aisle. I think that this
4 would be an appropriate situation for a
5 waiver, and that there is a hardship for the
6 Applicant.

7 BZA CHAIR MILLER: Is there a
8 fence or something?

9 MS. RODDY: There is an existing
10 fence.

11 BZA CHAIR MILLER: There's
12 something, right.

13 MS. RODDY: Right, and they will
14 retain the fence.

15 BZA CHAIR MILLER: Okay.

16 MEMBER DETTMAN: Madam Chair, I
17 wonder if I could ask a question just for
18 clarification. I'm a little unclear on why
19 we're sort of looking at 214. I think you had
20 said 2516 as well as 2108 were the provisions
21 you're seeking relief from.

22 MS. RODDY: Under Section 352,

1 that's for a parking lot in the R-5-A zoned
2 district. That's Section 352, which refers
3 you back to the special exception relief in
4 the R-1, which then leads us to Chapter 23.

5 MEMBER DETTMAN: Okay. I asked
6 because we had a similar case last week. It
7 was the Blondon Alley, LLC. I think it was
8 17770. The exact same case, it was a request
9 for off-site accessory parking, and there were
10 two different zonings. The principal building
11 was in one zoning and the accessory lot was in
12 another.

13 I believe that the Applicant
14 requested relief under 214, but when DCOP was
15 doing their analysis, it was Paul Goldstein.
16 He determined that it was more appropriate to
17 sort of review the case under 2516 because of
18 that sort of difference in zoning.

19 MS. RODDY: Okay.

20 MEMBER DETTMAN: I think either
21 way it's okay to go forward, but I'm just
22 looking for clarification.

1 BZA CHAIR MILLER: We don't have
2 the issue though of screening, right? Well,
3 we're just here for the screening question, I
4 think, so that they're in compliance with
5 that, right?

6 MS. RODDY: We're here --

7 BZA CHAIR MILLER: Are you going
8 through all 214?

9 MS. RODDY: No, we're here -- the
10 main things that we need the relief for is
11 that we have -- I'm sorry?

12 BZA CHAIR MILLER: No, go ahead.

13 MS. RODDY: I mean, the screening
14 -- oh, I understand what you're saying. I
15 thought you meant here today. No, we're here
16 on 214 solely for this screening and it is a
17 lot in the R-5-A zoned district.

18 MEMBER DETTMAN: I think the
19 application can be reviewed under 2516, and
20 you'll get to the screening under 2117 just
21 for general access and maintenance and
22 operation of a parking area that provides

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1 parking spaces in excess of ten. It has that
2 five percent landscaping.

3 So I think you'll get there. You
4 don't lose the screening provision by stepping
5 out of 214, and last week I think the Board
6 agreed with Mr. Goldstein that because of the
7 difference in zoning it's sort of more
8 appropriately fit into 2516 instead of 214.

9 BZA CHAIR MILLER: Okay, but while
10 we're here though, can you, Mr. Dettman, show
11 me the screening provision and then is there
12 a modification provision here as well?

13 MEMBER DETTMAN: The screening
14 provision is 2117.11. Landscaping with trees
15 and shrubs shall be provided for all open
16 parking spaces provided on a lot where there
17 are more than ten open parking spaces provided
18 collectively as accessory to any building or
19 structure. Landscaping shall cover a minimum
20 of five percent of the total area.

21 So there's the screening, and then
22 the second question you had?

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1 BZA CHAIR MILLER: Isn't that
2 different though than screening? The amount
3 of landscaping, isn't that different than
4 providing screening? You're in compliance
5 with the landscaping.

6 MEMBER DETTMAN: Well, 2117.12,
7 the next one down says the open parking spaces
8 shall be screened from all contiguous
9 residential property located in R-1, 2, 3, 4,
10 5, et cetera. It's slightly different.

11 BZA CHAIR MILLER: Okay, okay.
12 But if we follow that, and I'm not sure
13 whether it matters which one we use, but if we
14 do follow that one, is there a waiver
15 provision that we would then apply like we did
16 under the previous analysis?

17 (Pause in proceedings.)

18 BZA CHAIR MILLER: Is there a
19 problem with just relying on the provisions
20 that the Applicant put forward?

21 MEMBER DETTMAN: No, as I said, I
22 think it's fine. I was just raising the

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1 question because I think the Applicant's
2 application sought relief from 2116; is that
3 right?

4 BZA CHAIR MILLER: They do mention
5 2116.

6 MEMBER DETTMAN: Originally, and
7 then we stepped into 214. So I was really
8 just looking for some clarification.

9 MS. RODDY: I think that there's
10 some overlap in the regulations, just to make
11 sure that those regulations are adhered to.

12 BZA CHAIR MILLER: Well, okay.
13 They're not the most perfect regulations, but
14 I think the question is though if when we get
15 to the point of deliberating on the relief
16 that you're seeking, we need to add some
17 relief because it's not 2108.1 and 2116.5.
18 You added either 352 or what are you adding
19 specifically?

20 MS. RODDY: It's Section 352.

21 BZA CHAIR MILLER: Three, fifty-
22 two.

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1 MS. RODDY: But the 2116.5 we're
2 keeping because it's not located on the same
3 lot, and then the 20 -- we're keeping the
4 other request for relief is all. Okay.

5 MEMBER DETTMAN: Madam Chair, I
6 think Ms. Glazer just brought up a good point.
7 Twenty-one, sixteen, point, nine says that the
8 Board may impose conditions on any accessory
9 or nonaccessory parking spaces as to
10 screening, coping setbacks fences. So it was
11 IOG's suggestion that maybe we stick with the
12 2116 as advertised and as applied for, I
13 guess, and then if the Board sees it to be
14 necessary, we could impose, you know, a
15 condition for screening, if necessary.

16 BZA CHAIR MILLER: I understand
17 that, kind of, but what does that mean? Does
18 that mean that there really isn't a
19 requirement for screening and, therefore, we
20 could impose one if we wanted to? Because the
21 Applicant seems to be reading the regs. as
22 requiring screening.

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1 MEMBER DETTMAN: Well, it seems
2 under 214 it's clear that there is a
3 requirement for screening, but then it also
4 goes on to say that the Board can waive that
5 criteria. Under 2116, it doesn't appear that
6 there's a requirement, but it says that if the
7 Board sees fit and sees that it's necessary,
8 we could impose that condition.

9 BZA CHAIR MILLER: Let me ask you
10 one more time, Ms. Roddy. In 214 is that the
11 screening requirement?

12 MS. RODDY: The screening
13 requirement is in both 2117.12 and 2303.2.

14 BZA CHAIR MILLER: Oh. Okay. One
15 more time, and the waiving, the waiver
16 provision?

17 MS. RODDY: The waiver provision
18 for 2117, I believe, was pointed out that it
19 is in 2116. 9, and then the waiver provision
20 for 2303 is in Section 214.

21 BZA CHAIR MILLER: I guess we
22 don't have to belabor this right now. We'll

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1 get back to this. I mean, I don't want to
2 hold up your proceeding further. I mean, I'm
3 pretty sure we have the authority to do it.
4 There is a requirement for screening, and so
5 we'll just decide later on which provision to
6 go under. I don't think there's any problem
7 with advertising with respect to your
8 application.

9 MS. RODDY: Okay.

10 BZA CHAIR MILLER: Okay.

11 MS. RODDY: All right. Well, I'm
12 going to have Mr. Lopiano then walk through
13 the parking plan.

14 MR. LOPIANO: Good afternoon. My
15 name is Christopher Lopiano. I'm here
16 representing City Interests, which is one of
17 the members of the entity that owns the Benco
18 Shopping Center.

19 City Interests is a D.C. based
20 real estate developer formed a little less
21 than two years ago for the purpose of
22 acquiring five retail centers from a REET by

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1 the name of Urban America. Four of those
2 retail centers are in the District of
3 Columbia, all of them east of the Anacostia
4 River, including the center that's subject
5 today.

6 We are in the process of planning
7 the redevelopment or improvement of the four
8 centers. We own a shopping center just down
9 the block from here, East River Park Shopping
10 Center at Benning and Minnesota, which is an
11 eight acre center, and we're going through a
12 redevelopment of that center. But in the case
13 of Benco, we are in the process of improving
14 that center.

15 During our due diligence, we
16 discovered that the parking lot that's been in
17 use for 50 years went out of compliance in
18 1966. The 1961 variance or special exception
19 that was granted expired five years later.

20 The lot that the center is on is
21 Lot 11. That contains 39 parking spaces. Lot
22 8 is across the public alley from this lot and

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1 is currently striped for five spaces. We're
2 asking for 13 spaces.

3 The lot was apparently leased off
4 -- I mean fenced off by a previous owner
5 apparently to lease that lot to a contractor
6 or some other company that had a lot of
7 trucks. So it has not been in use for parking
8 retail customers for some number of years.
9 I'm not sure how long that is.

10 We are in the process of improving
11 the center. We have added lighting. We have
12 removed graffiti, painted the rear, done any
13 number of things, increased the security of
14 the roof because we had break-ins through the
15 roof.

16 We are in the process of
17 consolidating multiple dumpsters into a single
18 dumpster and building an enclosure.

19 We also have a company under
20 contract to repave, reseal, and restripe the
21 main lot. That has not been implemented
22 because we also during our due diligence found

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1 some minor contamination on the site, and we
2 have been doing site environmental testing,
3 which included two wells to test the
4 groundwater, and our last sampling per the
5 environmental protocol is next month, in July,
6 and once that is done, we'll cap those wells
7 per the DDOE regulations, and then we'll be
8 able to give a notice to proceed to the
9 contractor to repair, reseal, and restripe
10 that main lot.

11 We also are in the process of
12 trying to improve the tenant mix there to
13 better serve the community. We've added a
14 restaurant, for instance, Tropicana. Since
15 we've owned it another lease out to another
16 restaurant, an Italian restaurant, and we have
17 a signed lease for a laundromat. The
18 laundromat will be a 5,000 square foot, 24-
19 hour, state of the art laundromat. It will be
20 replacing a Foot Locker that was the tenant
21 there.

22 When we acquired the center was

1 fully occupied. There always appears to be
2 parking spaces available. I've never had a
3 problem parking there. There has never been
4 any complaints by the tenants, but we feel
5 that the new laundromat is going to increase
6 the parking demand, and so we would like to
7 resurface, repair, resurface and redesign this
8 parking lot to provide 13 spots, and it's
9 across the public alley from the end of the
10 center where the laundromat will be located.
11 So it will be very convenient to that new use.

12 Currently, as I mentioned, it's
13 surrounded on four sides by fencing with the
14 barbed wire on the top. We will remove the
15 fencing from three of the sides, the side
16 along the alley, along the public sidewalk,
17 and along the rear. We will leave the fence
18 that separates Lot 8 from Lot 7, the
19 residential lot next door, but we will remove
20 the barbed wire from the top of that fence.

21 We'll add a four foot wide
22 planting bed between the lot and the public

1 sidewalk along Benning Road and plant that
2 with evergreen shrubs.

3 In addition to that, we'll put a
4 new curb. There currently is no curb
5 separating the alley from the parking lot. So
6 we'll provide a curb. The circulation for the
7 parking lot is one-way circulation with an in
8 and out lane. All of the parking spots are to
9 code, as well as the drive aisle.

10 The difficult is this lot is only
11 60 feet wide. To provide code compliance
12 spaces and drive aisle, you need 60 feet,
13 which is what prevents us from doing a four
14 foot planting bed along the boundary between
15 Lot 7 and Lot 8, which is why we need the
16 relief for the screening.

17 I believe that this obviously will
18 provide additional parking for the center. It
19 maintains an historic use that's been that for
20 50 years and will improve the center
21 appearance.

22 One other point I'd like to make

1 is that the 56 spaces that are required by
2 zoning include a 1,500 square foot second
3 story space, which is a Comcast file server
4 room that has no employees, no customers, and
5 so that 1,500 square feet does not really
6 generate any parking demand.

7 I'd be glad to answer any
8 questions you might have.

9 BZA CHAIR MILLER: I think that
10 the ANC might have made a reference to -- is
11 anyone here from the ANC in this case, by the
12 way?

13 (No response.)

14 BZA CHAIR MILLER: Okay. They
15 submitted a brief report, and I think there is
16 a reference to a concern about traffic
17 congestion at the Benning Road entrance.
18 First of all, I wanted to ask you did you go
19 to the ANC meeting.

20 MR. LOPIANO: Oh, yes. I'm sorry.

21 BZA CHAIR MILLER: Okay.

22 MR. LOPIANO: I attended ANC-7E

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1 February-March this past year. They voted
2 unanimately, seven to zero, to support this
3 application.

4 BZA CHAIR MILLER: Okay. Our
5 report says, and it's kind of hard to decipher
6 a little bit because it's kind of cryptic; it
7 says the vote of the motion to adopt the
8 report to the Board was six-zero.

9 MR. LOPIANO: Oh, six-zero. I'm
10 sorry.

11 BZA CHAIR MILLER: It doesn't
12 exactly say they support the application, but
13 they may. It's not clear from this. We have
14 this report. You probably have a copy of it
15 as well.

16 Okay. But in any event, it
17 certainly doesn't say that they oppose it, but
18 it just raised two concerns that I can
19 decipher from it, and one is this question of
20 traffic congestion. Can you address that at
21 all? Is there traffic congestion? Do you
22 know what the concern is and how your plan

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1 affects that?

2 MR. LOPIANO: Well, I don't
3 believe there's any traffic congestion. I
4 believe that the ANC was going to contact DDOT
5 about their concerns, but I don't believe
6 there's any traffic congestion. I think that
7 one of the residents, who was in attendance
8 may have been concerned that the laundromat
9 might add more traffic, and the question was
10 will that create traffic congestion.

11 But we have no traffic study.

12 MS. RODDY: I think --

13 BZA CHAIR MILLER: Yeah, go ahead.

14 MS. RODDY: I'm sorry. I was just
15 going to say to that as well, I think that
16 opening this parking lot up for additional
17 spaces will help alleviate any traffic
18 congestion that there may be. I mean, again,
19 this is an existing condition that's been
20 going on for 50-some years, and if anything
21 else, we're providing more parking than there
22 currently is, which can only help.

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1 BZA CHAIR MILLER: Will there be a
2 congestion as far as going into both lots or
3 something like that?

4 MR. LOPIANO: No, I don't believe
5 so. They'll be entering separate entrances
6 that actually increases the capacity to enter
7 and exit the site.

8 BZA CHAIR MILLER: Other
9 questions?

10 VICE CHAIR LOUD: Good morning,
11 again. I wanted just to commend you on both
12 acquiring the property and then some of the
13 improvements you've made already, the
14 graffiti, the lighting, the painting, and so
15 on and so forth.

16 I just want to ask you a couple of
17 questions about the landscaping plans that you
18 have. I believe you testified earlier that
19 you've already done some upgrades,
20 landscaping, just on Lot 11?

21 MR. LOPIANO: Yes. Lot 11 is
22 pretty much 100 percent improved with building

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1 and parking lot. The one area that is not
2 impervious is the triangle that separates the
3 triangular shaped island that separates the
4 East Capitol entrance from one of the Benning
5 Road entrances, and it also contains the pylon
6 sign.

7 When we bought the center, that
8 was essentially dirt. We have since then --
9 there were a couple of bushes that looked very
10 lonely there, and we have since then added
11 some bushes, covered most of the area with
12 ornamental grass, which we find to be very
13 good use in this type of landscaping, as well
14 as planted some flowers.

15 And I also mentioned that we have
16 a bid to refurbish the sign which is in
17 disrepair, replace the pylon and refurbish the
18 art deco sign that has been at the center
19 since its inception.

20 VICE CHAIR LOUD: So then if I
21 understand you, the landscaping to date, which
22 is, I mean, you only have sort of a small

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1 window of opportunity to do it because it's
2 restricted to that triangular island, but it
3 includes you've added some bushes. Do you
4 recall the names and the types?

5 MR. LOPIANO: No.

6 VICE CHAIR LOUD: And if you
7 don't, it's fine. Okay.

8 MR. LOPIANO: I don't, but I can
9 get that information if you'd like it.

10 VICE CHAIR LOUD: That would be
11 helpful to me.

12 Section 2116.11, which sort of
13 undergirds the landscaping piece, requires
14 that the landscaping be maintained in a
15 healthy, growing condition, and oftentimes
16 that means some sort of ongoing maintenance,
17 either watering or weed, pruning, mulching, et
18 cetera.

19 In this case, is there a plan to
20 keep the landscape healthy?

21 MR. LOPIANO: Well, we have a
22 contract with a landscaping company that's

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1 supposed to come out several times a week, and
2 one of the things that they are supposed to do
3 is water the plants.

4 Now, we cannot be there to
5 determine if they're showing up, but you'll
6 certainly notice from the condition of the
7 landscaping whether they're doing their job or
8 not. We feel very good about it. It's a
9 local Ward 7 landscaping company. So he's
10 local and so far the landscaping has held up
11 fairly well.

12 VICE CHAIR LOUD: Excellent, and
13 is that a contract that -- in terms of
14 duration, is it for the year or --

15 MR. LOPIANO: Yes, it's a one-year
16 contract.

17 VICE CHAIR LOUD: Great. I just
18 wanted to mention before opening up to
19 colleagues. Are you familiar with the
20 District's Store Front Improvement Program?
21 It's a program for communities like Marshall
22 Heights, and I'll get off the soapbox in two

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1 seconds, where the District will pay 80
2 percent of the cost of the upgrade of an
3 exterior facade, which includes windows and
4 store fronts and things like that, if the
5 owner agrees to pay 20 percent.

6 MR. LOPIANO: What is the name of
7 the program?

8 VICE CHAIR LOUD: It's called the
9 Store Front Improvement Program, and you might
10 want to speak to a gentleman named Mr. Lamont
11 Lee.

12 MR. LOPIANO: I know him.

13 VICE CHAIR LOUD: Over at the
14 Department of Housing and Community
15 Development.

16 I'll reserve any further questions
17 for later.

18 MEMBER DETTMAN: I'd like to ask
19 one question. I was wondering. Are you sort
20 of coming to the Board just simply to come
21 into compliance because during the due
22 diligence you noticed that the relief had

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1 lapsed or sort of considering what you're
2 looking to do in terms of getting some new
3 tenants in there and the types of businesses
4 that will better serve the community, do you
5 see it as an absolute need for you to have the
6 50-some parking places?

7 And I ask because as I was sort of
8 analyzing the case, I thought I sort of saw an
9 opportunity where you could actually reduce
10 the required number of parking so that you
11 could accommodate them actually on the site
12 and not have to use the accessory lot.

13 MR. LOPIANO: Well, I would answer
14 that question by saying that we would want to
15 be in compliance, and we would be here seeking
16 relief to be in compliance regardless of other
17 situations because, well, if for no other
18 reason our loan documents require it.

19 But the addition of this
20 laundromat, it's a 5,000 square foot
21 laundromat. It's a very large laundromat.
22 It's a great laundromat, and it's badly needed

1 in this neighborhood. There are a lot of
2 multi-family buildings within a half a mile of
3 this site that do not have adequate or any
4 laundry facilities, and I know this because we
5 have a small laundromat at East River Park and
6 folks will push their shopping carts from this
7 area down to East River Park to use that very
8 small laundromat. So it's a great service for
9 the community.

10 He would not come; he would not
11 sign his lease or come to the center if we
12 weren't able to provide more parking.

13 BZA CHAIR MILLER: You need to
14 turn your mic off when you're not using it.

15 Okay. Any other questions? Mr.
16 Turnbull.

17 COMMISSIONER TURNBULL: I just had
18 -- and maybe I misunderstood. The existing
19 main parking lot, are you keeping the same
20 amount of entrances and exits or are you
21 closing one?

22 MR. LOPIANO: No, the entrance and

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1 exits for the main part will remain exactly
2 the same.

3 COMMISSIONER TURNBULL: Okay.

4 MR. LOPIANO: And this parking lot
5 will have access from an existing public
6 alley, which lies between the two properties.

7 COMMISSIONER TURNBULL: So you're
8 getting your increase in numbers mainly by
9 restriping the size?

10 MR. LOPIANO: Well, I think that's
11 just an historical anomaly. They needed five
12 spaces to be in compliance back in 1957, and
13 so they striped it for five, but it has always
14 -- we're not increasing the impervious areas.
15 The lot will be the same size. We're just
16 restriping it and making it, you know, the
17 maximum number of spots we can get on what is
18 now paved.

19 COMMISSIONER TURNBULL: Because
20 one thought was you could close maybe one
21 entrance, maybe the one up near East Capitol
22 and gain more parking spaces up there by

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1 closing that. I was curious on how you were
2 actually going to get the number of spaces
3 that you wanted up there.

4 MR. LOPIANO: We are not
5 increasing the number of spaces on the main
6 lot. There are 39 spaces there now, and it
7 will remain that.

8 COMMISSIONER TURNBULL: Okay.

9 MR. LOPIANO: We did look at a
10 number of ways to try to increase the spaces
11 on the main lot and really the only way is to
12 eliminate that triangular landscaping area.
13 You can maybe get another two or three spots
14 on there.

15 COMMISSIONER TURNBULL: Okay.

16 Thank you.

17 MEMBER WALKER: So you have a
18 lease from someone who's going to operate the
19 laundry facility, but it's contingent upon
20 your gaining the approval to put additional
21 parking spaces in the other lot?

22 MR. LOPIANO: His lease has a

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1 section in it which says that we'll make this
2 lot available to him. Currently it's fenced
3 off. That's what he saw, and so the lease has
4 a section saying that we would make this lot
5 available for parking, additional parking, not
6 just for him but additional parking, that we
7 would take the fence down.

8 MEMBER WALKER: Do you have any
9 projections as to how many individuals will
10 use the laundry facility at a given time? I
11 mean, how much parking do you really need for
12 this laundry facility?

13 MR. LOPIANO: Well, a typical
14 laundromat would be about 2,000 square feet.
15 This is 5,000 square feet. It's sort of the
16 trend in the industry now, is for these large
17 facilities.

18 I forget the number of washers,
19 but it's either 40 or 50 washers. So that
20 could be, you know, at a single time, say, on
21 a Saturday, it could be, you know, 15 or 20
22 customers using the laundromat at a single

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1 time.

2 MEMBER WALKER: And do you have
3 any estimates as to how many will drive versus
4 how many you will draw from the immediate
5 surroundings, who will walk?

6 MR. LOPIANO: No, Commissioner, we
7 do not. We did not study, and I do not
8 believe that the tenant did any study besides
9 looking at what existing laundromats there
10 were in the area and what condition they were
11 in. I don't think he did any demand
12 generation studies at all. You know, he's not
13 that sophisticated.

14 You mentioned that there's always
15 parking available currently at the lot. I
16 mean, give me a sense of what kind of
17 utilization you're experiencing right now in
18 the parking lot.

19 MR. LOPIANO: Well, I was there
20 this morning at about 10:00 a.m., and I would
21 say about half of the spaces were being used,
22 but there were probably four of the businesses

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1 were not open for business yet, the beauty
2 supply, the barber shop, the Tropicana
3 restaurant.

4 I've been there in the afternoon
5 plenty of times around four o'clock, five
6 o'clock, and you can get a parking spot, but
7 it's fairly full. There might be, you know,
8 two or three spaces available.

9 I've not been there on a Saturday.
10 I imagine, you know, it's busier on a
11 Saturday. The main drivers of parking there
12 are high turnover businesses, a liquor store,
13 a Subway shop, a barber shop. It's not like
14 folks are coming and parking for hours at a
15 time. You know, they're short-term parking.
16 So there's a lot of turnover.

17 But I would say that, you know, in
18 the afternoons when I've been there, and I
19 would surmise that on the weekends, you know,
20 you're probably at 80 or 90 percent capacity.

21 MEMBER WALKER: Thank you.

22 BZA CHAIR MILLER: I had a chance

1 to look at our parking regulations again, and
2 I know it can be confusing because there are
3 so many different chapters. What I think
4 applies, before we go on to the Office of
5 Planning, and if you disagree, you know, let
6 me know, but I think, Ms. Roddy, you cited
7 2303.2, which is the screening requirement for
8 parking lots in the zoned district in which
9 the accessory parking lot is located, and I
10 think that that is the right provision that
11 you cited.

12 And just following that is a
13 waiver provision that says 2303.3, "if
14 approved by the Board of Zoning Adjustment as
15 a special exception under 3104, the conditions
16 in 2303.2 may be waived or modified." And
17 then it tells us what we can look at in
18 2303.4.

19 So I think that's where our
20 standard is, and I don't think we need to add
21 any additional relief because we're looking at
22 this under 3104 already, which you cited.

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1 Okay. And the three factors then
2 I believe would be 2303.4, the adequacy of
3 protective and screening walls located on
4 adjacent residential property, topographic and
5 traffic conditions, and see any adverse effect
6 of the requested waiver modification of
7 standards that it would have on adjacent
8 residential property.

9 And I think that you gave your
10 reasons, but if there's anything else you want
11 to add now in light of those specific factors,
12 you know, feel free, or later, but before we
13 go on to Office of Planning, if you do want to
14 say anything further.

15 MS. RODDY: I think that we've
16 gone through it in our testimony. We would be
17 happy to answer anymore questions about it,
18 but we're happy also to listen to Office of
19 Planning's report.

20 BZA CHAIR MILLER: Okay. The
21 fence that's there, is it the residential
22 property's fence or your fence?

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1 MR. LOPIANO: The survey shows
2 that it's our fence. It's a six foot high
3 chain link fence.

4 BZA CHAIR MILLER: It's a chain
5 link fence?

6 MR. LOPIANO: It's a chain link
7 fence, yes.

8 BZA CHAIR MILLER: Are you keeping
9 that?

10 MR. LOPIANO: We're keeping the
11 one side that separates the residential from
12 our lot. That's our intentions. We're
13 removing it on the other three sides.

14 BZA CHAIR MILLER: Well, what do
15 you mean you're -- oh, it's enclosed with a
16 fence, and you're keeping that side there.
17 Okay.

18 Does that screen views into the
19 parking lot or anything or what's the purpose
20 of the fence?

21 MR. LOPIANO: I believe -- this is
22 just conjecture on my part -- but the fence

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1 looks like it was all erected at the same
2 time. I believe a previous owner decided to
3 fence off that lot so he could secure it and
4 lease it to a small business to park their
5 vehicles overnight in a secure manner, just to
6 raise extra income. I don't think there was
7 any other purpose to it.

8 BZA CHAIR MILLER: So now if
9 there's a six foot high fence, what purposes
10 would it serve now? Would it serve security?
11 Would it serve any privacy? What's it going
12 to do?

13 MR. LOPIANO: No.

14 BZA CHAIR MILLER: Nothing?

15 MR. LOPIANO: It serves nothing
16 except for a separation. Glad to take it
17 down.

18 BZA CHAIR MILLER: But could you
19 put up something more attractive to divide the
20 properties? I mean a different type of fence.
21 I'm just exploring this. We can ask Office of
22 Planning. I'm just trying to imagine in my

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1 head this fence which doesn't serve a purpose,
2 except it could serve a purpose dividing the
3 properties.

4 MR. LOPIANO: It could serve as a
5 screen with the addition of screening
6 material. There is the possibility of weaving
7 canvas or other material strips through
8 various colors, whatever color you would
9 choose that would create a solid barrier and
10 would screen the lot off from the building --
11 I mean from the parking lot. Excuse me.

12 BZA CHAIR MILLER: Okay. That's
13 something you're familiar with?

14 MR. LOPIANO: Oh, yes.

15 BZA CHAIR MILLER: Okay. So is
16 that something that you would consider that
17 would improve the aesthetics or the privacy?

18 MR. LOPIANO: Well, we would be
19 happy to do it. I think it's a matter of
20 opinion whether it increases the aesthetics of
21 the property or not. I mean, I think some
22 people think that it's useful, and other

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1 people think that it's an eyesore. I just
2 think it's a matter of opinion, but we're glad
3 to do it. It would block.

4 I would say that the building next
5 door sits significantly higher than -- and I
6 don't mean 20 feet, but you know, four or five
7 feet -- above the level of the parking lot.
8 There's a slope that runs from the parking lot
9 to the building and then the building is built
10 up a little bit. That first floor is a little
11 bit above that.

12 So there's nobody who's looking
13 out their window at the front of a car, but
14 we're glad to weave it, and you know, I think
15 that material is available for that if
16 improved over the years in terms of durability
17 and appearance. We're happy to do that.

18 BZA CHAIR MILLER: What is the
19 building next door? Is it an apartment
20 building or what?

21 MR. LOPIANO: Yes, it is a garden
22 apartment complex that borders on two sites --

1 two sides of our shopping center, to the rear
2 and to the side. It's a three-story, 1950s
3 vintage brick garden apartment complex.

4 MEMBER WALKER: And how far is the
5 closest building to the property line?

6 MR. LOPIANO: I have not measured
7 it, but I would say that it's no further away
8 than 20 feet and perhaps as close as ten feet.
9 So maybe between ten and 20 feet.

10 MEMBER WALKER: Okay, and I'm
11 struggling a little bit here. Ms. Roddy, you
12 said that it would be a hardship for the
13 Applicant to comply with the screening
14 requirements of 2303. I mean, why is that?
15 Why should we waive those requirements?

16 MS. RODDY: Because our parking
17 lot goes to the property line. The
18 residential building is set back from their
19 property line. So it would be a use of their
20 property, but on our property we don't have
21 the space to provide the screening, and so if
22 we were to provide the screening, it would

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1 then require us to either make the spaces
2 smaller or make the aisle drive smaller, and
3 make those noncompliant.

4 COMMISSIONER TURNBULL: Your lot
5 is basically about 60 feet wide?

6 MR. LOPIANO: It's exactly 60 feet
7 wide.

8 COMMISSIONER TURNBULL: And to
9 comply with the regs you've got 19, 20, and
10 19.

11 MR. LOPIANO: Exactly.

12 COMMISSIONER TURNBULL: All right.
13 So you've got 1.6 on the residential property
14 side then.

15 MR. LOPIANO: Well, we have --

16 COMMISSIONER TURNBULL: Or it may
17 taper. I don't know.

18 MR. LOPIANO: We have -- no, it
19 doesn't taper I don't believe, but we have a
20 little curb we're putting on our property --

21 COMMISSIONER TURNBULL: The curb,
22 yeah.

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1 MR. LOPIANO: -- that takes up
2 four or six inches, and so you have about I
3 think it's eight inches left basically.

4 COMMISSIONER TURNBULL: Okay.

5 MR. LOPIANO: Not sufficient for
6 planting.

7 BZA CHAIR MILLER: And did you
8 confer with the owner of the building next
9 door?

10 MR. LOPIANO: No.

11 BZA CHAIR MILLER: So I assume
12 they got notice since they are next door.

13 Okay. No, I don't know. Is
14 anybody here who is going to be testifying on
15 this case?

16 Okay. You know, if we were
17 considering certain decisions, you know, like
18 the weaving or the not weaving, it would be
19 nice to have the party that's affected here.

20 But anyway, okay. Any other
21 questions?

22 VICE CHAIR LOUD: Just one last

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1 question. You know my only issue is
2 landscaping.

3 Are you -- is the testimony that
4 five percent of the lot area is being covered
5 with the landscaping?

6 MR. LOPIANO: For the lot that's
7 subject of this proceeding?

8 VICE CHAIR LOUD: Yes.

9 MR. LOPIANO: The planting area is
10 288 square feet. Five percent of the parking
11 lot would be 240 square feet. So we're
12 slightly in excess of five percent.

13 VICE CHAIR LOUD: Okay. Thank
14 you.

15 BZA CHAIR MILLER: Anything else?
16 Any other questions from the Board?

17 (No response.)

18 BZA CHAIR MILLER: Anything else
19 from the Applicant at this time?

20 Okay. Then why don't we move to
21 the Office of Planning? Good afternoon, Mr.
22 Jackson.

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1 MR. JACKSON: Good afternoon,
2 Madam Chair and members of the Board. My name
3 is Arthur Jackson. I'm a development review
4 specialist in the District of Columbia Office
5 of Planning, and I will summarize the Office
6 of Planning's report.

7 You have it before you. We did
8 our analysis based on Section 2300, Chapter
9 2300, Section 2117 and Section 214. We think
10 that the Applicant has submitted sufficient
11 information with regard to the existing
12 conditions and the status of the land use, and
13 that it is reasonable for them to ask for a
14 reduction in the amount of parking.

15 If you will note on our site
16 plans, we submitted a plan that shows that
17 this site is near Metro and is well served by
18 Metro service along both major arteries, and
19 is quite near the Benning Road Metro station,
20 which actually probably may not reduce the
21 amount of parking on site, but would add to
22 the people who wanted to use the site.

1 And we think that the convenience
2 of the property, the location of the existing
3 lot, and the existing conditions on the
4 shopping center site wherein there aren't
5 anymore space for any additional parking
6 spaces would make the request to continue the
7 use of this accessory parking space as a lot
8 reasonable.

9 And also, we would support the
10 reduction in the parking, keeping the current
11 utilization. But we did raise some concerns
12 about these conditions of both lots and the
13 fact that we thought both lots should be
14 brought into conformance with existing
15 regulations in light of the fact that this lot
16 is over 50 years old, and of course, at the
17 time when they were constructed, it appears
18 from the information that was provided that
19 they met the conditions that were imposed at
20 the time, but of course, the times have
21 changed.

22 We would note that the site is now

1 identified in the conference plan as a
2 neighborhood commercial center and also as a
3 neighborhood enhancement area. So we would
4 think that going forward we know that there
5 are new developments on track to redevelop
6 major portions of the site to the properties
7 to the north; that the potential redevelopment
8 of properties across Benning Road is very
9 real; and that we'd like to see this property
10 come into the 20th Century with regard to the
11 standards that they meet and also be as much
12 an amenity now as future developments will be
13 at the time they're developed.

14 Based on that, we had some
15 conditions for approval. Although supporting
16 the application, we think that prior to final
17 action the detailed plans for rehabilitation
18 of existing parking lot on Lot 11 and the
19 accessory parking lot on Lot 8, subject to the
20 standards of DDOT, of Department of
21 Transportation, Chapter 23 -- and I'll modify
22 the last part with regard to your finding --

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1 2303.2 should be added to the public record
2 that both lot rehabilitations be completed
3 prior to the issuance of a certificate of
4 occupancy for the new accessory parking lot,
5 and that the term of the accessory parking lot
6 be for one year.

7 And with that, we will conclude
8 our brief summary, and we will be able to
9 answer questions about the Office of Planning
10 report.

11 BZA CHAIR MILLER: Could you
12 explain how the lots are out of compliance
13 with Chapter 23 and Section 2117?

14 MR. JACKSON: Well, actually, the
15 lots are out of compliance essentially because
16 there's no special exception in place that
17 allows it to exist. So that's 214.

18 BZA CHAIR MILLER: They're here
19 for special exceptions.

20 MR. JACKSON: Right.

21 BZA CHAIR MILLER: Oh, for the
22 accessory, and they're here for a special

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1 exception for reduction in parking.

2 MR. JACKSON: Right.

3 BZA CHAIR MILLER: Okay.

4 MR. JACKSON: So the noncompliance
5 comes from the existing lot not being in
6 compliance, and then the nonconforming also as
7 a result of an addition that occurred after
8 the area was in operation, but that addition
9 was not -- well, the addition occurred, but it
10 wasn't tied to the accessory lot. So now
11 we're linking it all together.

12 The accessory lot was created, but
13 the special exception for the accessory lot
14 expired. So we're also addressing that issue.

15 BZA CHAIR MILLER: Are you saying
16 that they're also here to get a special
17 exception to operate a parking lot?

18 MR. JACKSON: Yes.

19 BZA CHAIR MILLER: Not just for
20 the reduction because they no longer have a
21 special exception that's not expired. Is that
22 it?

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1 MR. JACKSON: The previous special
2 exception for the accessory parking lot has
3 expired. That expired back in the 1960s. It
4 has operated, it continued to operate for
5 various purposes as an applicant represented.
6 It was no longer being used to support -- it
7 apparently was no longer going to be used to
8 support the shopping center. It was being
9 used as a leased lot that was used for parking
10 other vehicles.

11 However, now, the Applicant -- I
12 congratulate the Applicant for coming forward
13 to resolve all of the inconsistencies with the
14 property. So they're trying to get a special
15 exception, first of all, to lower the parking
16 requirement to address the issue on the site,
17 that there was an addition after the shopping
18 center was opened that increased the parking
19 requirement. They addressed the issue by
20 explaining that although that occurred, most
21 of the space within that addition was occupied
22 by technical equipment, equipment that did not

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1 generate any more traffic or parking
2 requirements, except for probably a service
3 technician.

4 So based on that, the location,
5 they asked for a reduction in the parking.
6 However, even though the parking is reduced,
7 they still have no more space on the primary
8 site, which is the shopping center site, to
9 add anymore spaces. So now they do need the
10 accessory parking lot in order to provide the
11 additional spaces. It's just at the accessory
12 parking lot, the way it is currently
13 configured, was not able to be occupied by
14 more than 13 spaces.

15 That seems to be a reasonable
16 conclusion based on the Exhibit 1. Exhibit 1
17 in the attachment was the photographs of the
18 site. You can see that the existing parking
19 lot flows down toward Benning Road, and there
20 is a paved area north of there, but in the
21 interim there is a service driveway that cuts
22 through the lot.

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1 So that answered one of the
2 questions that I had after the site visit, is
3 that the lot itself seems much bigger than the
4 exception parking lot. So why can't they
5 build more spaces?

6 Well, the complications about the
7 service drive, and the Applicant seemed to
8 indicate that there's quite a story behind --
9 there is probably a good story behind how a
10 portion of the property is taken up with the
11 driveway, a portion is occupied by a retaining
12 wall with dumpsters on it, and a portion
13 appears to be a place that was originally
14 designated for dumpsters.

15 So rather than address all of
16 that, we think the proposal to use the
17 existing accessory parking area to its full
18 capacity, which is 13 spaces, is a reasonable
19 one, and the possibility of expanding it
20 further to eliminate the service drive and
21 possibly eliminate the retaining wall seems to
22 be a difficult undertaking which may not be

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1 necessary.

2 So, in essence, we're supporting
3 the proposal in concept. However, we think
4 that the parking lots both in the shopping
5 center and in the accessory lot should be
6 brought into compliance, again, because of the
7 long-term goals of the area and to protect the
8 adjacent residential use, which is an
9 apartment building from what may become a very
10 active parking lot with the creation of the
11 laundromat and the other uses that will make
12 this a vibrant commercial center that
13 everybody wants to see.

14 BZA CHAIR MILLER: That's kind of
15 my question was how is it out of compliance.
16 Is it the surface is not up to standards?

17 MR. JACKSON: Oh, you're talking
18 about the surface? Well, our current
19 regulations are really moving toward
20 sustainability, and if you note, in 30, the
21 standards of N -- let's see -- 2303 don't talk
22 about impervious surface anymore. They make

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1 reference to an all weather surface. So we're
2 actually looking at impervious surfaces that
3 will allow water to seep into the ground.
4 We're looking at.

5 So, and I quote, in addition to
6 traditional impervious surface, allowable all
7 weather surfaces include porous or pervious
8 concrete, porous asphalt, mechanically
9 reinforced grass and so on.

10 So the Applicant has flexibility
11 in what they could use, and what we would like
12 to encourage them to do is working with
13 Department of Transportation, implement such
14 strategies as to make this a sustainable lot
15 as opposed to simply paving over what
16 currently exists.

17 The other issue is screening, and
18 we would contend that, frankly, if you have a
19 19 foot parking space, a 20 foot aisle and a
20 19 foot parking space, you do have sufficient
21 aisle for a one foot wide concrete wall that
22 meets the requirements of the zoning

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1 regulations.

2 Now, the concern is, again, we're
3 setting a standard. I think we have an
4 opportunity here to set a standard that would
5 meet the current regulations and for future
6 developments that come in, and I think there's
7 space, sufficient space based on the site plan
8 and the size of the lot to meet the
9 requirements for screening, again, about the
10 only concern about the screening along the
11 shared boundary with the apartment building.

12 We would also note that retaining
13 a chain linked fence is not screening. Beyond
14 that, the information of slats and fabrics,
15 all have been tried in other locations, but
16 over time those don't fare very well, and that
17 can be as much a detriment as an improvement
18 to the community.

19 So that's the issues we have with
20 the accessory lot. Now, with regard to --

21 BZA CHAIR MILLER: Before you move
22 though --

1 MR. JACKSON: Yes.

2 BZA CHAIR MILLER: -- I don't get
3 how it's resolved. With respect to the chain
4 linked fence issue --

5 MR. JACKSON: Right.

6 BZA CHAIR MILLER: -- are you of
7 the opinion that they can fit a wall there or
8 that they can't?

9 MR. JACKSON: They can.

10 BZA CHAIR MILLER: They can?

11 MR. JACKSON: They can with a one
12 foot wide wall, yes.

13 BZA CHAIR MILLER: Okay.

14 MR. JACKSON: Just based on the
15 required dimensions of the aisle and the
16 driveway and the parking lot, the parking
17 spaces, 19, 19, and --

18 COMMISSIONER TURNBULL: How high
19 would that have to be?

20 MR. JACKSON: Forty-two under the
21 regulations.

22 COMMISSIONER TURNBULL: Three and

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1 a half feet?

2 MR. JACKSON: Forty-two inches
3 tall, yes.

4 COMMISSIONER TURNBULL: Okay.
5 Thanks.

6 MR. JACKSON: Wait a minute.
7 Because it's only 12 inches thick.

8 And then would you like me to move
9 on to the existing parking lots?

10 BZA CHAIR MILLER: So that could
11 be either, before you move, either a wall or
12 evergreens?

13 MR. JACKSON: Well, the --

14 BZA CHAIR MILLER: Evergreens you
15 couldn't contain within one foot probably.

16 MR. JACKSON: Evergreens are
17 difficult to -- I don't think evergreens would
18 survive, frankly.

19 BZA CHAIR MILLER: Okay.

20 MR. JACKSON: Because it's without
21 enough of a planting strip. I think the
22 landscaping strip along the street has a

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1 better chance of surviving. More generous
2 space would be nice, but reasonably looking at
3 the site plan and the limitations, we think
4 what they proposed there is reasonable.

5 However, again, since the chain
6 link fence is not screening, and we want to
7 screen this parking lot which is going to be
8 very busy from the residences next door, we
9 think that the wall as stipulated in the
10 regulations is a reasonable approach.

11 BZA CHAIR MILLER: So you're of a
12 different opinion as to whether there's space
13 for it.

14 MR. JACKSON: Yes.

15 BZA CHAIR MILLER: They were
16 claiming there isn't. You're saying there is.

17 MR. JACKSON: Right. Well, I had
18 some conversations with the attorney for the
19 Applicant, and I wasn't expecting -- I
20 understood there was going to be a fence
21 there, but I wasn't expecting it was going to
22 be the same chain link fence. I thought they

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1 were going to put up something else, something
2 opaque.

3 But I think on further
4 consideration one foot is one foot, and if you
5 can build within one foot, I think it should
6 be done.

7 BZA CHAIR MILLER: And just one
8 more question before we move on. What regs.
9 were you referring to with respect to this
10 surface, you know, the pervious surface?

11 MR. JACKSON: Oh, 2117.10, but
12 those are repeated in Chapter 23. As you
13 noted, I think -- and the reason they're
14 repeated is that they want to make sure that
15 there's no missing the change in policy with
16 regard to the surface that's to be used in
17 parking lots and other areas.

18 It's repeated in 2303.1, all
19 weather surface in addition to impervious
20 surface, and so on and so forth. So the
21 regulation is consistent through the -- this
22 provision is consistent through the

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1 regulations. It's just repeated several times
2 to make sure it's not missed.

3 I would also mention the Applicant
4 has expressed some -- was not adverse to
5 working with the Department of Environment
6 with regard to recycling the materials that
7 were created on site. I have contacted the
8 Department of Environment, but at this time
9 there is no firm program in place to actually
10 undertake that.

11 MEMBER WALKER: And, Mr. Jackson,
12 are you of the opinion that there's a need for
13 the parking spaces in this accessory lot?

14 I mean, we have heard some
15 testimony about, you know, the server that's
16 on the second floor that doesn't create the
17 demand for parking, you know. A lot of space
18 is always available.

19 You know, do we really need an
20 accessory parking lot here to accommodate this
21 laundry facility?

22 MR. JACKSON: I think the utility

1 of this accessory lot is important for three
2 reasons. One is that we don't think that from
3 observation, basically observation, we don't
4 think this shopping center is operating at its
5 fully capacity. We think as time goes on and
6 we get a higher level of more substantial
7 occupants, tenants in the shopping center, and
8 of course, the laundromat, this will become a
9 much used center.

10 And, again, we're looking at a
11 long-term vision in the comp. plan for this
12 whole area to become more vibrant and more in
13 terms of the retail services and officers that
14 are in the area. So as that time goes on,
15 this is becoming very busy, and there really
16 are no options for on-street parking. On-
17 street parking is not allowed on Benning Road
18 and is not allowed on East Capitol in the
19 vicinity of the center.

20 So as such, this is the only
21 resource that's available to deal with the
22 parking demand of this site, and so we think

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1 it would be prudent that this resource could
2 be available because it would be consistent,
3 generally consistent, with the requirements of
4 the zoning regulations, but more importantly,
5 going forward, with the gradual changes that
6 are proposed by the Applicant that we expect
7 to see in this area in general, they'll be
8 needed.

9 COMMISSIONER TURNBULL: Have you
10 seen or do you notice are there any Metro
11 users that would be parking their car over
12 here?

13 MR. JACKSON: I'm sure the owners
14 of the shopping center would be very opposed
15 to heavy --

16 COMMISSIONER TURNBULL: Oh, I'm
17 sure.

18 MR. JACKSON: -- Metro parking. I
19 visited the site twice, and I saw no evidence
20 of that, but of course, unless you're there
21 for eight hours, you don't know what's going
22 on.

1 COMMISSIONER TURNBULL: You don't
2 know.

3 MR. JACKSON: But we note that the
4 Metro -- we had occasion to visit another site
5 nearby that's, as I say, the subject to some
6 serious interest in terms of redevelopment,
7 and it appeared that most of the Metro parkers
8 are shopping further north around Square 4139.
9 There's close proximity, and there's no meters
10 on the street.

11 Now, I'm referring to 45th Street
12 and Blaine Street to the north. So it's
13 conceivable that you'd be more inclined to
14 park up there just because there wouldn't be
15 any problem long term with the shopping center
16 planning.

17 BZA CHAIR MILLER: Any other
18 questions?

19 VICE CHAIR LOUD: Yes.

20 BZA CHAIR MILLER: Yes, go ahead.

21 VICE CHAIR LOUD: I just wanted to
22 follow up regarding your visit to the site.

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1 You said you've been up there twice. Have you
2 had an opportunity to review the current
3 landscaping?

4 MR. JACKSON: Well, this is an
5 interesting circumstance because if you look
6 at site plan, I think, Attachment No. 2 in the
7 OP report, this is --

8 VICE CHAIR LOUD: Is that Exhibit
9 2?

10 MR. JACKSON: Exhibit. I'm sorry.
11 Exhibit 2 in the OP report. Based on that we
12 pulled of D.C. land records, which is not a
13 survey, so based on D.C. land records, all of
14 the improvements the Applicant highlighted are
15 in public space such that the sign, the
16 landscaping in front of one corner of the lot
17 is not on their property so that the lot
18 proper has very little landscaping and does
19 not meet the five percent requirement.

20 But, again, we were moving forward
21 with this based on information that we have in
22 D.C. land records. We haven't got an actual

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1 survey of the property. So the Applicant has
2 -- I'm sure the Applicant can provide it on a
3 survey and show exactly where the landscaping
4 is on their property, and that would resolve
5 that.

6 But that would not be atypical of
7 what may have happened in 1950 when they --
8 1960s when they built this shopping center and
9 needed some more space for a sign. They stuck
10 it out in public space.

11 And if our file, if our records
12 are correct -- well, okay. I should rephrase
13 that -- if our GIS layer is correct, then the
14 only landscaping on the existing parking lot
15 will be two corners next to the six spaces,
16 six or seven spaces immediately adjacent to
17 the intersection of East Capitol and Benning
18 Road. Otherwise there is no landscaping on
19 the lot.

20 And, again, we would say that in
21 terms of sustainability, in terms of bringing
22 this parking lot and shopping center into the

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1 20th Century and making it set a standard for
2 future developments or redevelopments that
3 occur around it, we think the lot should be
4 approached with not just repaving, but doing
5 with surfaces that meet the growing
6 requirements, implementing strategies that are
7 consistent with what the DDOT policy is with
8 regard to the use of parking lots, and that it
9 be done properly as opposed to jus repaved and
10 continued to use, which is why we're also
11 saying that the existing parking lot should be
12 brought into conformance with the current
13 regulations with regard go landscaping and
14 surface, surface material.

15 VICE CHAIR LOUD: Well, on the one
16 hand, I can appreciate that and definitely the
17 law is what it is.

18 On the other hand, if that
19 landscaping of the public space and the public
20 is not landscaping its own space, that to me
21 would be a benefit to the community, and I'm
22 not sure how that's resolved here today.

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1 But I want to be a little bit more
2 familiar with what is happening in terms of
3 the landscaping piece. I'm looking at your
4 Exhibit 2, and it looks like at the northwest
5 corner of Lot 11 basically, the corner of
6 Benning Road and East Capitol, there's a
7 triangular shaped green space, and that's the
8 green space that you're saying is public
9 space.

10 MR. JACKSON: Well, again, based
11 on our land records -- I'm sorry -- based on
12 our GAS layer, which is based on D.C. land
13 records, the property lines of this property
14 and at the parking spaces that are
15 perpendicular to that -- that are, I guess,
16 perpendicular to the actual intersection,
17 beyond that appears to be public space.

18 But again, there may be a survey
19 that the Applicant has that shows somewhat
20 differently, and we don't think that it's
21 unreasonable for the Board in its wisdom to
22 consider, to weigh improvements to the public

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1 space compared to improvements on site. It's
2 still that analysis needs to be done, and you
3 probably need more information, as does the
4 Office of Planning, to know exactly what is
5 where.

6 VICE CHAIR LOUD: Just sort of
7 traveling down that path for a moment, just
8 looking at -- and you've been out to the site
9 -- and looking at that triangular corner
10 there, and Mr. Lopiano's testimony that five
11 percent of the parking lot area has been
12 landscaped, would that be consistent with your
13 understanding based on your site visit?

14 It looks to me like there's a
15 section of this triangular area that's been
16 landscaped, but that the balance of it is
17 grass it looks like, just regular grass
18 growing, but there's been a section that has
19 been carved out, mulched. Some liriope has
20 been planted.

21 MR. JACKSON: I think when you
22 look at the purpose for putting landscaping in

1 the parking lot is not only to -- is best
2 served if the landscaping is in the parking
3 lot, that is, you have green spaces, green
4 sections. You've got area that you would
5 actually accept water rather than allow it to
6 run off.

7 In the repaving of their lot, if
8 they choose to -- and we would encourage them
9 to -- you'd get more sustainable approaches
10 to doing that such that you may actually have
11 landscaping as part of a lot that would still
12 be on the parking spaces or you would use
13 other amenities, and that amenity right now is
14 very remote from the center. The landscaping
15 amenity may be even more useful if it's next
16 to the building, around the building, around
17 the places where people are walking and
18 walking across the lot and in front of the
19 building.

20 So I think the opportunity here is
21 although the improvements to the public right-
22 of-way is good, it's still in the public

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1 right-of-way. It doesn't benefit the shopping
2 center parking lot proper, and we think that
3 some real consideration should be given to
4 what should be done to the parking lot proper
5 to make it consistent with the intent of our
6 regulations.

7 VICE CHAIR LOUD: Okay. Thank
8 you.

9 BZA CHAIR MILLER: I just want to
10 ask you is the surface out of compliance. I
11 mean, is there a way to say it's out of
12 compliance? It looks bad in these pictures,
13 but is it clearly out of compliance or are you
14 just saying they should be required to meet a
15 higher standard now?

16 MR. JACKSON: Well, it is not in
17 good condition. So in terms of the condition
18 of the existing parking lot, it's not in
19 compliance. It's rutted. We had occasion
20 when we took our car in when you get in one of
21 those holes it's hard to get out, and you can
22 see the condition of the surface.

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1 However, the Applicant is working
2 with the department environment and with other
3 agencies to look at the circumstances on site,
4 and they're moving toward a solution which
5 would be -- which appears it sounds as if it
6 would be repaving the lot after they get an
7 okay.

8 What we're saying is that simply
9 repaving the lot is one option. We think the
10 better option is to upgrade the lot, the base
11 and the amenity of this facility since that is
12 consistent with current regulations because
13 the current regulations look forward to making
14 all of the lots in the District sustainable.
15 Repaving the lot will make this a sustainable
16 facility, and I think in the long term it's a
17 benefit for the Applicant, the shopping
18 center, and the community.

19 So that's what we're encouraging
20 the applicant to do, and that's why we made
21 the conditions as they are.

22 BZA CHAIR MILLER: Okay. Any

1 other questions by Board members?

2 Oh, I have a question. The one-
3 year term.

4 MR. JACKSON: Yes.

5 BZA CHAIR MILLER: What's that
6 for?

7 MR. JACKSON: To make sure
8 everything is done in accordance with the
9 Board's wishes. I think the Board has
10 admitted itself that on occasion we put
11 conditions in place and we never know if
12 they're adhered to.

13 If the Board were to approve the
14 current requirements, I think, of one term, I
15 think in one year we could see whether or not
16 those requirements were met and, more
17 importantly, see whether or not those
18 requirements really were sufficient to just
19 issues that have occurred during that year.

20 We currently do not have the dry
21 cleaners or the laundry open, but of course,
22 when that happens, the entire dynamic of this

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1 center will change. We currently are seeing
2 a changeover in the uses that are on the site.
3 When that happens, again, that would add to a
4 change in dynamic, and so when that happens,
5 we may go back and say, well, what was done
6 was sufficient. It's serving a purpose or you
7 may decide that additional changes may be
8 necessary.

9 I was also thinking in terms of if
10 the Applicant had proposed something that was
11 an alternative solution to the screening
12 problem other than a brick wall, like that was
13 put in place. In a year's time we could see
14 whether that served the purpose that it
15 should.

16 So we've got a proposed screen.
17 That's landscaping. We've got a proposed
18 screen that's something else along the
19 property boundary. I think in a year's time
20 you could actually see whether the trees
21 survived or the other screen worked on the
22 accessory lot and see what the status of the

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1 parking lot on the principal property was at
2 that time, too, to see if everything was done
3 according to DDOT standards, Chapter 23, and
4 so forth.

5 BZA CHAIR MILLER: As far as
6 seeing that the order is implemented, for
7 instance, if we were to require a landscaping
8 plan, okay, and surfacing, et cetera, prior to
9 getting the permit or certificate of
10 occupancy, would the ZA be in a position to,
11 you know, determine that they've done what
12 they're supposed to do, or you're saying that
13 even if there's a plan that we have to make
14 sure that they actually plant the trees or
15 whatever?

16 MR. JACKSON: Well, I'm thinking
17 more in terms of planting the trees and
18 surviving for a year. Again, we have -- now,
19 we've had the opposite where an Applicant
20 comes back repeatedly over 20 years every five
21 years, and they've maintained their plans and
22 they've done a good job, and at the end of a

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1 period, you've said, well, you've done it for
2 over 20 years. It's unlikely you're going to
3 change that. So it's open ended.

4 Here we're instituting something
5 new. For 50 years this lot has not had
6 anything. It has been fenced off. It has got
7 barbed wire. It hasn't really been admitted
8 to the community because it wasn't really
9 intended to serve the community. It was
10 serving other purposes.

11 So now we're changing over to
12 something different, something live that will
13 have to be maintained, and the Applicant
14 admitted they're not really sure if the trees
15 get -- if all the plants get watered.

16 If there would be some incentive
17 -- I'll rephrase that -- urgency in making
18 sure that everything was maintained
19 appropriately at least for a year to make sure
20 that when they came back for renewal of the
21 special exception, they were able to -- and it
22 would become more, I guess, realistically

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1 speaking, it's in your best interest to make
2 it part of your work plan and to keep doing it
3 on a regular basis.

4 When it gets ingrained, then at
5 that year if everything is in place and
6 everything is sufficient, you could grant a
7 much longer period of time because it would be
8 a part of the established pattern of business,
9 the way of doing business on the property.

10 At this point we don't have that
11 pattern ingrained, and we're dealing with a
12 new owner. That was our concern.

13 BZA CHAIR MILLER: Okay, and are
14 you familiar with any other instance where
15 we've had a term of one year?

16 MR. JACKSON: Well, the first term
17 of this application was one year. The first
18 two terms were one year, and then they didn't
19 come back. In the second application, it was
20 two and it disappeared.

21 So we've seen other applications
22 not with parking lots. Most of the ones that

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1 I've seen actually have been in existence 20
2 years or more, and they were still coming back
3 for just one or two-year extensions.

4 But the Board, in their wisdom,
5 looking at the pattern over time of continuing
6 compliance and no degradation in the values
7 that were originally established, felt that
8 the time was right to change it, which could
9 happen in this case, too.

10 BZA CHAIR MILLER: Okay. Thank
11 you.

12 Other questions?

13 (No response.)

14 BZA CHAIR MILLER: Does the
15 Applicant have a copy of the Office of
16 Planning report? Do you have any questions
17 for Mr. Jackson?

18 MS. RODDY: No, we do not.

19 BZA CHAIR MILLER: Okay. I think,
20 you know, we'll follow up on some of those
21 things with you, but let me just see. I don't
22 think there's anybody else here who's going to

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1 be testifying, and I just want to double check
2 at this point.

3 Is there anybody here from the ANC
4 who wishes to testify?

5 (No response.)

6 BZA CHAIR MILLER: Not hearing
7 from anybody we already made reference to
8 their report. Speaking of their report, Ms.
9 Jackson, they did ask that there be a traffic
10 study don by DDOT. Did you talk to DDOT or
11 has there been any communications with DDOT on
12 this application?

13 MR. JACKSON: I forwarded their
14 request to the Department of Transportation
15 and asked if they had any comments, and to
16 date we haven't received any response. So
17 that's all we know at this point.

18 BZA CHAIR MILLER: Okay. Office
19 of Planning didn't have concern with respect
20 to congestion or traffic?

21 MR. JACKSON: Well, the existing
22 conditions, given our site visit, it seemed

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1 fairly tame. Again, the shopping center is
2 not working to its full capacity. We think
3 the real impacts of this -- I think in talking
4 to the single member district representative,
5 they were talking more about the conflicts
6 between the bus stop, the turning movements
7 into and out of the center, and how that
8 conflict might come back to -- might affect
9 the increased usage of the accessory lot by
10 the dry cleaners. At this point without a
11 traffic study, we couldn't project that, and
12 it would be hard to project what's going to
13 happen with the cleaners -- I'm sorry -- with
14 the laundry because it will be the hottest
15 thing on wheels when it first opens, but over
16 time it could modify itself or since it's a
17 good idea, three or four may open in the area
18 and actually the problem would go away.

19 BZA CHAIR MILLER: Okay. Thank
20 you.

21 Is there anybody here who wishes
22 to testify in support of this application?

1 (No response.)

2 BZA CHAIR MILLER: Anybody who
3 wishes to testify in opposition?

4 (No response.)

5 BZA CHAIR MILLER: Okay. Not
6 hearing from anyone, I think we can go to
7 final questions from the Board for the
8 Applicant.

9 I have a question. Did you not
10 seek a special exception just to even operate
11 the main parking lot since you said that the
12 previous orders had expired and you want to
13 come into compliance? Don't you need an order
14 on that?

15 MS. RODDY: We're seeking a
16 special exception under 352, as well as for
17 the parking lot within the R-5-A zoned
18 district, in addition to on a separate site,
19 and the reduction of spaces, and that's what
20 I think I was trying to get to in the
21 beginning of our presentation.

22 BZA CHAIR MILLER: You didn't

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1 amend your application in writing, right? Is
2 that what you're saying?

3 MS. RODDY: Correct.

4 BZA CHAIR MILLER: You wanted to
5 do it here.

6 MS. RODDY: Correct.

7 BZA CHAIR MILLER: Okay. Once
8 more with feeling. Three, fifty-two you're
9 citing because it refers back to something.

10 MS. RODDY: I'm sorry. It refers
11 back to 214, 214.

12 MEMBER DETTMAN: Madam Chair.

13 BZA CHAIR MILLER: Why isn't it --
14 what about 213 though? That's my question.
15 I think that Mr. Jackson was talking -- I'm
16 sorry -- I think Mr. Jackson was talking about
17 the original parking lot's special exception
18 having expired. No?

19 MR. JACKSON: No, I was referring
20 to accessory parking lot. The special
21 exception expired. The existing parking lot
22 on the principal -- the parking lot on the

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1 shopping center site is accessory to the
2 shopping center.

3 BZA CHAIR MILLER: Oh, it's under
4 that. Oh, okay.

5 MR. JACKSON: We treated that as
6 an accessory use to the shopping center,
7 whereas the parking lot across the alley was
8 established by a special exception and wasn't
9 linked to the shopping center at all. There's
10 no reference to it being linked to it.
11 There's no requirement. It doesn't say
12 there's a requirement for it. It just says it
13 will be accessory to the shopping center, but
14 it doesn't say it's meeting any type of
15 requirement. It's just there.

16 BZA CHAIR MILLER: Thank you.

17 Okay, okay. Is that what you
18 wanted to tell me?

19 MEMBER DETTMAN: No, I just wanted
20 to sort of get my thoughts, my read on this
21 because there has been a lot said about 214
22 and 2116 and all of this stuff.

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1 First, I thought I heard sort of
2 the accessory parking lot as it's labeled on
3 DCOP's report categorized as a parking lot,
4 and I thought I heard 2303 sort of thrown
5 around. It's my opinion that it's not a
6 parking lot. If you look at the definition of
7 a parking lot, it says, "Attractive land used
8 for the temporary parking of motor vehicles
9 when the use is not accessory to any other
10 use."

11 BZA CHAIR MILLER: What are you
12 reading from?

13 MEMBER DETTMAN: From the
14 definitions.

15 BZA CHAIR MILLER: No, what reg.,
16 so everybody can follows?

17 MEMBER DETTMAN: This is actually
18 under 199.1, the definition of parking lot.
19 And it specifically said that in order to be
20 a parking lot, it cannot be accessory to any
21 other use.

22 And so in this case we're talking

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1 about accessory parking spaces. So in terms
2 of 2303, I don't think 2303 applies in terms
3 of the screening requirement and all of that.

4 Now, with respect to 214 and
5 whether or not that applies, 214.1 begins by
6 saying accessory parking -- accessory
7 passenger automobile parking spaces elsewhere
8 than on the same lot or part of the lot on
9 which any principal R-1 use is permitted.

10 The property is zoned C-3-A. We
11 are not able to put a principal R-1 use onto
12 a C-3-A property. We can't do it. What
13 governs the uses of a C-3-A property is 741,
14 and so since we can't -- since it references
15 the qualifier is that any part of a lot on
16 which a principal R-1 use is permitted and
17 since a principal R-1 use is not permitted on
18 a C-3-A lot, 214 is not applied, and we have
19 to go elsewhere. For me that elsewhere is
20 2116.5, which I believe the Applicant
21 originally applied for, relief under 2116.5.

22 And because 214 reads like that, I

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1 think I'm going to guess that last week when
2 Mr. Goldstein was here from DCOP, this is why
3 he opted to change the requested relief from
4 214 to 2116, because we have this difference
5 in zoning. We have a C-3-A lot, and we're
6 looking to locate the accessory parking on an
7 R-5-A.

8 And so because I think we need to
9 go elsewhere than 214, I think 2116 is more
10 appropriate. Twenty-one, sixteen, point,
11 five, "except as provided in 2117.9, which I
12 believe regulates rowhouse dwelling parking,
13 if approved by the BZA pursuant to 3104,
14 special exception, open parking spaces
15 accessory to any building or structure may be
16 located anywhere on the lot upon which the
17 building or structure is located or elsewhere.

18 And it says in accordance with
19 2116.6 through 2116.9, and it's sort of .6
20 through .9, sort of lays out the criteria the
21 Board should use to approve or disapprove
22 these.

1 It appears that in 2116 there's no
2 screening, landscaping, buffering, any sort of
3 requirement. But if the Board felt it was
4 necessary in their analysis through the
5 testimony, through the record, if we saw a
6 need to impose some sort of criteria, we have
7 that opportunity under 2116.9. It says the
8 Board may impose conditions on any accessory
9 or non-accessory parking spaces as to
10 screening, coping, setbacks, fences, et
11 cetera, location of entrances, and so that's
12 where I think we should be, 2116 for the
13 location off site and 2108 for the reduction.

14 Now, again, if we feel that
15 screening is a big issue, then we should take
16 advantage of 2116.9. However, 2117 is going
17 to apply. I feel that 2117 applies to the
18 Applicant as well. However, it's not before
19 the Board, and so if we were to approve this
20 application, the applicant will go to DCRA, I
21 assume, to get a C of O to locate these things
22 off site.

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1 I'm assuming that DCRA, the ZA is
2 going to do a thorough zoning analysis
3 together with the regs. as well as the BZA
4 order, and he's going to look at 2117, and if
5 he feels a need based on the plans that the
6 Applicant is going to submit, that they don't
7 meet 2117.11, which deals with the
8 landscaping, he may or may not kick it back to
9 the BZA saying that you don't meet 2117.11 and
10 it doesn't appear that in the BZA order you
11 didn't get relief from that.

12 So that's sort of how I can see it
13 sort of stepping through, and I think the main
14 point there is that I don't think 214 applies.

15 BZA CHAIR MILLER: I'm with you up
16 until why doesn't 2117 apply.

17 MEMBER DETTMAN: I think in the
18 past on several cases where we've seen
19 proposals for multiple dwelling structures in
20 an R-5 zone, the Board has sort of done a
21 thorough zoning analysis. Maybe it was for
22 setback or maybe it was for rear yard or

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1 something, FAR, and the Board in sort of
2 addressing the amount of parking that was
3 being provided on the site, we've always sort
4 of stepped into 2117, which I think is
5 appropriate.

6 So my comments about 2117 can go
7 either way. I could see the Board looking to
8 2117 in terms of our zoning analysis today or
9 when we deliberate, or I could see that, well,
10 it's not before the Board and the ZA in the
11 DCRA zoning analysis will refer to 2117.

12 BZA CHAIR MILLER: Why do you say
13 it's not before the Board? I mean, we're
14 looking at -- it may not be called a parking
15 lot under the definition, but it is in reality
16 a parking lot. But is that your assessment as
17 to why 2117 isn't before us?

18 MEMBER DETTMAN: No. Twenty-one,
19 seventeen, point, one begins by saying the
20 parking spaces required by this chapter shall
21 be provided and maintained so long, and so
22 2117 applies to all parking spaces required.

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1 We'll looking at -- this case is sort of
2 looking at the spaces that are required by the
3 operation of this retail center.

4 And so that being said, I think
5 the Board could look at 2117 and analyze this
6 case to see whether or not they meet the five
7 percent landscaping that's required under
8 2117.11.

9 Though I may have missed
10 something, it seems like the plans that we
11 have in the record right now, they don't meet
12 the five percent landscaping, and I think the
13 Applicant knows that.

14 I'm seeing no. So I'll retract
15 that. I think the Applicant believes that
16 they meet the five percent, and so maybe
17 that's why they didn't. Maybe they recognized
18 that 2117.11 applies. They feel that they
19 meet the five percent, and they didn't request
20 it from the Board.

21 BZA CHAIR MILLER: Okay. Because
22 even though -- I guess my point is that even

1 though we may not be calling this a parking
2 lot, we are talking about required spaces, and
3 that's what these regulations go to. So I
4 would think that if we're talking about the
5 spaces with the area being in compliance or
6 not, that we would look at the landscaping and
7 lighting and things like that.

8 Anyway, but I open it up for the
9 Applicant's response. I think Mr. Dettman did
10 a good job actually zeroing in on what looks
11 like the applicable section. Do you have
12 comments to that?

13 MR. LOPIANO: I had one question
14 for Commissioner Dettman.

15 When you're referencing the five
16 percent requirement, are you talking about the
17 parking spaces on Lot 8, the R-5-A lot?

18 MEMBER DETTMAN: Actually it would
19 be both because 2117.11, the qualifier is that
20 the five percent landscaping requirement
21 applies to parking areas that provide in
22 excess of ten parking spaces, and in this case

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1 since the accessory lot is going to contain
2 13, the five percent--

3 MR. JACKSON: But you're saying it
4 also applies to the existing lot. I'm just
5 trying to figure out how to do the calculation
6 because we do have on the R-5-A lot we do have
7 in excess of five percent landscaping. So
8 under your analysis, how do you do that five
9 percent calculation?

10 MEMBER DETTMAN: Whether it's
11 separate or combined, right. That's a good
12 question. Does the five percent apply to --
13 do you take both lots and say, well,
14 collectively it provides five percent, or is
15 five percent applied to both lots? Is that
16 your question?

17 MR. LOPIANO: Essentially.

18 VICE CHAIR LOUD: I think it's a
19 matter of interpretation, but if you look at
20 the literal reading of at least 2117.11, the
21 sentence reads that the landscaping shall
22 cover a minimum of five percent of the total

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1 area devoted to parking.

2 So that would suggest to me that
3 it would be the combined, since we're talking
4 about the two separate lots here, the total
5 parking area for both lots, but again, that's
6 subject to interpretation, and if others have
7 thoughts I'd like to hear.

8 BZA CHAIR MILLER: They're on
9 separate lots, aren't they? So I don't think
10 it would apply to each lot, personally. I
11 mean, I'm not sure. I've got to look if I
12 can pinpoint it in the reg., but that's what
13 I think is normally the case.

14 MR. LOPIANO: The way I read that,
15 Commissioner, is that the total is to make
16 sure that you're taking the drive aisles, the
17 parking spaces, the total parking area, not
18 just the parking spaces themselves. I don't
19 think it refers to multiple lots, totally not
20 multiple lots. It means to make sure you take
21 the total of all the parking facility, whether
22 it's devoted to landscaping, parking aisles,

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1 parking spaces or whatever.

2 That's my interpretation.

3 COMMISSIONER TURNBULL: Madam
4 Chair, I think I would agree with what you had
5 just said. My feeling is that the accessory
6 lot can always go away, and you're left with
7 the main principal lot for the space, and
8 that's the lot that also has to come up to the
9 five percent.

10 It's just a gut feeling that I
11 have, and in looking at how you would -- as I
12 say, if the other one goes away, you're left
13 with the main lot just serving.

14 MEMBER WALKER: I agree, Madam
15 Chair. I certainly don't think the drafters
16 contemplated the situation where you had an
17 accessory lot with landscaping, say, covering
18 ten percent of the total and then a primary
19 lot with nothing.

20 MEMBER DETTMAN: I'm actually in
21 agreement with Mr. Loud. As it reads, I agree
22 with Mr. Loud. However, I will say that it

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1 seems, you know, you can put two and a half
2 percent on one and two and a half on the
3 other. Then the other one goes away, like Mr.
4 Turnbull said, and so I just sort of remind my
5 colleagues that we do have 2117.9, which
6 allows us to impose conditions as we see
7 appropriate.

8 Sorry. Twenty-one, sixteen,
9 point, nine.

10 BZA CHAIR MILLER: Okay. Well,
11 let me just ask the Applicant about the issues
12 that Mr. Jackson raised. Certainly, well,
13 we've just talked about landscaping. I think
14 Mr. Jackson was referring at least to the
15 accessory lot, whereas the Applicant had said
16 there's five percent and Mr. Jackson says
17 there isn't. That's one issue.

18 Another issue is is there room for
19 a wall versus the chain link fence. Yeah?
20 Did I make a mistake?

21 MR. JACKSON: I just want to
22 clarify.

1 BZA CHAIR MILLER: Okay. Go
2 ahead.

3 MR. JACKSON: Office of planning
4 does not dispute the Applicant's claim that
5 five percent of the accessory lot is
6 landscape. What we're disputing is that the
7 use of a chain link fence is not screening
8 such that they would need to screen the
9 portion of the lot that actually borders the
10 residences.

11 That's our stipulation, and we
12 just indicated that we think there's a foot
13 available to build that one foot wall if they
14 choose to.

15 BZA CHAIR MILLER: Okay. Let's
16 just take one issue at a time then. Do you
17 want to address whether you can put a wall
18 there?

19 MR. LOPIANO: I'd like to say for
20 the record that I am not thoroughly confused.
21 We came here because an area -- I don't want
22 to call it a lot -- but an area that was used

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1 for parking for 50 years and that had been
2 approved by, I assume, a predecessor to this
3 body, was approved for that use, was by
4 neglect out of compliance, and we were trying
5 to get that into compliance.

6 And it seems like we've opened up
7 the proverbial Pandora's box here. I could
8 not, not being an attorney, I could not follow
9 this conversation that went on, but it seems
10 like the scope of what we're asking for has
11 suddenly enlarged and created a lot of
12 concerns for me as a representative of the
13 owner.

14 BZA CHAIR MILLER: All right.
15 Let's back up a little bit. First of all,
16 we're trying to figure out which regulations
17 apply, but separate from that, I mean, it's
18 basic. You're coming here to come into
19 compliance. Okay? It's not just the number
20 of spaces that you're coming here to get a
21 reduction of. That's kind of the simpler
22 issue, but then if we're going to approve a

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1 special exception, we want to make sure you're
2 in compliance.

3 And Mr. Jackson says, number one,
4 there is a regulation that requires that there
5 be a screening between the apartment building
6 and the residential property and the parking
7 lot. Okay. So that's not that complicated an
8 issue. It's not a huge can of worms.

9 So that was number one. Number
10 two was if the surface is in terrible
11 condition, he's saying in order to come into
12 compliance with the standards today, you need
13 to rehabilitate the surface somehow.

14 And then the third thing was
15 landscaping that our regs. call for, five
16 percent landscaping. Do you have it? Do you
17 not have it? Can you -- it's not that
18 difficult either maybe, finding another spot
19 to plant to come into the five percent.

20 But that's the way I see it, more
21 simply at least, at this point.

22 MR. LOPIANO: Okay. Well, I am

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1 prepared to speak about these issues, to
2 respond to them, and there's another issue
3 also that you did not have on your list that
4 I wish to respond to, and that's what I'll
5 take up first.

6 The notion that we will make this
7 substantial investment for only a one year of
8 use is -- even if I were to recommend this to
9 -- were willing to recommend this to our
10 investors, they would never approve it.
11 You're asking for a substantial investment to
12 improve the community, improve the center and
13 its functioning, and you're going to say,
14 okay, you're guaranteed that use for one year.

15 I think it's onerous, and I don't
16 think we'll go forward under those conditions.

17 To address the wall --

18 MS. RODDY: I'm sorry. While
19 we're still on the one year term, I might as
20 well address this now. I think that there are
21 a lot of things that are really enforcement
22 issues. I think that if they want to insure

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1 that we're consistent with DDOT's standards,
2 this is an issue that will come up when we go
3 to the Zoning Administrator, and I think that
4 there is another arena, I guess, really to
5 insure that we are compliant and that we are
6 providing the striping and the paving and such
7 when we go forward for the certificate of
8 occupancy, and I think that that would be an
9 appropriate time to raise those issues. I
10 don't think the one-year term is necessary to
11 address those.

12 MR. LOPIANO: The second issue
13 about the condition of the existing lot, which
14 would be the lot that is in the C-3-A
15 District, 39 spots serving the existing
16 center, it is in bad condition. We've known
17 this since we purchased it. We've had a
18 contract to repair and resurface, reseal and
19 restripe that lot, to bring it up to code.

20 We have been prevented from doing
21 that by the D.C. Department of Environment's
22 regulations about having to have wells there

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1 for a particular length of time to test the
2 ground water. Once those wells are abandoned
3 consistent with the DDOE regulations, we'll be
4 able to implement that resurfacing.

5 And I agree. I've parked in the
6 ruts. Those ruts have been there for years.
7 It's not of our doing, and we fully intend to
8 correct that, but we cannot do that because
9 that resurfacing will change the level of the
10 parking lot. It will bury the wells or
11 contaminate the wells, and we're not allowed
12 to do that until the testing is done.

13 We fully intend to do it. It's
14 under contract with the paver that's done all
15 of our other shopping centers, and glad to
16 have that done prior to getting the
17 certificate of occupancy for the existing.

18 I want to be clear though, and I
19 think Mr. Jackson was clear, but just to make
20 sure that we're all on the same page, we are
21 not required by any code, D.C. code that I
22 know of to pave this with a pervious surface.

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1 I think the zoning code at one time or the
2 parking code regulation at one time required
3 an impervious surface and now they're saying,
4 well, it doesn't have to be impervious
5 anymore. It can be other than impervious.

6 We are willing to look at that for
7 the accessory lot, the lot that's in the R-5-
8 A, but to reconstruct the entire parking lot
9 for the existing center is economically
10 prohibitive. We could not do that. We don't
11 think there's any basis for requiring us to do
12 that.

13 Okay. As to the landscaping for
14 the existing lot, I didn't analyze that
15 because I didn't think it would be subject of
16 this proceeding. So I can't tell you if we're
17 five percent.

18 I can tell you that it is what it
19 was when we purchased it. There is no other
20 space on the existing center to plant
21 anything. We would have to eliminate
22 something to create a planting area.

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1 Whether or not that is public
2 space or our space, I'd have to check the
3 survey. I assume that the triangular island
4 was our space because we maintain it. We
5 plant it. We have a sign on it.

6 But to be truthfully honest with
7 you, I'd have to go back to the survey to see,
8 but I think it serves the purpose of the
9 landscaping requirement, which is to create
10 green, to create some relief.

11 But just to be clear, that if now
12 by coming here to be compliant with the number
13 of spaces, by reactivating the special
14 exception for this existing lot, we are now
15 going to be subject to bringing the other lot
16 into compliance for, you know, landscaping
17 requirements and so forth. That is going to
18 be something that we'd have to analyze and
19 certainly I think it would change what our
20 request is here because we'd have to eliminate
21 parking spaces in order to put the additional
22 landscaping on the existing lot.

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1 So I don't know if through all of
2 this discussion if that has become an issue.
3 I can't speak to whether we have five percent
4 on the existing lot. We have what we bought.

5 In terms of the wall, we have
6 something between six inches and a foot, six
7 inches on that side of the lot. It's hard to
8 say without having a surveyor out there. The
9 survey says we have 60 feet. We're using
10 about a little over 61 feet for curb parking
11 and aisle and so forth. So we've got enough
12 to put a thin wall up.

13 But I would ask the question:
14 what are we screening? Because I can tell you
15 for certain that a 42 inch wall is not going
16 to screen anything from the residential area.
17 The first window on that wall is well above 42
18 inches. The ground is probably at 42 inches.
19 So a 42 inch wall is not going to screen off
20 that building from anything. It's going to
21 screen off their garbage cans basically.

22 So I would say that it's not a

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1 good investment of our money, and I don't
2 think it's a requirement that's in the spirit
3 of why you'd have a screening wall, which is
4 to screen the headlights from somebody's
5 window, you know, screen the activity at
6 night. It's not going to screen off anything
7 because the windows that are in the existing
8 building are going to be well above a 42 inch
9 wall.

10 I think it's a large investment of
11 masonry to fulfill a requirement, but not to
12 really accomplish any actual screening.

13 I think that was all the issues.
14 If there's anything else, I can --

15 BZA CHAIR MILLER: I just want to
16 ask a few more questions.

17 MR. LOPIANO: Sure.

18 BZA CHAIR MILLER: If you have an
19 opinion. I mean, I said to Mr. Jackson when
20 do you know that we've ever imposed a term of
21 one year, that is, I don't think we have ever,
22 this Board. But we do impose terms for

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1 purposes, especially when it's new, of seeing
2 whether something is working.

3 Do you have an opinion as to what
4 you think would be a reasonable term? We do
5 do it for, quote, parking lots even though we
6 might not be calling this a parking lot.

7 MR. LOPIANO: Well, my response to
8 that would be from an owner's perspective we
9 would like that to be ten years because I'd
10 like to be able to assure my tenant that
11 during his initial term of ten years he will
12 be assured of having access to this parking.
13 After that he has options and so if the
14 parking goes away, he doesn't have to renew
15 his options.

16 But he's making a \$987,000
17 investment in the laundromat, and I'd like to
18 be able to assure him that if this parking is
19 available, that it will be available for the
20 term of his lease. So that would be ten
21 years.

22 BZA CHAIR MILLER: Okay, and I

1 mean, basically what we like to do is, you
2 know, carve conditions that are appropriate or
3 serve a purpose basically, and often with
4 parking lot situations, for instance, we may
5 require that there be a maintenance contract
6 in place, a landscaping contract in place so
7 that we can be assured that that's ongoing.

8 And I think as Ms. Roddy said,
9 that if the landscaping deteriorates terribly,
10 it does become an enforcement issue, and they
11 can see that, oh, you're not following your
12 maintenance contract or whatever.

13 So did you say that you have a
14 landscaping or maintenance contract already
15 for what is it, the main --

16 MR. LOPIANO: Yes, we have a one-
17 year landscaping contract that would typically
18 be renewed several times before we went out to
19 bid again, but yes, it's a one-year contract.
20 It's responsible for weeding, mulching,
21 watering, replacing distressed plants,
22 planting seasonal or annual flowers and so on.

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1 And that contract is in place, and it's the
2 way we operate all of our centers and the same
3 with parking lot cleaning and so on.

4 BZA CHAIR MILLER: Would you be
5 willing to put into the record one of your
6 contracts that you would be using? I mean, I
7 assume it would be similar for all of your
8 areas.

9 MR. LOPIANO: Oh, certainly. I'd
10 be willing to put in the actual contract. Not
11 a problem.

12 BZA CHAIR MILLER: Okay. Are
13 there other questions?

14 (No response.)

15 BZA CHAIR MILLER: I think what we
16 should do in this case is, you know, just
17 determine if there's any other information
18 that the Board wants in the record and then
19 set this off for decision making.

20 So one would be that contract for
21 maintenance. Another would be I guess there's
22 the question about -- I'm not sure -- related

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1 to the surfacing. Is there some type of a --
2 you know, you said there's some kind of --
3 we'd have some kind of guarantee that you're
4 going to be resurfacing the main lot prior to
5 the certificate of occupancy.

6 That could be a condition, or else
7 you want to -- if there's anything else you
8 want to put in the record to indicate, you k
9 now, that schedule or something.

10 I think we should leave the record
11 open. If you could just address -- I think
12 you've verbally done this fairly well, but
13 look at the question of the landscaping,
14 whether you comply or don't comply.

15 MR. LOPIANO: Both lots.

16 BZA CHAIR MILLER: Both lots, and
17 that, for instance, you know, that piece and
18 just give us a little bit more information.
19 For instance, if we were to decide that, okay,
20 you don't need to do more maybe because you do
21 this much. So we have an understanding at
22 least what you are doing and, you know, why

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1 you can't met it if that's the case.

2 Anything else?

3 VICE CHAIR LOUD: Madam Chair, may
4 I weigh in?

5 And just on the Lot 11
6 landscaping, if we could have a landscape
7 plan, something that has, for example, an
8 actual rendering of that triangular lot and
9 then the specific plants that are part of the
10 landscape plan, and even a layout of where
11 those pants are going to be positioned in that
12 triangular lot, that would be very helpful.

13 MR. LOPIANO: I can give you a
14 plan and identify the bushes. I don't think
15 I'm going to be able to give you a rendering
16 in the short time frame. I mean, that's not
17 what our landscaping contractor can do.

18 BZA CHAIR MILLER: Can you submit
19 a picture?

20 VICE CHAIR LOUD: Even if it's
21 hand drawn that's fine.

22 BZA CHAIR MILLER: Can you submit

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1 a picture?

2 MR. LOPIANO: I can take a
3 picture, yes. Okay.

4 BZA CHAIR MILLER: Would that
5 suffice?

6 VICE CHAIR LOUD: As long as the
7 picture captures the entire triangular area
8 and where within the triangular area the
9 Applicant intends to place different
10 plantings.

11 And I'm not trying to make it
12 burdensome for him. I'm just trying to get an
13 idea of what the landscaping will look like
14 after.

15 MR. LOPIANO: Oh, it's in. The
16 landscaping is in.

17 VICE CHAIR LOUD: Yeah, but I've
18 looked at the different exhibits.

19 MR. LOPIANO: Oh, you're talking
20 about the accessory lot now.

21 VICE CHAIR LOUD: No, I'm talking
22 about Lot 11.

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1 MR. LOPIANO: Well, Lot 11 the
2 landscaping is in.

3 VICE CHAIR LOUD: And I've looked
4 at some of the pictures, but the angles don't
5 give me a clear sense.

6 MR. LOPIANO: Yeah, okay.

7 VICE CHAIR LOUD: I mean, there's
8 one huge aerial shot where I can't see.

9 MR. LOPIANO: No, we can give you
10 pictures and a layout of what the plants are.

11 VICE CHAIR LOUD: Okay, and that's
12 important to me. I'm not -- I don't know
13 about other Board members, but I'm not so hung
14 up on the five percent public space or not
15 public space, but I do think that that entire
16 triangular area is ripe for landscaping, and
17 the images I've seen have restricted the
18 landscaping to a very small part of that
19 triangular area. So that's what I'm trying to
20 get a better visual on.

21 BZA CHAIR MILLER: Could you just
22 also clarify in a supplemental proceeding. We

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1 touched on this before, but what your exact
2 plans are with respect to the surfacing of
3 each lot. I know they were different. I
4 think you said the first one is going to be
5 impervious, whatever is going to happen with
6 that, and then the second one I believe you
7 said today would be pervious or whatever.

8 MR. LOPIANO: I said we'd be
9 willing to consider that. I would have to
10 discuss the pros and cons of that with our
11 contractor to see what's required to create
12 that.

13 BZA CHAIR MILLER: Okay. Well,
14 whatever your position is, just so that we
15 understand what you are planning to do and
16 willing to do, and then we have all the
17 information to deliberate.

18 MR. LOPIANO: We will submit for
19 the record a design scope for the repavement
20 of both the lots. It will be clear, our
21 materials.

22 COMMISSIONER TURNBULL: Is there a

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1 drawing of the main lot that shows what you
2 intend it to look like?

3 MR. LOPIANO: The main lot
4 configuration is not going to change at all.
5 The lot is what it is. We're going to repair
6 it. There are places where it has sunk,
7 places where it has rutted out. We're going
8 to repair those and then put a new coat of
9 asphalt over the top, seal that coat and then
10 restripe. So the configuration will be the
11 same, the parking spaces will be in the same
12 place. The size and shape of the lot will be
13 exactly the same. It will just have a new
14 surface on it.

15 COMMISSIONER TURNBULL: But
16 there's no overall drawing or layout that
17 shows what the contractor is doing in all the
18 areas.

19 MR. LOPIANO: Well, I have a
20 layout of the lot. I'm just not sure. You
21 know, I have a layout of the lot. I have a
22 survey that shows where all of the spaces are.

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1 COMMISSIONER TURNBULL: Could we
2 get a copy of that?

3 MR. LOPIANO: Sure.

4 COMMISSIONER TURNBULL: Great.
5 Thank you.

6 Let me also just share on the
7 record, and you can make use of this
8 information or not make use of it, but I know
9 from personal experience that the Department
10 of Recreation which owns a lot of these
11 triangular lots where there's both public and
12 private aspects to it will do a landscape
13 plan, a layout plan for free. Now, obviously
14 they don't purchase the plants, but moving
15 forward it's some information that you may
16 want to just, you know, stick in your hat and
17 take advantage of if at some point in time
18 that makes sense.

19 MR. LOPIANO: Now, which agency is
20 that?

21 COMMISSIONER TURNBULL: That's the
22 Department of Recreation, and they have some

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1 subdivision that deals with urban forestry or
2 something like that, and they recommend very
3 hearty urban plants that don't require a lot
4 of watering, and they'll plot it out for you
5 and develop a pretty decent landscape plan.

6 MR. LOPIANO: Okay. I have five
7 things that you want for the record. May I go
8 over them and make sure I have everything?

9 Landscaping contract;

10 Scope and schedule of repavement
11 of both lots, including materials to be used;

12 Analysis of the landscaping
13 compliance for both lots, that is, the five
14 percent compliance;

15 Pictures, drawings, layouts of the
16 triangular landscape, what it looks like, what
17 plants are being used, where they are;

18 And a survey of Lot 11. Yeah,
19 I've got that in the scope.

20 Is that everything?

21 BZA CHAIR MILLER: I have one
22 other basic question, and it's just -- it

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1 always comes up with maintenance of the
2 parking lots in general. Do you have some
3 type of maintenance plans in general, for
4 instance? If they're picked up three times a
5 week or twice a week or sometimes we just say
6 they're kept free of debris or whatever, but
7 I'm just wondering since you have these other
8 shopping centers and lots, if you could
9 indicate, you know, what your maintenance
10 schedule is for keeping the lots clean.

11 MR. LOPIANO: We do have a
12 contract for parking lot maintenance, and I
13 will provide the schedule, how often it's
14 cleaned.

15 BZA CHAIR MILLER: You're going to
16 put in a contract?

17 MR. LOPIANO: Yeah.

18 BZA CHAIR MILLER: Okay.

19 MR. LOPIANO: I'll put a -- I'm
20 assuming it's a contract and not just a fee
21 for service, but I will provide you all the
22 information I can on how, you know -- the

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1 schedule and who and how we maintain it. I
2 know that they're cleaned regularly.

3 BZA CHAIR MILLER: Okay. That's
4 great. That's fine. I mean, we don't need
5 more information than goes to the maintenance.

6 MR. LOPIANO: Un-huh.

7 BZA CHAIR MILLER: Okay. Is that
8 it? All right. We just have to discuss
9 schedule, and some of it is up to you. Our
10 next decision meeting, what we do is when we
11 don't -- Ms. Roddy knows, but you probably
12 don't. You know, some cases we decide, you
13 know, the same day, when we don't need
14 information, but in this case we're going to
15 take in a little more information, and so we
16 have public meetings scheduled once a month
17 where we deliberate on those cases that have
18 been continued for more information.

19 So our next decision meeting, I
20 believe, is July 1st, and the question is, you
21 know, is that sufficient time for you to get
22 in all of this information or do you want more

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1 time, which might be like take us to the next
2 month?

3 MR. LOPIANO: Well, when would I
4 have to have the information in for a July 1st
5 hearing?

6 MS. ROSE: It depends on if the
7 Board needs responses from OP. Then June
8 27th. If you don't need responses June 27th,
9 everything could be in.

10 BZA CHAIR MILLER: I don't think
11 we need responses, but Mr. Jackson, do you
12 think that you would need to or want to
13 respond to any of the items that we've asked
14 for?

15 MR. JACKSON: No, Madam Chair. I
16 think what the Applicant is doing is providing
17 additional information for clarification
18 purposes for the Board's consideration. So it
19 would be nice if OP received information, but
20 we don't think we need to make any additional
21 comments.

22 We think we've basically stated

1 our concerns, and the Applicant seems willing
2 to address them.

3 BZA CHAIR MILLER: Okay. Yes,
4 that's what I thought, but that is a good idea
5 of serve Mr. Jackson, and if you got the
6 information and even though it might be the
7 27th and you have a reaction to it that you
8 want to file something, you could.

9 MR. JACKSON: Thank you.

10 BZA CHAIR MILLER: Okay. So I
11 think we can go with that date.

12 What day of the week is that, Ms.
13 Rose, the 27th?

14 MS. ROSE: Yes, it's a Friday. Do
15 we want to do Thursday to give staff an
16 opportunity to get it in the package?

17 BZA CHAIR MILLER: If that's
18 possible. I'm not sure. You know, we weigh
19 it. If you need the extra time, then the
20 staff will make an additional effort to get it
21 to the Board, but it's much easier -- we have
22 our packages that go out on Thursday.

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1 MR. LOPIANO: We have no problem
2 getting it on the 26th or the 25th. I don't
3 see anything on here that presents an issue.

4 BZA CHAIR MILLER: Okay.

5 MS. ROSE: Say the 25th about
6 three o'clock.

7 MR. LOPIANO: Twenty-fifth by
8 three. Okay.

9 MS. ROSE: Yeah.

10 BZA CHAIR MILLER: Okay. Anything
11 else you think you want to submit? I think
12 this has become more complicated than it
13 needs to be though, right?

14 MS. RODDY: The last thing I did
15 want to mention --

16 BZA CHAIR MILLER: Yes.

17 MS. RODDY: -- and we can discuss
18 this in our post hearing submission is that we
19 would like some flexibility to work with DDOT
20 in the configuration of the lot. The spaces
21 will remain the same. Obviously we'll keep
22 the required landscaping, but we want to be

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1 able to accommodate some of their comments and
2 be able to change and revise the parking plan.

3 BZA CHAIR MILLER: I have one
4 other question. I just want to leave the
5 record open if you want to address this any
6 further with respect to what's the best
7 solution in your opinion, you know, for where
8 the chain link fence is between the
9 residential property and the parking lot.

10 I think it has been addressed a
11 little bit verbally here today, but if there's
12 anything -- I just want to leave the record
13 open if there's anything more you want to say
14 about that or if you come up with any other
15 idea that you think is a good one.

16 Okay. Anything else?

17 (No response.)

18 BZA CHAIR MILLER: Okay. Thank
19 you very much.

20 MS. ROSE: The next case is
21 Application 17772 of George F. Haskins, Jr.
22 and Dianne M. Haskins, pursuant to 11 DCMR

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1 Section 3104.1, for a special exception to
2 establish a child development center, 15
3 children and two staff, under Section 205, in
4 the R-2 District, at premises 4605 Kane Place,
5 N.E., Square 5154, Lot 901.

6 BZA CHAIR MILLER: I think the
7 Board is just going to take a very short,
8 five-minute break before we start with you so
9 that we're really fresh with you. So we'll be
10 right back.

11 (Whereupon, the foregoing matter
12 went off the record at 3:58 p.m.
13 and went back on the record at
14 4:05 p.m.)

15 BZA CHAIR MILLER: We're back on
16 the record and ready for the next case.

17 MS. ROSE: Yes, Madam Chair, as a
18 preliminary matter, staff would note that the
19 affidavit of posting indicates that the
20 property was posted only 14 days prior to the
21 hearing, where 15 days are required, and the
22 Applicant would need a one-day waiver of the

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1 posting requirement.

2 BZA CHAIR MILLER: Okay. Thank
3 you.

4 Well, let's start with
5 introductions first. If you could give your
6 name and home address, please.

7 MS. HASKINS: Dianne Haskins, 4603
8 Kane Place -- 4605 Kane Place in N.E.,
9 Washington, D.C.

10 MR. HASKINS: Bishop George F.
11 Haskins, Jr., 4605 Kane Place, N.E.,
12 Washington, D.C.

13 DR. NEWELL: And I'm Dr. Betty
14 Newell, 1414 New Jersey Avenue, N.W..

15 BZA CHAIR MILLER: Okay, and are
16 you all together or no? Okay.

17 DR. NEWELL: Could we respond to
18 the posting of the --

19 BZA CHAIR MILLER: Absolutely.
20 Yeah, we have to deal with that as a
21 preliminary matter. So go right ahead.

22 DR. NEWELL: Yes. What happened

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1 was that the names were not correct on the
2 sign. So we had to get the names corrected
3 and that caused a day delay, because they have
4 the name not correct on the signs when we
5 picked them up.

6 BZA CHAIR MILLER: Whose names?
7 Your names?

8 DR. NEWELL: Yeah.

9 BZA CHAIR MILLER: Your names.
10 Okay. All right.

11 This Board has authority to waive
12 that requirement for good cause on no
13 prejudice to any party. I would suggest that
14 that requirement is met. Would you all?

15 Okay. So you're fine. That
16 problem is solved. Okay. Now we can go right
17 to the merits.

18 DR. NEWELL: Okay. I'm the
19 representative for Bishop Haskins, First Lady
20 Haskins, and I came to help them when we went
21 through the process at North Capitol Street,
22 and they ran into a problem with the code.

1 The code was at that time -- they indicated
2 that it was 30 -- that it was 30 -- that it
3 was to be -- it's two codes -- 302. LeGrant
4 said it was to be 302.1, and BZA said it was
5 to be 205. So it was a discrepancy. They
6 could not come to a consensus with which code
7 it should be. So we ended up under the two
8 codes, which we don't understand all codes.
9 We're just amateurs.

10 Anyhow, we filed the paper work
11 and we finally made it to BZA, and what we're
12 in the process of trying to do is open up
13 another child development center. Bishop
14 Haskins and First Lady Haskins has half in
15 existing day care center at 4800 Nanny Helen
16 Burris Avenue, N.E. I think it has been in
17 operation for approximately 17 to 18 years.

18 They have great rapport in the
19 community. The families are not high income
20 families. It's kind of low income families.

21 Not only did they have a child
22 development center in their area. They also

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1 have a church in that area which has existed
2 for about 25 years. So they've been great in
3 the community. They've done clothing, food
4 bank, substance abuse, youth counseling, and
5 a whole lot of other things pertaining to
6 families. So they are very renowned in the
7 community, very fluent.

8 So and ANC has given us full
9 support. So we're here today to present our
10 situation to you for approval for a second
11 child development center at 4605 Kane Street,
12 N.E.

13 BZA CHAIR MILLER: How are the two
14 related, the two centers? How far away would
15 they be?

16 DR. NEWELL: 4800 Nanny Helen
17 Burris Avenue is like Minnesota runs here;
18 4800 Nanny Helen Burris Avenue. So you come
19 up about five or six blocks on 48th Street,
20 and then you come over Sheriff Road to Kane
21 Street, N.E. So I'd say approximately, if you
22 do it right, seven minutes.

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1 BZA CHAIR MILLER: Thank you.

2 Okay. So this is being considered
3 under 205 because it's a child development
4 center, correct?

5 DR. NEWELL: Correct.

6 BZA CHAIR MILLER: Okay, and I
7 think you have addressed the requirements in
8 writing. Is there anything you wanted to add
9 to your written application?

10 DR. NEWELL: We don't have
11 anything add. It has been a lot of hard work.
12 So we think we've put everything in there that
13 should be in there so that we could not spend
14 the whole day.

15 BZA CHAIR MILLER: Are there any
16 questions from Board members?

17 I think this is pretty
18 straightforward. So if you want to add
19 anything now, feel free, or highlight
20 anything. Otherwise we can go to the Office
21 of Planning right now.

22 DR. NEWELL: We can go to the

1 Office of Planning.

2 MR. HASKINS: I know that my
3 representative talked further, but over 19
4 years we have stretched out into that area,
5 and one of the main reasons for deciding to
6 open up another child development center was
7 because we had so many people on the waiting
8 list, and people were just encouraging us the
9 more, "Please open up another child care
10 center because we love the way your curriculum
11 work. We love the way you treat our children.
12 We just love you, how you treat the
13 neighborhood and the community."

14 And so it put a great desire in
15 our hearts to open up another child
16 development center.

17 The Lord has blessed us to not go
18 out and give second handed stuff away such as
19 clothes, but we've given out brand new
20 clothes. We've given out food. We've given
21 our time to that neighborhood and trying to
22 prepare the children coming up to be our next

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1 leaders. We are just so into this area that
2 we just want to get this child development
3 center on the road, want to take some relief
4 off the families around in that area and so
5 that they can be happy, and if we can do
6 anything else, we want to do that also.

7 We might see you again.

8 BZA CHAIR MILLER: So let me just
9 ask you. It looks like, if I'm reading this
10 correctly, that the Office of Planning has
11 identified some of the basic facts, and I want
12 to make sure that you agree with them.

13 The hours of operation would be
14 from 6:00 a.m. to 6:00 p.m.

15 DR. NEWELL: That's correct.

16 BZA CHAIR MILLER: Okay. Is that
17 what the other one is?

18 DR. NEWELL: Yes.

19 BZA CHAIR MILLER: Okay. Then you
20 would have no more than 15 children.

21 DR. NEWELL: At this site, yes.

22 BZA CHAIR MILLER: At this site.

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1 And the age range is six months to 12 years;
2 is that correct?

3 DR. NEWELL: Correct.

4 BZA CHAIR MILLER: Okay, and
5 you'll have three full-time staff?

6 DR. NEWELL: Correct.

7 BZA CHAIR MILLER: Okay, and then
8 the dropoff of the students would take place
9 in front of the center; is that correct?

10 DR. NEWELL: That's correct.

11 BZA CHAIR MILLER: Okay, and it
12 would be from 6:00 a.m. to 9:00 a.m. This is
13 the dropoff in the morning. Is there a
14 specific time that they're all getting dropped
15 off?

16 DR. NEWELL: yes.

17 BZA CHAIR MILLER: Okay, because
18 these could go into an order as conditions.
19 So that if there's something wrong or
20 something that you might have trouble living
21 with, you know, let us know.

22 And then pickup is from 3:00 p.m.

1 to 6:00 p.m.?

2 DR. NEWELL: Yes.

3 BZA CHAIR MILLER: Okay. Okay.

4 Anything else you want to add? We can get
5 back to you after we hear from Office of
6 Planning anyway, but if there is anything now
7 more.

8 You did a good filing.

9 DR. NEWELL: Thank you.

10 DR. NEWELL: Oh, parking is where?

11 DR. NEWELL: Parking?

12 MR. HASKINS: Adjacent to the
13 building. The parking is going to be adjacent
14 to the building. That will be on the -- I
15 would say the east side of the building.

16 BZA CHAIR MILLER: Do you have a
17 lot or what?

18 DR. NEWELL: Yes, we do.

19 MR. HASKINS: It's the west side.
20 I'm sorry. That's the west side of the
21 building. I made a mistake there. It's going
22 to be on the west side of the building.

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1 BZA CHAIR MILLER: How many spaces
2 do you have?

3 DR. NEWELL: Excuse me?

4 BZA CHAIR MILLER: How many
5 parking spaces?

6 DR. NEWELL: Two.

7 BZA CHAIR MILLER: You have three
8 employees and two parking spaces?

9 DR. NEWELL: Yes. One of the
10 employees walks.

11 BZA CHAIR MILLER: Okay, and is
12 there parking on the street near you as well?

13 DR. NEWELL: It is, yes.

14 BZA CHAIR MILLER: Is it zoned, do
15 you know, or is it --

16 DR. NEWELL: It's just not a big
17 one. it's not a big one, but you can see that
18 there are cars parked on the street.

19 MEMBER WALKER: Have you given
20 thought to how the dropoff plan will work in
21 the morning? I assume that very young
22 children, very young children will need to be

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1 brought in by their parents, but will older
2 children actually be dropped off at the front
3 of the building?

4 DR. NEWELL: Yes, only at the
5 front.

6 MEMBER WALKER: And so there will
7 be staff posted outside to receive them or how
8 will that work exactly?

9 DR. NEWELL: What happens in the
10 center is when parents -- they don't just drop
11 children off. They have to bring the children
12 and sign them in. The children have to be
13 signed in and signed out.

14 MEMBER WALKER: And so where do
15 you anticipate that the parents will park when
16 they are coming in to sign in the children?

17 DR. NEWELL: In the front. You
18 see the cars. You basically see the cars
19 here, and there's a sidewalk here. If you
20 look at the drawings here, the gray line at
21 the bottom is a sidewalk. In front of the
22 gray line -- see the gray line at the bottom?

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1 That's a sidewalk. In front of the sidewalk
2 is a space which we call -- I've got that term
3 written down. It's a space we call -- oh,
4 goodness. I can't think of the name of it,
5 but there's a space. Oh, it's called right-
6 of-way. It's called right-of-way.

7 On this side of the sidewalk right
8 here is right-of-way, but they don't stay in
9 the street. It's space for them to park right
10 there. It's called right-of-way.

11 MEMBER WALKER: There are no
12 restrictions on parking right in front of the
13 center?

14 DR. NEWELL: No.

15 BZA CHAIR MILLER: How many cars
16 can pull up at one time basically?

17 DR. NEWELL: You can get about
18 one, two, three, about four or five cars. And
19 in that area most people use the Metro, the
20 bus. So we don't -- in our area we don't have
21 a lot of parents driving.

22 MR. HASKINS: Might I add also

1 that one of the main reasons why we did accept
2 to purchase that property in that area was
3 because we knew that in that general area,
4 they had family members and so many children
5 that was in that area that just couldn't make
6 it to our Child Development Center because all
7 of the centers had been occupied.

8 So we knew that some of the
9 children might not -- most of them might be
10 walking to the child development center rather
11 than to have a ride, a car?automobile dropoff.
12 Most of them seemed to look like they're going
13 to be walking to the child development center.
14 That's how the children are surrounding the
15 child development center that we plan to have.

16 BZA CHAIR MILLER: It's a wide
17 range, six months to 12 years. I mean, the
18 older kids, do they just -- do they come after
19 school and the very young are there earlier?
20 Is that it?

21 DR. NEWELL: It's before and
22 after. They come in the mornings and they go

1 to school and after me they come after school,
2 and you only have -- we have six months. You
3 know, they come and three and four year olds
4 come for the duration of the day, but the
5 older kids are at school.

6 BZA CHAIR MILLER: Could you just
7 show us the playground area also on that color
8 site map?

9 DR. NEWELL: If you see the round
10 circle at the top, the part at the top, that's
11 the play area.

12 BZA CHAIR MILLER: The yellow one?

13 DR. NEWELL: The yellow one.

14 BZA CHAIR MILLER: Okay.

15 DR. NEWELL: Yes, the yellow one.
16 This is where the children egress and go to
17 the play area. This is the building here, and
18 the children come out, egress, and go into the
19 play area.

20 BZA CHAIR MILLER: Okay. It looks
21 like a large play area. Is it?

22 MR. HASKINS: It is real large.

1 BZA CHAIR MILLER: That's great.

2 That's great. Okay.

3 All right. Any other questions?

4 (No response.)

5 BZA CHAIR MILLER: All right. Why
6 don't we turn to the Office of Planning right
7 now?

8 Good afternoon, Mr. Moore.

9 MR. MOORE: Good afternoon, Madam
10 Chair, and members of the Board. I'm John
11 Moore of the Office of Planning, Development
12 Review Section.

13 We stand generally in support of
14 this application. We stand on the record.

15 For clarification, your first
16 question regarding the distance to the
17 existing center, it's much more than 1,000
18 feet to that center.

19 The Applicant has showed you a
20 picture of the play area. By the way, this
21 was submitted late to the record. So it
22 should be a matter of record. I'm sure that

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1 she won't mind leaving that one if you need
2 it.

3 But in the rear of the property,
4 they worked closed with DDOT, and there will
5 be -- the Bishop mentioned there's going to be
6 parking spaces adjacent to the building.
7 They're going to actually separate the two
8 uses. There's going to be a green buffer --
9 you know, we're greening up everything now --
10 between the parking space and the play area.
11 So the kids will be segregated from any sort
12 of danger in that regard.

13 Regarding dropoff and pickup, keep
14 in mind there are only 15 children, a maximum,
15 most of whom will come from the community and,
16 as the Bishop mentioned, will walk to the
17 center. Those that will come by vehicle, this
18 is a local road. One block over, Sheriff
19 Road, is a through road. So there is very few
20 times -- if there's something at the church
21 that may be going on it may cause some traffic
22 to be on the block, but normally there's

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1 adequate parking spaces in front of the center
2 for dropoff and pickup.

3 With that, if there are any
4 additional questions, I'd be glad to try to
5 answer them for you.

6 MEMBER WALKER: Mr. Moore, how can
7 the Applicant insure that people won't park in
8 front of the center in the evening, you know,
9 preventing there from being room for a queue
10 in the morning?

11 MR. MOORE: Well, as I mentioned,
12 we are talking about a maximum of 15 cars if
13 they all drove, and in this case, let's say
14 two-thirds of them, which is ten, will access
15 the center by foot. That means that the
16 maximum number of vehicles that can be
17 conflicting would be five, and it could easily
18 accommodate that number.

19 MEMBER WALKER: Thank you.

20 BZA CHAIR MILLER: You say on page
21 4 of your report that the proposed child
22 development center would be designed and

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1 screened in a manner that minimizes negative
2 impact on adjacent nearby properties while
3 providing a safe environment for children.

4 Can you just elaborate what you
5 mean? I mean, is that something that's going
6 to be happening or is that something that, you
7 know, already exists? If you can, tell us
8 what you're referring to.

9 MR. MOORE: Mostly let's look at
10 what's existed. If you look at the photograph
11 in the back of the OP report, you'll see the
12 site as indicated by an arrow. On both sides
13 of the side there are actually vacant lots.
14 There could be structures on there. Those
15 vacant lots are going to serve as a buffer
16 between that and the next residential use. So
17 it sort of minimizes the impact there.

18 In the rear of the property
19 existing right now is a six foot wooden fence.
20 That fence also comes about halfway to the
21 property on the east side. So, again, that
22 serves as a buffer.

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1 On the west side there's also a
2 fence that comes halfway the property that
3 they're going to continue, and the Bishop
4 informed me today that the office is going to
5 put a green edge in front of the fence itself
6 to sort of soften it up for the fact that
7 there's a house next to it.

8 So those are the things in place
9 mostly now. I already talked about the
10 enhancement of the rear of the property for
11 the playground, and the separation from the
12 parking. That's basically what they're trying
13 to describe.

14 BZA CHAIR MILLER: Could I just
15 ask you though about that separation? I mean,
16 it made me nervous a little bit when you said,
17 oh, there's the parking spaces and there's the
18 playground, and then you said, well, there's
19 a good buffer between the two.

20 You know, so that some toddler
21 doesn't crawl into the parking area. I mean
22 what kind of buffer is it?

1 MR. MOORE: Well, originally the
2 Applicant was going to put a chain link fence
3 there. Obviously, I was very opposed to that.
4 So, again, they're going to put in low growing
5 shrubbery that are close together.

6 Keep in mind that the site will
7 always be monitored by adults if the kids are
8 out there, but in case one were to slip
9 through the security I'll call it, there would
10 be that buffer there that will separate from
11 where the cars will be parked.

12 There also would be a buffer --
13 there's a basement there, and they're going to
14 put lattice around the basement itself so that
15 you can't fall down in there.

16 So I think it's pretty thought out
17 in terms of trying to provide for the
18 children's safety.

19 BZA CHAIR MILLER: So looking at
20 the picture that's attached to your report, I
21 looked at it and I thought, "Wow, this is
22 great," because with kids playing in the

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1 backyard and stuff and they make noise and,
2 you know, sometimes we hear about neighbors
3 complaining, whatever, and here it looks like
4 there's all this space that apparently it's no
5 problem here. It's like fantastic.

6 But, I mean, at some point homes
7 could be developed --

8 MR. MOORE: Hopefully not parking.

9 BZA CHAIR MILLER: -- on both
10 sides.

11 Apartments?

12 MR. MOORE: Hopefully not a
13 parking.

14 BZA CHAIR MILLER: Yeah, right.
15 On the sides, on the east and the west of it;
16 is that it?

17 MR. MOORE: Yes.

18 BZA CHAIR MILLER: Okay, but you
19 can always add additional buffering and
20 landscaping. That's kind of speculative at
21 this point anyway.

22 MR. MOORE: Well, since one of the

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1 people at the table owns the property to the
2 east, I think it's pretty assured that that
3 can be taken care of.

4 BZA CHAIR MILLER: Okay, good.
5 And what did you say? Behind it looks like
6 there's a good backyard to begin with. Behind
7 that is vacant right now, but at some point
8 there could be homes there as well. Is that
9 it?

10 MR. MOORE: Actually there is a
11 paper alley in the rear and beyond the alley,
12 yes, they can build additional houses, but
13 then you're talking a distance of at least
14 what, 50, 60 feet from the fence to this
15 property?

16 COMMISSIONER TURNBULL: Mr. Moore,
17 the house though sits on a rather large lot.

18 MR. MOORE: yes.

19 COMMISSIONER TURNBULL: And so
20 what looks like a not vacant lot is really
21 just the part of their property there.

22 MR. MOORE: No, it's actually a

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1 separate lot.

2 COMMISSIONER TURNBULL: It is?

3 MR. MOORE: Yes.

4 COMMISSIONER TURNBULL: So are we
5 combining two lots.

6 MR. MOORE: No, no, no, no, no,
7 no. Are you looking at the east side now?

8 COMMISSIONER TURNBULL: Here.

9 MR. MOORE: That's the west side.

10 COMMISSIONER TURNBULL: That's
11 where the driveway comes in and the parking
12 lot goes back. So you're saying that there's
13 still a small lot in between?

14 MR. MOORE: Oh, no, no, no. I'm
15 corrected. That's on the east side.

16 COMMISSIONER TURNBULL: Oh, you're
17 talking on that side.

18 MR. MOORE: Yes. On the west
19 side, that house.

20 COMMISSIONER TURNBULL: That's the
21 house and then that's their whole lot.

22 MR. MOORE: That property is --

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1 COMMISSIONER TURNBULL: So that's
2 really the only property that could really --

3 MR. MOORE: Yeah, another building
4 potentially.

5 COMMISSIONER TURNBULL: Okay.

6 BZA CHAIR MILLER: Could you
7 explain your rationale for recommending a
8 five-year term?

9 MR. MOORE: Only because it's a
10 new center, although the Applicant already is
11 an experienced operator. This is still a new
12 center at a different location.

13 BZA CHAIR MILLER: Any other
14 questions from the Board?

15 (No response.)

16 BZA CHAIR MILLER: Does the
17 Applicant have a copy of the Office of
18 Planning's report?

19 DR. NEWELL: Yes.

20 BZA CHAIR MILLER: Yes. Do you
21 have any questions for the Office of Planning?

22 DR. NEWELL: No, we don't.

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1 BZA CHAIR MILLER: Okay. Is
2 anyone here from the ANC in this case?

3 (No response.)

4 BZA CHAIR MILLER: Okay. Not
5 hearing from anyone, I want to say that we do
6 have a report from the ANC in the record.
7 It's our Exhibit No. 10. They talk about the
8 fact that the facility would benefit this area
9 by allowing parents -- let's see -- it's
10 accessible to bus line and it would
11 accommodate much needed before and after
12 school, and that Bishop Haskins has a great
13 track record and is well known in the
14 community for providing excellent services to
15 the residents.

16 Okay. I can't see that they took
17 a formal vote on this, but it is a letter in
18 support of the application.

19 Okay. Is there anybody here who
20 wishes to testify in support of the
21 application?

22 (No response.)

1 BZA CHAIR MILLER: Anybody here
2 who wishes to testify in opposition to the
3 application?

4 (No response.)

5 BZA CHAIR MILLER: Okay. Not
6 hearing from anyone then, do you have any
7 closing remarks?

8 And also let me just ask you if
9 you would like to respond to Mr. Moore's
10 recommendation that this be for a five-year
11 term, which would mean that you would then
12 come back to the Board for review after five
13 years.

14 DR. NEWELL: Can it be more than
15 five-year preapproved?

16 BZA CHAIR MILLER: Can it be more
17 than five years preapproved?

18 DR. NEWELL: Preapproved, already
19 approve. So we've got to come back in five
20 years.

21 BZA CHAIR MILLER: It can be any
22 -- I mean, we could approve it without any

1 term, which would mean that it would just be
2 approved. You'd never have to come back to
3 the Board, and if you violated anything, you
4 would be subject to enforcement by other
5 agencies, whatever.

6 Sometimes we put on a term for, as
7 Mr. Moore was saying, for a new use or if it
8 looks like things might be changing in the
9 neighborhood, and we want to make sure it's
10 still working well with the conditions we put
11 on it or should we add any other conditions or
12 whatever?

13 You can always come back and ask
14 for, you know, another special exception if,
15 for instance, you are limited to 15 kids and
16 all of a sudden you -- and you wanted 20. You
17 can do that at any time, you know. That's
18 just another application, just so you kind of
19 understand.

20 So if you think that five is not a
21 good idea for some reason or not necessary for
22 some reason and you want to address that, you

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1 can. I mean, you could say, "No, I think
2 seven years is reasonable," or ten years or no
3 years. So.

4 MR. HASKINS: I would like to say
5 that we have people from downtown to come to
6 our building to inspect the space, and
7 normally that was how we derived how many
8 children we would normally have, and when they
9 come in, they actually go by the space. They
10 check the space out and when we have it set up
11 the way they want it set up, then they allow
12 us to know how many children should be in our
13 center.

14 And that's just the way they
15 operate from 11 DMS rulebook -- DMCMR -- DCMR.
16 That's the way they operate from it, and
17 that's the way we have been following for all
18 these years.

19 BZA CHAIR MILLER: That wouldn't
20 be the issue here. I think the issue here
21 would be, oh, a new home has been built net
22 door. I'm just talking hypothetically, and

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1 the children are causing a lot of -- making a
2 lot of noise, and so we need to revisit this
3 and see, you know. I don't know. I'm just
4 giving you an example.

5 But anyway, if the number is tied
6 to the occupancy, you know, as determined by
7 somebody else, you know, it's unlikely that
8 that's what -- we wouldn't be really looking
9 at that.

10 MR. HASKINS: Okay. Just want to
11 be in compliances. That's all.

12 BZA CHAIR MILLER: Do you have a
13 special exception for your other child
14 development center?

15 MR. HASKINS: No, no. No, we
16 don't.

17 BZA CHAIR MILLER: Okay.

18 MR. HASKINS: We don't.

19 BZA CHAIR MILLER: Mr. Moore, do
20 you have a comment on that?

21 MR. MOORE: I would think so. You
22 have a C of O, right?

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1 MR. HASKINS: Yes.

2 MR. MOORE: They have one.

3 MR. HASKINS: Do we have one?

4 DR. NEWELL: You know what? We're
5 thinking -- we do apologize. We're thinking
6 because this is a new -- well, you said new
7 facility and special exception. We just --

8 MR. HASKINS: Thought that that
9 was the way.

10 DR. NEWELL: -- didn't think
11 right.

12 MR. HASKINS: Yeah.

13 DR. NEWELL: We didn't think
14 right.

15 BZA CHAIR MILLER: It's okay.
16 It's all right. You've been operating the
17 other place for 19 years without any problems
18 though, correct?

19 DR. NEWELL: Correct.

20 BZA CHAIR MILLER: And the age
21 group is the same?

22 DR. NEWELL: No.

1 BZA CHAIR MILLER: No?

2 DR. NEWELL: Two, three and four.

3 BZA CHAIR MILLER: Oh, two, three
4 and four. Okay.

5 DR. NEWELL: And before and after,
6 before and after.

7 BZA CHAIR MILLER: So it's just
8 before and after school? It's not a whole
9 day?

10 DR. NEWELL: No.

11 BZA CHAIR MILLER: What?

12 MR. HASKINS: Two to 14.

13 DR. NEWELL: No, it is, right.

14 MR. HASKINS: It's two to 14, I
15 believe, two to 14 years of age. They are the
16 after care ones.

17 DR. NEWELL: Before and after.

18 MR. HASKINS: I mean before and
19 after.

20 BZA CHAIR MILLER: Okay. I mean,
21 one of the factors we consider, as Mr. Moore
22 made reference to, is that we do have a track

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1 record for running a good child development
2 center actually.

3 Anything else you want to add?

4 DR. NEWELL: Nothing else.

5 MR. HASKINS: Thank you very much.

6 BZA CHAIR MILLER: Well, stay here
7 because we may deliberate on yours. Yours is
8 a little bit more straightforward.

9 DR. NEWELL: Oh, yes.

10 (Pause in proceedings.)

11 BZA CHAIR MILLER: Okay. As I
12 said, this is fairly straightforward. So what
13 I would propose is that we deliberate this
14 case under motion. I think really what's
15 going to be most deliberated are the
16 conditions as opposed to whether or not the
17 application should be granted.

18 So I'm going to move approval of
19 Application No. 17772 of George F. Haskins,
20 Jr. and Dianne M. Haskins, pursuant to 11 DCMR
21 Section 3104.1, for a special exception to
22 establish a child development center, 15

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1 children and -- okay. We'll get to that in
2 the conditions -- for a child development
3 center under Section 205, at premises 4605
4 Kane Place, N.E.

5 Do I have a second?

6 COMMISSIONER TURNBULL: Second.

7 BZA CHAIR MILLER: Okay. This is
8 under 205, and I think that the Office of
9 Planning addressed all the criteria
10 specifically and thoroughly in its report.
11 Two, oh, five, point, two talks about the
12 center being capable of meeting all applicable
13 code and licensing requirements, and the
14 Office of Planning found that it will be and
15 that there's already a track record with the
16 owners of meeting all such code requirements
17 with their other child development center.

18 The center shall be located and
19 designed to create no objectionable traffic
20 conditions and no unsafe conditions for
21 picking up and dropping off children. We
22 discussed that.

1 This building is located on a
2 local street as opposed to a main street, and
3 there's place for the cars to pull somewhat
4 off the road, and there's space for at least
5 five cars to be there. So that's plenty for
6 15 clients, not all of whom will be driven.

7 They have enough parking spaces
8 for their employees. The center including any
9 after space area provided shall be located and
10 designed so that there will be no
11 objectionable impacts on nearby properties due
12 to noise or activity or other objectionable
13 conditions.

14 This is something that we often
15 have complaints about where child development
16 centers sometimes try to locate in
17 neighborhoods, and in this particular case
18 there is so much space around it's really
19 great to see that that criteria is certainly
20 met in this case.

21 The Board may require special
22 treatment in the way of design screening of

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1 buildings, planting and parking areas, signs
2 of other requirements as it shall deem
3 necessary to protect adjacent and nearby
4 property.

5 I don't think anybody has any
6 recommendations because they are so far apart
7 that we don't really need to be worried about
8 screening, though I think Mr. Moore also said
9 that there was going to be plantings and
10 things of that sort. So I don't think the
11 Board needs to add anything in this case.

12 There's no off site play area.
13 They're going to play right on site.

14 There's no other child development
15 center within 1,000 feet of the subject
16 property, as Mr. Moore clarified for us.

17 And it's in harmony with the
18 purpose and intent of zoning regulations and
19 zoning maps, and the community is in support
20 that there's a great need for a child
21 development center in this area.

22 Okay. Office of Planning has

1 recommended approval. The ANC is in support.

2 I think we need now to go to the conditions.

3 And I think we should use the
4 Office of Planning's recommendations. I think
5 I would just say two through five is what I
6 ask for confirmation from the Applicants about
7 the hours of operation, 6:00 a.m. to 6:00 p.m.
8 Student enrollment shall not exceed 15 ranging
9 in age from six months to 12 years. The
10 center shall be operated by three full-time
11 staff and dropoff of students shall take place
12 at the front of the center from 6:00 a.m. to
13 9:00 a.m., and pickup from 3:00 p.m. to 6:00
14 p.m.

15 Those were what Office of Planning
16 recommended and the Applicant confirmed that
17 they were accurate. I just want to say though
18 when I was reading a description of the
19 application it had in it two staff, and I kind
20 of paused there because in OP's conditions
21 they say three, and the Applicant confirmed
22 three. So I think we should go with the

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1 three.

2 If it's less than three, that's
3 fine. I don't see any problem with three.

4 Okay. So then we get to the
5 question of a term, and Office of Planning
6 recommended five years, and the Applicant like
7 most applicants don't want a term. So what we
8 have to, I guess, evaluate is, number one, it
9 is a new operation, and things may be changing
10 around the site. So this may need to be
11 revisited at least once.

12 And then, on the other hand, it is
13 being operated by individuals that have an
14 excellent track record in the community for
15 running this type of operation.

16 So are there comments? Yes.

17 VICE CHAIR LOUD: Just very
18 briefly, I'd be in support of a seven-year
19 term as sort of a backdrop to that, taking a
20 look at the Office of Planning's report, our
21 Exhibit 28, where they talk about the plan and
22 the importance in this area of providing child

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1 care and support for parents based on the
2 growing demand for those kind of services, and
3 as you mentioned, Madam Chair, the experience
4 of the applicant.

5 It seems to me they will have
6 their hands full trying to build this program
7 along with the other one that they currently
8 run, and it would just complicate matters for
9 them to have to be preparing during that
10 fourth year of running the program, revving up
11 to come back before us.

12 So I think they've got a track
13 record in this. The city recognizes through
14 its policies the importance of having these
15 kinds of facilities. So I think seven years
16 would be more than appropriate in this
17 setting.

18 I believe the ANC, as well,
19 recognizes in their report, our Exhibits 9 and
20 10, that these are experienced child care
21 providers in the area.

22 BZA CHAIR MILLER: Okay. I would

1 like to take us out of deliberation for a
2 minute, which is unusual, but, well, Ms.
3 Walker noticed that the definition of child
4 development center in our regulations, it's
5 from ages two years to 15; is that correct?
6 Fifteen.

7 So I want to back up because I'm
8 not sure that we're authorized to approve this
9 for under two years of age. So let's go back
10 into hearing again.

11 We've gone through all of the
12 standards that they meet and everything. So
13 now there's this issue. Mr. Moore, do you
14 have an opinion on this, whether they need
15 approval for something in addition to a child
16 development center in order to accommodate
17 younger than two years?

18 MR. MOORE: I believe, as a matter
19 of fact, I met with the child care service
20 person, Department of Health, and it's my
21 understanding -- as a matter of fact, she gave
22 me a copy of the regulations -- that if you

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1 have infants in the center, the number of
2 students that you have in there sort of drop.
3 I forgot what the ratio was.

4 But I believe in any case 15 would
5 be a minimum since 15, I think, under Article
6 5 -- Article 4 maybe -- I think 415 is the
7 number permitted as a matter of right.

8 BZA CHAIR MILLER: No, the concern
9 isn't the number of children. The concern is
10 whether it can be for younger than age 2
11 because as a child development center it's
12 defined as for ages two years old or older.

13 MR. MOORE: As defined in the
14 regs.

15 BZA CHAIR MILLER: And under 15
16 years of age.

17 MR. MOORE: I believe that the
18 answer to that question would lie in the -- I
19 believe you got a response from the Department
20 of Health on this application. What I don't
21 know is if the Applicant in the request to the
22 Department of Health indicated the ratio of

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1 kids that would be in the various age
2 categories so that it could have been taken
3 into consideration.

4 Did you when you went to the
5 Health Department tell them that you're going
6 to have infants in the building?

7 So that may be one that will have
8 to be readdressed by the Department of Health.

9 BZA CHAIR MILLER: I don't think
10 though it's just the Department of Health
11 because I think it's in our zoning regulations
12 as ot what we can approve as a child under the
13 definition of child development center in the
14 zoning regulations.

15 Mr. Moore, I don't know if you're
16 aware or if there's another provision in our
17 regulations that would cover children under
18 two years of age.

19 MR. MOORE: No, I'm not aware.

20 BZA CHAIR MILLER: Okay. Does the
21 Applicant have any thought on this issue?

22 DR. NEWELL: Our thoughts on this

1 issue is that once we were informed that once
2 we do this process and then we go back to
3 Early Childhood, they would tell us you can
4 only have so many children. We can do two,
5 three and four. It's limited to what we can
6 have, but we can have two years old.

7 Is that what you're saying or
8 trying to --

9 BZA CHAIR MILLER: Okay. You sat
10 with us through the previous case, right?

11 DR. NEWELL: Yes.

12 BZA CHAIR MILLER: I mean, this is
13 probably another case where we have to start
14 looking through the regulations perhaps, but
15 under child development center, which you
16 applied for a special exception to operate
17 that, that is defined in our regulations, you
18 know, as for ages two to 15 basically.

19 And so you had described your
20 center as wanting to serve six months and
21 above.

22 DR. NEWELL: Yes, what we want to

1 do, yes.

2 BZA CHAIR MILLER: You want to do
3 it.

4 DR. NEWELL: Yes.

5 BZA CHAIR MILLER: So I don't
6 believe we can grant you that under the child
7 development center category. There's no
8 problem for two years to 15. We've gone
9 through the standards already. We're just at
10 whether or not or how long a term to impose on
11 you basically.

12 We can take a minute to see
13 whether we might see if there's another
14 category by special exception that would
15 encompass the infants, but I don't know.

16 DR. NEWELL: Right. So this is
17 what we want to do, but if it's not feasible,
18 if it's not possible, we would go to the next
19 step.

20 MR. HASKINS: And one of the main
21 reasons for us just trying for that, because
22 I think one of our case workers at one time

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1 told us how desperate the need was for
2 infants, and that was the only reason that we
3 decided to do that.

4 But we'll adapt to whatever we
5 should have according to the rules and
6 regulations here.

7 BZA CHAIR MILLER: Okay. You know
8 what I want to do is take about a ten or 15
9 minute break and we'll go in there instead of
10 just doing it right here in front of you and,
11 you know, calmly look at the regulations and
12 see if we have a solution for you that would
13 encompass that. If we don't, then it looks
14 like today you will get the child development
15 center for ages two and up, but we just want
16 to take a -- our regulations, they have
17 regulations all over the place, you know, and
18 so we need to take a little more calm look at
19 this.

20 So we're going to take a break for
21 about ten to 15 minutes.

22 (Whereupon, the foregoing matter

1 went off the record at 4:50 p.m.
2 and went back on the record at
3 5:20 p.m.)

4 BZA CHAIR MILLER: We're back on
5 the record.

6 We took a very careful look at our
7 regulations, and our conclusion is that child
8 development center as currently written does
9 start at two years old. If you look in our
10 definitions, you will find a child development
11 home as well, which seems to allow infant
12 care, and I think that has been very recently
13 amended, but it's limited to six children, and
14 so, therefore, I assume you want to proceed
15 under child development center and have more
16 children.

17 I also say to Mr. Moore perhaps
18 that's a regulation that the Office of
19 Planning could take a look at and see if maybe
20 a text amendment might be appropriate because
21 it doesn't appear that infants are too well
22 accommodated by our regulations, even though

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1 like Department of Health has no issue with
2 it, it would seem.

3 MR. MOORE: So noted.

4 BZA CHAIR MILLER: Okay. Thank
5 you.

6 And so what I want to do we can go
7 back into deliberation now and finish this
8 case up.

9 But what I would like to do as far
10 as I believe I recommended the conditions that
11 were contained in the Office of Planning
12 report, and then we were discussing the term
13 one, but I would like to make an amendment to
14 not specify the age because the ages are
15 controlled by the definition.

16 So I'm going to, you know, say
17 that this went to the condition that said that
18 the student enrollment shall not exceed 15,
19 and then it said ranging in age, and so I
20 would recommend that we stop that condition at
21 "shall not exceed 15," and if the definition
22 were to change then the Applicants would have

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1 the option to also change the ages.

2 Okay, and then we were discussing
3 the term, and Mr. Loud recommended seven
4 years. Are there any other comments on that?

5 COMMISSIONER TURNBULL: I would go
6 along with the seven years.

7 BZA CHAIR MILLER: Okay. It's
8 hard to pinpoint exactly what's right. I
9 would go along with seven as well in that it
10 should have some term because it's new and
11 also the environment may be changing around
12 it, but then you balance that with the track
13 record of the Applicant, so to give it a
14 little bit longer perhaps. So I think seven
15 is fine.

16 Any other comments? Everybody all
17 right with that?

18 (No response.)

19 BZA CHAIR MILLER: Okay. So is
20 everybody clear with respect to what we would
21 be voting on? It would be approval basically
22 with the conditions set forth in the Office of

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1 Planning report, except that approval would be
2 for a period of seven years as opposed to
3 five, and condition number three as written
4 would stop after 15. We would not include the
5 part that talks about the age range.

6 All right. Any other comments?

7 (No response.)

8 BZA CHAIR MILLER: All right. All
9 those in favor say aye.

10 (Chorus of ayes.)

11 BZA CHAIR MILLER: All those
12 opposed?

13 (No response.)

14 BZA CHAIR MILLER: All those
15 abstaining?

16 (No response.)

17 BZA CHAIR MILLER: And would you
18 call the vote, please?

19 MS. ROSE: Staff would record the
20 vote as five to zero to zero to grant the
21 application. The motion was made by Ms.
22 Miller, seconded by Mr. Turnbull, with Mr.

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1 Loud, Mr. Dettman and Ms. Oates Walker in
2 support of the motion with conditions as
3 discussed.

4 BZA CHAIR MILLER: And this would
5 be a summary order if there's no party in
6 opposition.

7 MS. ROSE: Yes.

8 BZA CHAIR MILLER: Okay. You
9 should be getting your order quickly since
10 it's a summary order.

11 DR. NEWELL: Could we just say
12 thank you to Mr. Moore.

13 BZA CHAIR MILLER: Absolutely.

14 MR. HASKINS: Thank you, Mr.
15 Moore.

16 DR. NEWELL: Thank you, Mr. Moore,
17 for your expertise.

18 MR. HASKINS: You're very
19 professional.

20 MS. ROSE: The final application
21 for the afternoon is continued from the June
22 10th, 2008 public hearing session, Application

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1 No. 17726 of Wisconsin Avenue Baptist Church,
2 pursuant to 11 DCMR Section 3104.1, for a
3 special exception to construct an addition to
4 the existing building and to allow a child
5 development center under Section 205 and a
6 special exception to allow a private school
7 under Section 206 in the R-1-B District at
8 premises 3920 Alton Place, N.W., Square 1779,
9 Lot 824.

10 At this point in the proceedings,
11 the Board is to hear from the Office of
12 Planning.

13 BZA CHAIR MILLER: Okay. This is
14 a continuation of the hearing from last week,
15 and I think we're at the point where Office of
16 Planning presents its report.

17 Hi. Whenever you're ready.

18 MS. THOMAS: Oh, okay. Give me
19 two minutes.

20 Good evening, Madam Chair, members
21 of the Board. The case before us, Wisconsin
22 Avenue Baptist Church, they originally

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1 requested a special exception -- special
2 exception approval -- sorry -- from Section
3 205 for a child development center and from
4 Section 206 to operate a private school.

5 And, very briefly, we determined
6 that there would be no adverse impact with
7 respect to noise or traffic, subject to the
8 TDM measures that the center has agreed to
9 incorporate into its existing operations.

10 We found that dropoff and pickup
11 would be on site, and OP prefers the 28 spaces
12 and the parking alternative as opposed to 36
13 spaces.

14 Although space does not seem to be
15 objectionable and the majority of action takes
16 place inside -- activities -- sorry -- takes
17 place indoors.

18 With respect to the screening, the
19 Applicant has agreed to improve the screening
20 with additional landscaping on the site around
21 the redesigned parking lot.

22 I'm sorry.

1 The Applicant has also proposed,
2 in addition, to fill in the southeast corner
3 of the building to 24.9 percent lot occupancy,
4 and the proposed addition wouldn't affect any
5 existing yard measurement. So we had no
6 objection to that addition and to the
7 redesigned parking area, subject to DDOT's
8 approval of the curb cut on Yuma Street.

9 So with that, we had no objection
10 to the proposed special exception request, and
11 we would recommend approval of the application
12 based on the TDM strategies as accepted by
13 DDOT.

14 Thank you.

15 BZA CHAIR MILLER: You made
16 reference to additional landscaping. Do we
17 have a landscaping plan for that or do we need
18 one?

19 MS. THOMAS: I believe the
20 Applicant submitted landscaping materials with
21 its -- with its May 27, 2008 submission, and
22 I do have something that resembles a landscape

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1 on the site plan in that submission.

2 BZA CHAIR MILLER: Okay. So
3 you're not asking for anything in addition to
4 that.

5 MS. THOMAS: In addition, no. I
6 believe they were going to be working this out
7 with the neighbors as to what -- and the ANC
8 -- as to what, you know, would be their
9 preferences in terms of the landscaping.

10 BZA CHAIR MILLER: And did Office
11 of Planning make an assessment separate from
12 DDOT with respect to the number of parking
13 spaces that you recommend or are you just
14 relying on DDOT?

15 Do you know what I mean? I mean,
16 did you actually assess it or are you just
17 going along with DDOT?

18 MS. THOMAS: Well, we're not just
19 going along with DDOT in a sense because our
20 policy. We adopted a policy going forward
21 that excessive amount of parking isn't the
22 best way for the city to be going forward, and

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1 right now we're examining parking policies.

2 The 21 space is based on the
3 requirements, the parking requirements.
4 Twenty-eight spaces should satisfy what
5 they're trying to do and with the addition
6 they are requesting. So we don't see the need
7 to provide 36 parking spaces. and we wanted to
8 encourage TDM strategies. So we would support
9 the 20 parking spaces even without DDOT.

10 BZA CHAIR MILLER: Okay. You
11 know, sometimes we see as we did this morning,
12 we had a case where clearly many more parking
13 spaces, for instance, were required than were
14 actually needed by the user.

15 In this case if I recall, it seems
16 that -- I'm not sure. We've had a week go by,
17 but I thought that all of the other parties
18 were in favor of more spaces based on the real
19 needs of the Applicant. Is it that you don't
20 agree that there really is that need there?

21 MS. THOMAS: I don't believe that
22 in this case?

1 BZA CHAIR MILLER: Yeah, this
2 case.

3 MS. THOMAS: I don't think that
4 the need is there for an excessive amount of
5 parking.

6 BZA CHAIR MILLER: Okay. Other
7 questions?

8 (No response.)

9 BZA CHAIR MILLER: Okay. Let me
10 ask you. Why don't we hear from DDOT now and
11 then we could let the other parties cross
12 examine both? Because I think your testimony
13 is related. Okay.

14 MR. JENNINGS: Thank you.

15 Good afternoon or good evening,
16 Madam Chair, Board members. My name is Jeff
17 Jennings. I work for the District Department
18 of Transportation. I work as the Ward 3
19 transportation planner.

20 And I think as Karen Thomas
21 stated, we are in support of the 28 parking
22 spaces. The eight additional spaces, we've

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1 come to a conclusion are more of a choice, not
2 necessarily a need, and the reason we arrived
3 at that conclusion is because I think the
4 Applicant has even said it pretty well. They
5 can do much better with respect to where they
6 are currently today with their numbers.

7 Looking throughout the various
8 numbers that they've provided DDOT, there
9 seems to be a pretty clear pattern that the
10 carpooling, which I recommend to Dr. Bergfalk,
11 that they try to utilize that much better and
12 much more.

13 There have been other cases that
14 have come before this Board. In Ward 3 where
15 the carpooling seemed to be perhaps not as
16 effective as it was, and those particular
17 institutions ramped up on that use to actually
18 help out with getting students to those
19 particular institutions on a somewhat similar
20 capacity or similar size as far as students
21 attending those institutions.

22 So that was one thing that we did

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1 talk about with the Applicant in this case,
2 and obviously that falls into the various TDM
3 strategies that they've weighted out in this
4 plan.

5 They are correct in saying that
6 because of the young ages we have in this
7 particular institution not everybody is going
8 to be able to use mass transit. That's
9 certainly a reality. In an idea world, sure,
10 you'd put a two year old on a train or on a
11 bus and you'd send him off to school. We
12 don't necessarily have that here.

13 But with respect to parents who
14 are driving their kids to school and being
15 able to split up the zip codes to understand
16 where the originating trips are happening, you
17 can actually begin to realize that that the
18 Applicant is already going, I must say, a
19 decent job with respect to the carpooling, but
20 it can be much better. So that's the reason
21 why we come in with the lower number than we
22 do, than what's been proposed, I should say,

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1 by the community and by the ANC.

2 The other idea, I guess, that was
3 discussed with respect to transportation is
4 this curb cut, and as we all know, the plans
5 that we saw last week, there's this Yuma
6 Street curb cut, and we would certainly want
7 the Applicant to come before the public space
8 committee to see once again if the need is
9 justified for that curb cut. It seems as
10 though the 12 foot ingress and egress that's
11 used today on Alton Place is particularly
12 narrow. We do agree with that.

13 And then we also ran the idea in
14 front of the Applicant on one of the occasions
15 we had to meet with them what if perhaps they
16 even did away altogether with the Alton Place
17 curb cut and strictly used the Yuma Street
18 curb cut for ingress and egress.

19 So, again, these are things that
20 we discussed with them. Nothing was actually
21 ever really hammered out, and we do feel at
22 DDOT, and I have talked extensively with our

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1 public space committee about that particular
2 curb cut, that we would want them to come
3 before that public space committee to
4 understand the queuing, the circulation
5 internally inside the parking lot and what
6 that would do to the institution as well.

7 BZA CHAIR MILLER: So are you
8 saying that the curb cut issue isn't really
9 before us because it's going to go to public
10 space and we're not going to be considering
11 the ingress?egress routes as they're affected
12 by those curb cuts?

13 MR. JENNINGS: No, but it seems as
14 though that's part of the Applicant's plan, is
15 to, for lack of a better way of saying it,
16 create a drive-through, if you will. There's
17 a drive-through scenario going on here, and we
18 don't necessarily encourage that. We wouldn't
19 necessarily want a single institution like
20 this to come in, have an ingress off of Alton
21 and then use the Yuma Street as its egress and
22 then maybe even an ingress as well.

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1 So two curb cuts for one
2 institution, we're not really big fans of
3 that, if you will.

4 BZA CHAIR MILLER: I just want to
5 welcome Mr. Jeffries who just joined us.

6 You know, we've had this gap in
7 our hearing. So excuse me if, you know, I'm
8 not remembering well enough, but I just want
9 to be clear because I do remember looking at
10 the parking lot and the different options,
11 depending on whether there were 28 spaces or
12 36, and the talk of another curb cut, but I
13 guess my question to you is curb cuts do get
14 approved by public space, and so are we
15 looking at this parking lot, you know, just
16 based on what's there now or is one of those
17 curb cuts part of the equation for us to
18 analyze?

19 MR. JENNINGS: I wouldn't
20 necessarily put it into your full analysis as
21 you may deliberate going forward, but it's one
22 of those items that, you know, if DDOT public

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1 space can have the ability to fully examine
2 it, as we put in our notes delivered to you
3 a couple of days unfortunately before the case
4 happened last week, we would prefer the
5 Applicant coming to DDOT and justify the need
6 for that particular curb cut.

7 BZA CHAIR MILLER: And we saw last
8 week two different plans, one, you know, with
9 the 28 spaces, one with the 36, and I think
10 that my recollection was that the advocates
11 for the 36 said that there was a better layout
12 as a result.

13 Did DDOT consider that and its
14 assessment as to which number of spaces it was
15 favoring?

16 MR. JENNINGS: We did, and again,
17 we feel that the 28 spaces suffices in this
18 particular situation, and the reason we feel
19 that way is not necessarily for circulation
20 purposes because we seem to think that with
21 the 28 spaces circulation can still occur, but
22 we do get into a situation where as we even

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1 heard from some of the community members at a
2 meeting at the Office of Planning, I think,
3 that dates back to late March or early April
4 about this case, at one point this institution
5 was renting out parking spaces, which we're
6 not fans of either.

7 And I can honestly say that if
8 there are less parking spaces, it's something
9 that we would rather have the induced demand
10 on an institution like this so as to not over
11 park and, therefore, have the institution put
12 a parking lot with eight additional spaces,
13 more of a choice than a need, and then come to
14 realize we've done this million dollar
15 development. We need to pay some bills and,
16 therefore, let's rent out some of these
17 spaces.

18 BZA CHAIR MILLER: Well, that's a
19 different issues. I mean, and I think that
20 that could be controlled. I mean, for
21 instance, if we said they couldn't rent out
22 the spaces or whatever. I don't know, but I

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1 guess I want to, you know, understand what you
2 think are the pros and cons because, on the
3 one hand, eight cars doesn't seem like a large
4 amount with respect to how much this is going
5 to help mass transportation policies. I mean,
6 you know, eight like versus like 50 cars
7 somewhere else. That doesn't seem to me like
8 a big dent there, but I'm sure every little
9 bit helps, as opposed to the other
10 considerations which were, I think,
11 maneuverability, better layout, comfort level
12 for the neighborhood who's concerned that
13 there might not be enough because there
14 doesn't seem to be -- even if you say the need
15 isn't there, but it sounds like maybe the need
16 is being met very tightly. So there isn't
17 much give and so that's why the neighbor is
18 concerned.

19 MR. JENNINGS: Those are all
20 certainly things that we thought about as
21 well. We absolutely did, and in meeting with
22 the community, once again, we came to realize

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1 that perhaps the city has not done enough in
2 the area of a Metro station to try and thwart
3 the parking on Alton and 39th Street, as we
4 heard some of those community members, the
5 residents of those streets here last week.

6 And one of the proposals that DDOT
7 did come up with was for the residents to
8 realize that we can actually put into place
9 some kind of more progressive residential
10 permit parking ideas to try and hold back on
11 the parking that they've been seeing in the
12 neighborhood as an effect because the visitors
13 to the church don't necessarily go inside the
14 parking lot like they should.

15 So the idea was to, you know,
16 again, provide some better curb side
17 management and make the church realize that
18 they have to manage their visitors much better
19 and get them inside the 28-space parking lot
20 if that was to be approved.

21 And I think, you know, that became
22 pretty clear and obvious to us, that this is

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1 400 feet away from a Metro station, as the
2 Applicant as well as the community has said on
3 record; six or seven bus lines right outside
4 the front door of this particular address.
5 You know, again, in an ideal world everyone
6 takes mass transit, but you know, we're not
7 there yet.

8 So one of the witnesses that
9 testified last week, I believe it was the
10 gentleman who runs CummuniKids, he even
11 mentioned that the parking lot is not fully
12 utilized, and he sounded as though from the
13 times that I've been able to listen to him
14 speak at the ANC meetings, as well as here
15 last week, you know, there's just not enough
16 demand to kind of sign off on that extra
17 parking space.

18 We'd much rather see it less
19 parking in our view is going to be better, and
20 I think also as one of the ANC Commissioners
21 put it pretty well: we'd much rather see
22 green space next to the church than an

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1 additional eight parking spaced, too.

2 So those are things that we
3 certainly took into consideration.

4 BZA CHAIR MILLER: And how do you
5 figure that the 28 spaces meet the Applicant's
6 needs?

7 MR. JENNINGS: Site visits. I've
8 actually been out there quit a few times
9 myself with the Applicant and then
10 additionally, on subsequent visits right up
11 until about, I think, two or three weeks ago
12 to understand how much of a need is out there.

13 It seems that the dropoff and
14 pickup is instrumental to this institution.
15 Parking is kind of a if it's there, people may
16 use it or may not, and that became, I think,
17 very much a realization, very much a real item
18 once I was out there and able to see how the
19 morning operation worked. I saw a pickup and
20 dropoff from approximately I want to say it
21 was 8:30, maybe as late as ten or 10:30.

22 BZA CHAIR MILLER: I want to ask

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1 you. If we were to approve 36 spaces, is that
2 a bigger paved area for pickup and dropoff?
3 It's not just the parking spaces, right?

4 MR. JENNINGS: From what I can see
5 in the plans, 36 versus 28, there is a wider
6 space for pickup and dropoff. So you do
7 gather more green space when you do have the
8 28 spaces.

9 BZA CHAIR MILLER: My question was
10 if we were to approve the greater number of
11 parking spaces, does that mean we are
12 approving a greater paved area in which to do
13 both dropoff and parking?

14 MR. JENNINGS: From what I can see
15 on the 28 space plan, the dropoff lane is 20
16 feet wide. There is more green space, again,
17 from what I can see looking on this plan in
18 front of me.

19 For the 36 space plan that I'm
20 looking at, the dropoff lane whittles down to
21 14 feet wide, and again, it has the appearance
22 that there will be less green space because

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1 the parking lot winds up heading, if you are
2 looking on a map, west towards the National
3 Park Service land.

4 BZA CHAIR MILLER: Okay. You
5 know, the impression I got from listening to
6 testimony last week was that a lot of parents
7 might pull into a space temporarily to drop
8 their kids off, you know, park. It's a kind
9 of dropoff, but it's a park and dropoff; pull
10 into a space and go bring their kids into this
11 building and then leave, come back and leave.

12 So I'm under the impression that
13 the 36 space plan gives more place for that
14 kind of activity; is that correct?

15 MR. JENNINGS: I don't know if
16 that's completely valid with respect to what
17 I saw there the times that I was out there
18 because these classes are not big enough so
19 that you're not necessarily seeing the demands
20 in such a sense that 36 spaces would be at one
21 particular time fully utilized.

22 I did see, you know, probably at

1 one time somewhere in the ballpark of eight to
2 ten vehicles pull up to that Alton Place
3 small, narrow driveway.

4 BZA CHAIR MILLER: We're talking
5 about increases, right, in enrollment?

6 MR. JENNINGS: Absolutely.

7 BZA CHAIR MILLER: Is that
8 factored into your analysis?

9 MR. JENNINGS: Sure.

10 BZA CHAIR MILLER: And also, I'm
11 not sure of the percentage of cars that fit in
12 this category, but something like the
13 Caterpillar Co-op or whatever would have
14 carseats so that they couldn't carpool, right?

15 Do you know what percentage cars
16 that is?

17 MR. JENNINGS: Unfortunately I
18 don't.

19 BZA CHAIR MILLER: Okay. The
20 Applicant.

21 Okay. Other questions?

22 MEMBER JEFFRIES: But let me just

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1 be clear. It is your understanding that the
2 community is in favor of 36 spaces?

3 MR. JENNINGS: That's correct.

4 MEMBER JEFFRIES: Okay, and you
5 communicated that in your meetings, you know,
6 in terms of the city's initiatives, in terms
7 of being 400 feet from a Metro station, trying
8 to encourage more usage of the Metro, and so
9 forth and so on.

10 Okay. Thank you.

11 MR. JENNINGS: Yeah, much to no
12 fanfare. I've been out there at two different
13 ANC meetings trying to let everybody know that
14 the agency really prides itself on trying to
15 cut down on the availability for parking in
16 these particular instances.

17 And, again, not everybody is happy
18 about that, but yes.

19 MEMBER JEFFRIES: And you would
20 say that, I mean, obviously that in terms of
21 demand for parking, you know, that could
22 overflow beyond 28 or whatever, will not be on

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1 a regular basis. I mean, there might be times
2 when a bus will come through or whatever, but
3 it's not going to be a situation where all the
4 time the community is going to be seeing
5 overflow on, you know, parking spaces on the
6 streets.

7 MR. JENNINGS: That's right. You
8 know, again, if we had the ideal world
9 situation you would see no overflow.
10 Everybody would drive into that lot and sit
11 there and wait for pick-up appropriately, but
12 there will be instances where you will have
13 that overflow onto the curb side and public
14 space.

15 MEMBER JEFFRIES: Okay. I'll
16 probably go back to the Applicant at one point
17 and ask the question about how often they
18 think that the demand will be so great that
19 there will be overflow.

20 So thank you.

21 MEMBER DETTMAN: I want to just go
22 back real quickly to what you said about the

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1 curb cut along Alton Place, and it was sort of
2 in the beginning of your testimony. Can you
3 just sort of restate what you said about that?

4 MR. JENNINGS: The one that exists
5 out there today is very narrow. If we were to
6 have an application in front of us today for
7 such a curb cut, we most likely would ask that
8 it be widened. That Alton Place curb cut is
9 very narrow.

10 And as you've heard the Applicant
11 say, one vehicle is, you know, allowed to get
12 down that very narrow roadway, which is on
13 private space once you enter the curb cut
14 itself.

15 The idea that DDOT public space
16 staff has looked at if the Applicant were to
17 come before the DDOT public space committee
18 for the Yuma Street curb cut, whether or not
19 we can close the Alton Place curb cut, and
20 what that would do is allow them ingress and
21 egress off of Yuma Street, and when I sat down
22 with the Applicant to run this idea in front

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1 of them with their traffic consultant, they
2 didn't necessarily warm up to it because their
3 address is Alton Place. So they thought that
4 it would be best if they had their visitors
5 enter on Alton Place, which makes sense on the
6 surface of things.

7 But we have numerous addresses in
8 the city, numerous addresses that your curb
9 cut to your entrance is not necessarily your
10 address. So, again, you get into the scenario
11 of are you creating a drive through. You
12 know, do you have vehicles coming down Alton
13 Place and exiting Yuma, and do we want to
14 encourage that type of use when it comes to
15 our public space?

16 MEMBER DETTMAN: Is this an idea
17 that DDOT and Public Space has thought through
18 enough to sort of provide the Board with
19 benefits versus disadvantages that you'd gain
20 by shutting off that curb cut and having all
21 degrees on Yuma? Is it thought out enough?
22 No?

1 MR. JENNINGS: It's not.

2 MEMBER DETTMAN: Okay.

3 MR. JENNINGS: We would need some
4 additional data and representation from the
5 Applicant to understand if we did button up
6 one of the curb cut, the ramifications.

7 MEMBER DETTMAN: I mean, I think
8 it's a good idea, but I think that it has
9 negative impacts to the 38 space plan in terms
10 of circulation and pickup and dropoff.

11 So thank you.

12 BZA CHAIR MILLER: I just want to
13 ask one follow-up question, Mr. Jennings. I
14 mean, it seems like parking spaces is not an
15 exact science, and it's somewhat of a
16 projection, and I think on the one hand, we
17 have the Applicant and the neighbors and the
18 ANC all in favor of one proposal, and then
19 DDOT and OP in favor of another. If you're
20 wrong, then the consequences are that the
21 worst case scenario, I guess, would be more
22 cars on the neighbors' streets; is that right?

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1 And if the neighbors and the
2 Applicant and the ANC are wrong and they have
3 the slightly bigger parking lot with eight
4 more spaces, the ramifications are what?

5 MR. JENNINGS: Well, the way we
6 see it is it allows more vehicle trips. It
7 allows the possibility for additional
8 congestion, retiming of signals along
9 Wisconsin Avenue, and the list goes on and on
10 and on. So trying to minimize those vehicle
11 trips, minimize the opportunities for people
12 to either park or take their single occupancy
13 vehicle into this particular institution, you
14 know, again, we feel that a 28-space lot from
15 site visits, previous cases that have gone
16 before this Board, have gone before the Zoning
17 Commission, that those parking lots, they send
18 a pretty clear message to the visitors, is how
19 we are trying to arrive at this particular
20 conclusion.

21 BZA CHAIR MILLER: Okay. Any
22 other questions from Board members?

1 (No response.)

2 BZA CHAIR MILLER: Does the
3 Applicant have any questions?

4 You do have a copy of the Office
5 of Planning report and the DDOT report?

6 MR. DePUY: Yes, I do.

7 BZA CHAIR MILLER: Okay.

8 MR. DePUY: For the record,
9 Jacques DePuy, Greenstein, Delorum & Luchs,
10 attorney for the Applicant.

11 I just have two questions for Mr.
12 Jennings. Mr. Jennings -- and I need to
13 preface this by saying that curb cuts, of
14 course, are not within the jurisdiction of
15 this Board, but the driveway and the
16 circulation plan is. So we're dealing with
17 something which is a little bit unusual here,
18 and I'll try to frame my question in terms of
19 the Board's jurisdiction.

20 With respect to your
21 recommendation or preference for an
22 abandonment of Alton Place curb cut, which

1 would then mean the driveway would have to be
2 reconfigured and presumably abandoned, but
3 certainly not used coming in off Alton Place,
4 might it be possible under that scenario that
5 people coming to the property would drop off
6 an Alton and/or double park on Alton
7 notwithstanding the fact that Yuma would have
8 become the entrance and exit point?

9 MR. JENNINGS: We can consider
10 these things, but the idea and I think the
11 agency would like to take back that dropoff
12 and pickup area that's located in front of the
13 institution on Alton as it stands right now
14 and actually make that back into parking.

15 So as you're aware currently
16 today, there are signs posted, I believe, in
17 front of the institution for dropoff and
18 pickup. We would want to encourage as much
19 traffic to come in on Yuma and to steer away
20 from Alton.

21 MR. DePUY: A second question.
22 You didn't in your remarks address your

1 analysis or evaluation of curb side parking in
2 the immediate area, but did you look at that
3 question?

4 And if so, what conclusions did
5 you come to with regard to availability of
6 street parking from time to time?

7 MR. JENNINGS: The street side
8 parking, it's there. You know, it's not there
9 in plentiful, robust amounts, but it's
10 certainly there. I mean, when you have a
11 commercial area like Wisconsin Avenue and a
12 neighborhood that abuts up to it as this does
13 and then on top of that you've got a Metro
14 station and you're dealing with intra-ward
15 commuters, people driving from hypothetically
16 Forest Hills or areas that aren't served by
17 Metro stations to Tenleytown, you do get a lot
18 of Ward 3, Zone 3 stickers, stickered vehicles
19 out there.

20 We could perhaps create more with
21 respect to making some of these streets or
22 blocks or sides of street RPP only, and that

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1 would perhaps allow the residents to have a
2 little bit more of an ample supply. You know,
3 there are ways that we can certainly try and
4 better the parking for the residents out
5 there.

6 MR. DePUY: Thank you.

7 No further questions.

8 BZA CHAIR MILLER: I just want to
9 follow up because I'm not clear about this
10 curb cut question because we have before us
11 two plans for parking, and they both have curb
12 cuts on them. One is existing; one is new,
13 and if we were to approve that, how would that
14 interplay with public spaces either granting
15 or not granting the curb cut?

16 I mean if we were to base our
17 approval based on a plan that has a curb cut,
18 would there be the possibility that public
19 space would eliminate the existing one and/or
20 not grant the new one, or is that something
21 that we need to have in our record before we
22 make our decision?

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1 MR. JENNINGS: I think if you
2 included it in the analysis and any part of
3 the order, Public Space would certainly
4 respect it, but again, after speaking with the
5 staff for some time about this, we came to
6 realize that there's just not enough evidence
7 to have two separate curb cuts for this
8 particular address. We would need a much
9 further analysis with respect to trips, how
10 often those trips are coming, the queuing that
11 may occur at certain times in the day, but to
12 understand if you can create that particular
13 drive-through effect that we're seeing with
14 their proposal.

15 BZA CHAIR MILLER: Okay, but you
16 don't intend to do that in the course of these
17 proceedings, or do you?

18 MR. JENNINGS: I can't.

19 BZA CHAIR MILLER: No.

20 MR. JENNINGS: As far as make a
21 judgment for these two curb cuts? I cannot.

22 BZA CHAIR MILLER: Okay. Thank

1 you.

2 MR. JENNINGS: I think, just to
3 give some further justification, the reason I
4 can't is because we usually see a much more
5 robust traffic impact study. In this
6 particular case we saw trips which, you know,
7 served a great need as far as our reviewing
8 this. We saw numbers throughout the day.
9 What we would have liked to perhaps see, the
10 impact that it has on the surrounding
11 neighborhood, which we didn't necessarily get
12 a full grasp for, and that also was the reason
13 I went out to the area to get an understanding
14 as to how much of an impact you see on the
15 neighborhood.

16 So with respect to what we saw, it
17 served its purpose, but again, with the uptick
18 in use as we're seeing with this application,
19 we usually see, you know, whether it's traffic
20 tubes being put down to do counts throughout
21 the day and the new counts being factored in,
22 you've seen, I'm sure, quite a few traffic

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1 studies since you've been here. This one was
2 good, perhaps wasn't the best.

3 BZA CHAIR MILLER: Okay. Does the
4 ANC have any questions?

5 I guess you should introduce
6 yourselves for the record even though it's a
7 continuation.

8 MS. PERRY: Hi. My name is Karen
9 Perry from ANC-3F.

10 Mr. Jennings, we might bounce
11 around a little bit, too, if you don't mind
12 because it's from last week, and we're hearing
13 some new stuff today.

14 Have you ever discussed with the
15 ANC and/or the residents of Yuma Place what we
16 heard today, that you might like to close off
17 Alton Place and just use Yuma? Was that ever
18 brought up to the ANC or to the residents of
19 those streets, of the street?

20 MR. JENNINGS: No, and I don't
21 think I've ever met with any of the residents
22 on Yuma Street, at least not at DDOT. I may

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1 have actually met some of them at your ANC
2 meetings where I spoke at the April and May
3 meetings.

4 But, no, that was never really
5 fully discussed, but when I did meet with Judy
6 Chesser and Pat -- and I'm forgetting her last
7 name -- at the end of May, that did come up,
8 I think, briefly in conversation.

9 MS. PERRY: But just to be clear,
10 you never even brought that up at our ANC
11 meetings, the possibility.

12 MR. JENNINGS: Yeah, but the ANC
13 would have to review the curb cut, too.

14 MS. PERRY: Skipping around here,
15 also in your report did you -- from what I
16 remember the OP report, I believe it said that
17 most of the pickup and dropoffs was going to
18 be on site, and today in your remarks you
19 mentioned this, I guess, lay-by on Alton Place
20 where pickup and dropoff is occurring also.

21 Has that been factored in or are
22 you -- you know, how does that play now?

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1 Because it's two different things that we're
2 saying here.

3 MR. JENNINGS: This is the first
4 time I'm hearing the term "lay-by." So this
5 is --

6 MS. PERRY: I'm not sure. Pickup
7 and dropoff area, let me just refer to it that
8 way.

9 MR. JENNINGS: Yeah. I think we
10 stand pretty firm on, you know, wanting to put
11 all of the dropoff and pickup onto private
12 property. We're not necessarily into wanting
13 to see those sign exist as they are out there
14 today in front of Wisconsin Avenue Baptist
15 Church. We would prefer to see that
16 particular area of Alton Place be put back
17 into the residential permit parking program if
18 we could.

19 MS. PERRY: Okay. I'm going to
20 try and find my questions for Mr. Jennings.

21 The parking counts that were done,
22 they weren't done by Grove, Slade, were they?

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1 they were done by the church itself.

2 MR. JENNINGS: They admitted to
3 that themselves, yes. The Applicant
4 themselves, not their traffic consultant,
5 performed the traffic counts. I believe they
6 said that on the record last week.

7 MS. PERRY: Okay. Do you believe
8 that people carrying instruments are going to
9 be taking the Metro or is it going to be
10 something where people are going to throw
11 their instrument in the car in the morning, an
12 accordion, a cello or whatever, drive to work
13 and then possibly drive to the site?

14 I mean, we're talking about
15 musical instruments here for the music school.

16 MR. JENNINGS: I believe you. I
17 think it's one of those scenarios where if you
18 can perhaps even leave your instrument at the
19 particular location or address where you go
20 for music lessons, I think, as is the case
21 with this institution, you're not going to
22 transport this instrument on a Metro train.

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1 However, if there is something
2 that needs to be taken home, yeah, I think you
3 are correct in saying that no one will,
4 perhaps, take a bus or take a train with such
5 a large instrument.

6 MS. PERRY: You know, I can
7 understand somebody not bringing a piano or
8 leaving a piano at work, at the school, but
9 most people don't have an instrument at home
10 to practice on and another one that they can
11 leave at the music school.

12 So, I mean, I think you would
13 agree with me that for the most part, people
14 are going to be transporting their
15 instruments.

16 MR. JENNINGS: When I think about
17 who plays an instrument and what type of
18 instrument and whether or not that can be
19 transported via a means of mass transit, there
20 aren't a ton of instruments that come to mind
21 that cannot be transported via mass transit.
22 So, you know, I'm pretty confident with the

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1 remarks we made with respect to people can be
2 taking mass transit at different times for
3 this particular institution.

4 MS. PERRY: Let's take you, Mr.
5 Jennings. You're going to bring your
6 instrument in the morning on the Metro to
7 DDOT, and then you're going to leave it.
8 You're going to bring it into your office.
9 You're going to take it back to the Metro, and
10 you're going to go to this site. I think it's
11 wonderful.

12 In your analysis of the 28 space
13 parking lot, the church has -- it suggested
14 based on the addition or also on the current
15 uses that the church has -- I mean, I guess
16 where I'm coming from is on a Saturday when
17 there are activities from the special
18 exceptions. What if there's a wedding or a
19 funeral? Aren't you going to need spaces or
20 are you assuming the bride is going to come on
21 the Metro with her bridal party and her gown?

22 MR. JENNINGS: No, we certainly

1 asked -- we asked that question, and we
2 certainly made that a point in asking the
3 Applicant what happens with the special events
4 like a big wedding or a funeral. And you're
5 right. There is overflow. I think as
6 Commissioner Jeffries stated, there will be
7 the inevitable overflow with special events,
8 as seems to be something that he'll ask the
9 Applicant and perhaps they can answer a lot
10 better, but it's pretty unique in the sense
11 that in my two and a half years of being at
12 DDOT before this case, before this case, I
13 never heard of this address existing.

14 In other words, was there an
15 impact or was this something that was actually
16 brought on by the application?

17 So I've got to be pretty clear
18 about that. Special events, funerals,
19 weddings, and again, I've been at DDOT for two
20 and a half years, and I hear of addresses all
21 the time that are problem addresses, nuisance
22 addressed. Can you do something about this

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1 private school? The traffic for this private
2 school is horrible.

3 And you know the ones I'm talking
4 about, Commissioner Perry. You do. You bring
5 the --

6 MS. PERRY: I don't deny that.

7 (Laughter.)

8 MR. JENNINGS: Prior to this
9 particular application going in, 3920 Alton
10 Place was just another address.

11 MEMBER JEFFRIES: But it's a
12 different world that we're talking here.

13 MR. JENNINGS: So true.

14 MEMBER JEFFRIES: I think that's
15 the point they're trying to make.

16 MR. JENNINGS: So true.

17 MS. PERRY: And you don't really
18 attend all of our meetings, do you, Mr.
19 Jennings, to hear that possibly there were
20 problems at this site but we didn't raise them
21 with you?

22 MR. JENNINGS: I will say,

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1 Commissioner Perry, with all due respect,
2 that --

3 MS. PERRY: I would raise it.

4 MR. JENNINGS: -- with all due
5 respect, I attend probably somewhere in the
6 ballpark of six to eight out of your 12
7 meetings throughout the year in the time that
8 I've been with DDOT.

9 MS. PERRY: Also referring to your
10 report, what previous site -- in your report
11 you mention previous sites that our ward have
12 been over-parked. What site in ANC-3F has
13 been over-parked?

14 MR. JENNINGS: I don't think I was
15 making reference to ANC-3F.

16 MS. PERRY: Okay. You mentioned
17 enhancing the RPP program on the neighborhood
18 streets. Wouldn't that require something from
19 the residents requesting it also?

20 MR. JENNINGS: That's correct. We
21 actually talked about that when they came and
22 visited DDOT. Judy Cheshire seemed --

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1 MS. PERRY: A petition?

2 MR. JENNINGS: -- ambitious with
3 respect to, you know, perhaps having residents
4 sign off on a petition that would get some
5 enhanced RPP on the streets.

6 MS. PERRY: Okay. Isn't it true
7 also that DDOT has gone to all of the ANCs in
8 Ward 3 and talked about giving all of the
9 residents on an RPP block a visitor or guest
10 pass in response to complaints that visitors,
11 nannies, housekeepers are getting tickets when
12 they come to our neighborhood?

13 So isn't it your intention on
14 these blocks to give everyone a visitor pass?

15 MR. JENNINGS: No, that's
16 incorrect. As a matter of fact, subsequently
17 since the Policy Division has gone out and
18 actually introduced the idea, we've had quite
19 a bit of negative feedback on that policy idea
20 being instituted. So we've rescinded it, and
21 we will not be going out with that particular
22 idea.

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1 MS. PERRY: Okay. The current
2 driveway is 12 feet. The use of this site
3 from the way I understand it, people are going
4 to be pulling in, dropping off, pulling out.
5 It's going to be a constant in and out, almost
6 like a revolving door, almost every 45
7 minutes, every hour. Can two cars currently
8 pass each other to get out on this 12 foot
9 drive?

10 MR. JENNINGS: No, they cannot.

11 MS. PERRY: So it's possible it
12 could back up without an additional curb cut?

13 MR. JENNINGS: There's a good
14 chance that, yeah, if it's not well managed,
15 the queuing, as I think has been stated here
16 just last week, it could be quite a burden on
17 the institution.

18 MS. PERRY: Since this is classes
19 that are going to be going every 45 minutes,
20 every hour, how would you describe the impact
21 to a residential neighborhood? Is it like an
22 office building where you come in in the

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1 morning and you go home at night and you park
2 your car, or is it more like a shopping mall
3 or a Burger King with the constant flow?

4 MR. JENNINGS: From the times I've
5 been out there, I didn't necessarily see a
6 constant flow, but I will say you heard the
7 size of the classes, and you actually even
8 heard a resident who sends their child there
9 just last week speak at the very end of the
10 testimony, and I think her description was
11 pretty on par with what I've seen out there in
12 the times that I've been to visit.

13 I haven't seen the kind of, you
14 know, as you stated just now, kind of that
15 drive-through effect, if you will. I did see
16 at one time that there was enough of a dropoff
17 and pickup on Alton Place that it does -- it
18 does kind of queue up. I'm not going to say
19 it looks like Wisconsin Avenue, but you know,
20 it's a residential neighborhood that abuts a
21 commercial zone, and we have to take into
22 consideration on such a location as we have

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1 here that there are going to be some impacts.

2 MS. PERRY: But it is a
3 residential neighborhood. It's not a
4 commercial zone.

5 MR. JENNINGS: It abuts a
6 commercial zone. I never said it was a --

7 MS. PERRY: Okay.

8 MR. JENNINGS: Okay.

9 MS. PERRY: Going to the OP
10 report, if I can -- Commissioner Wiss, do you
11 have questions for DDOT?

12 MS. WISS: Yes, I do.

13 MS. PERRY: Okay.

14 MS. WISS: Okay. Hi.

15 Commissioner Cathy Wiss from ANC-3F-06.

16 I'd like to understand how the
17 dropoff could actually be on site and safe,
18 which was a concern of a lot of people,
19 without having the circulation from Alton
20 Place to Yuma Street, especially in the 28
21 space parking lot, which doesn't allow
22 circulation around the lot.

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1 MR. JENNINGS: You said without
2 the 28 space?

3 MS. WISS: Well, particularly in
4 the 28 space lot. You don't have circulation
5 around the lot. So if you're going to have
6 circulation, don't you have to have both curb
7 cuts?

8 MR. JENNINGS: I don't believe so.
9 I honestly believe that with one or the other,
10 in this particular case if you did drop the
11 Alton Place entrance, you stand the chance of
12 having some circulation with that new curb cut
13 on Yuma Street.

14 MS. WISS: Would you have to
15 redesign where the parking spaces are to get
16 a flow through the parking lot?

17 MR. JENNINGS: You might have to.

18 MS. WISS: And do you think that
19 could be done?

20 MR. JENNINGS: We think so.

21 MS. WISS: Okay. Have you
22 designed it to find out?

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1 I mean, we just noticed last week
2 -- maybe you weren't here -- that the 28 space
3 lot really has only 27 spaces.

4 MR. JENNINGS: No, I was here.

5 MS. WISS: Okay. So you --

6 MR. JENNINGS: No, we haven't
7 designed it, and we don't usually go to such
8 great lengths on these particular land use
9 cases. We do discuss them to some length, but
10 to actually send to our design people or our
11 infrastructure people, we don't usually do
12 that.

13 We ask the Applicant actually if
14 they come before us for public space to show
15 us how the queuing would happen so that we
16 could be comfortable with it, too.

17 MS. WISS: Now, what about the
18 needs for the church? Because the zoning
19 regulations require one parking space for
20 every ten seats in the sanctuary. Well,
21 Reverend Bergfalk and I measured the seats,
22 and we computed that there were 294 seats in

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1 the pews, and that if you had a seat at the
2 piano and at the sound console and maybe for
3 the clergy or lay ministers, you'd have a few
4 more. So that's roughly 300 seats, would come
5 out to 30 parking spaces.

6 So if you have 28, how does that
7 affect the church?

8 MR. JENNINGS: Quite honestly, I'm
9 going to try and defer to my colleague at OP
10 here to see if she can come up with any rhyme
11 or reason for the private property use. Do we
12 know for a fact that someone is standing at
13 the door and counting 300 people entering into
14 the church at a particular occasion so that
15 perhaps you would need those 30 spaces as you
16 pointed out today?

17 MS. WISS: Would you have valet
18 parking?

19 I mean, the thing is I'm just
20 thinking the zoning regulations have a certain
21 requirement that's written in the zoning
22 regulations. Twenty-eight spaces, you could

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1 take out a few pews maybe and, thus, come
2 within the regulations.

3 MS. THOMAS: We did not count the
4 seating of the church as it wasn't before us
5 at the time. So we just focused on the child
6 development center and the school, private
7 school.

8 BZA CHAIR MILLER: Ms. Wiss, is
9 your point that if they actually have more
10 seats than were counted that actually 30 would
11 be required?

12 MS. WISS: Well, there were 294 in
13 the pews.

14 BZA CHAIR MILLER: I heard you go
15 through that.

16 MS. WISS: Okay.

17 BZA CHAIR MILLER: But, I mean, is
18 that the point you're trying to make, that
19 perhaps 30 are required, not 28?

20 MS. WISS: That's the point I was
21 trying to make, yes.

22 BZA CHAIR MILLER: Okay.

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1 MS. WISS: If not 29, but 29 or
2 30. At least 29 based on 294 people in the
3 pews.

4 BZA CHAIR MILLER: Okay. I don't
5 want to belabor this, but who actually chose
6 the number, the Applicant?

7 MS. WISS: Well, I measured it.
8 We took my tape measure.

9 BZA CHAIR MILLER: I mean we're
10 working with a 28 figure. Whose figure is
11 that? Is that the Applicant's?

12 MS. WISS: The Applicant's, yeah.

13 BZA CHAIR MILLER: Okay.

14 MS. WISS: Now, when the ANC
15 received the transportation study, we were
16 surprised. It seemed really thin. It didn't
17 have the usual analyses and counts that we
18 normally see.

19 So I'm asking DDOT whether the
20 Applicant should now even provide the figures
21 that you are asking for that you said would be
22 needed for the public space committee.

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1 MR. JENNINGS: No, and the reason
2 is because for the zoning order to be put in
3 place, we feel pretty confident with the site
4 visits we've performed. We feel pretty
5 confident with speaking to the community and
6 speaking with the Applicant about the various
7 measures that they need to do that could
8 perhaps be improved. When they do come before
9 Public Space, if they do, we would certainly
10 want to ramp up and ask them for much more
11 data than what has been prepared for in this
12 particular application.

13 MS. WISS: Now, you've been out.
14 You've looked at the existing impact, but it's
15 existing impact. So how did you arrive at the
16 impact of the expansion?

17 MR. JENNINGS: Again, we didn't
18 see the expansion as having such a substantial
19 burden so that, you know, there had to be an
20 underground parking garage built with over 100
21 spaces. We saw the expansion as, you know,
22 undoubtedly there will be an increase in use,

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1 and undoubtedly that will lead to more trips.
2 I think even the Applicant has admitted to
3 that, too.

4 But we have remained pretty strong
5 and pretty -- we're really adhering to this
6 idea that the Applicant can do much better
7 with respect to managing its vehicle trips and
8 even cutting down on them, you know, whether
9 it's divvying up zip codes to understand who
10 lives in 20016 or 20008 and who can perhaps
11 drive a block away in order to pick up one or
12 two more children. That's to us is perhaps a
13 significantly more logical approach than
14 having someone put into a traffic impact study
15 that, you know, they will see a 15 or 20
16 percent more vehicle use.

17 We'd rather stay away from that,
18 quite frankly. If they had put it into the
19 traffic impact statement that they provided,
20 it would have been fine. We would have
21 certainly put in many more transportation
22 demand management measures than we saw, but

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1 you know, again, we feel very confident that
2 this 28 space parking lot along with the
3 increase in use will suffice in this
4 particular scenario.

5 MS. WISS: Now, one of your
6 transportation demand management strategies is
7 to use more public transportation, typically
8 the Metro. Has DDOT studied the accessibility
9 of this site to Metro and the buses' physical
10 accessibility, the ease with which people who
11 may not have such an easy time walking can get
12 between the subway and the church?

13 MR. JENNINGS: Our infrastructure
14 projects management group is actually out in
15 the area trying to take a survey around the
16 Tenleytown Metro Station, and allow me to shed
17 some context.

18 Recently, in the last couple of
19 days, it has come to our attention that there
20 was an handicapped individual trying to access
21 the Tenleytown Metro Station, and that spurred
22 DDOT into action with trying to take a survey

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1 as to where sidewalks may not be necessarily
2 in this neighborhood.

3 So I think Commissioner Wiss may
4 be citing the idea that perhaps sidewalks are
5 not where they should be. We can do a much
6 better job, absolutely. I completely agree
7 with you, and again, our infrastructure
8 project management staff, they're out there at
9 the direction of Director Moneme to try and
10 see how we can make it better for access to
11 Tenleytown, the Metro station.

12 MS. WISS: Well, thank you for
13 that.

14 Now, I'd like to turn to the
15 Office of Planning. You recommend that the
16 child development center be approved. Have
17 you had any communication with the Department
18 of Health about the Child Development Center?

19 MS. THOMAS: No, no, I haven't.

20 MS. WISS: And on page 2 of your
21 report, you call one of the stories, I assume
22 the one that's partially below ground, a

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1 cellar. On what basis do you do this?

2 MS. THOMAS: As stated in the
3 Applicant's report, submission.

4 MS. WISS: Okay. I think that's
5 all the questions I have.

6 MS. PERRY: I have a few for OP.

7 In your report in many cases, you
8 link the Caterpillar Co-op CommuniKids as if
9 it was one child development center. Aren't
10 they actually two independent organizations
11 with their own board, their own staff
12 requiring their own special exceptions?

13 You keep saying Caterpillar Co-op
14 and CommuniKids as if it was one.

15 MS. THOMAS: Yeah, there are two
16 entities. They're separate entities. I do
17 recognize that, but the church is applying to
18 run a child development center using these two
19 entities. That's the way we looked at it.

20 MS. PERRY: Okay. Not as the two
21 independent --

22 MS. THOMAS: No.

1 MS. PERRY: -- entities that they
2 are.

3 Are you aware of the fact that
4 CommuniKids is organized as a Maryland for-
5 profit?

6 MS. THOMAS: I believe that they
7 said they were for profit.

8 MS. PERRY: In Maryland.

9 MS. THOMAS: I'm not sure. I
10 don't remember.

11 MS. PERRY: Okay. Isn't it true
12 that in an R-1 district the zoning regulations
13 in Section 216 state that uses for a program
14 for a church shall not be organized for profit
15 but shall be organized exclusively for the
16 promotion of the social welfare of the
17 community?

18 MS. THOMAS: Yes, that is true.
19 Section 216 governs church programs. This is
20 not a church program.

21 MS. PERRY: And that same for-
22 profit is in Section 209 for community

1 centers, that it can't be a for-profit.

2 MS. THOMAS: That's correct.

3 MS. PERRY: Where does OP or the
4 zoning regulations fall with regard to child
5 development centers that are for-profit in the
6 R-1?

7 MS. THOMAS: A child development
8 center is permitted in the R-1 zone.

9 MS. PERRY: Even a for-profit one?

10 MS. THOMAS: Yes.

11 MS. PERRY: It's silent, in other
12 words.

13 MS. THOMAS: It's silent on that.

14 MS. PERRY: Okay. We heard
15 something new today when we were sitting here
16 about child development centers and children
17 under the age of two. CommuniKids has
18 children of one year of age. So I think that
19 would need to be changed or we need to be
20 silent on it or something on the caps?

21 MS. THOMAS: I believe that that
22 will be up to the Board.

1 MS. PERRY: Okay.

2 MS. THOMAS: That they would be
3 silent on it.

4 MS. PERRY: Okay. Because their
5 application does talk about children from one
6 to eight.

7 On page 8 -- were you here, Ms.
8 Thomas, when Ms. Miller suggested an
9 enforceable enrollment cap possibly late week
10 for these institutions versus the cap that the
11 neighborhood ANC had recommended of just 97 at
12 any one time?

13 MS. THOMAS: Yes.

14 MS. PERRY: Okay. On your report
15 on page 8, I believe you recommend some caps.
16 You say, "OP recommends approval of the
17 special exception request, a child development
18 center for a maximum of 80 children ages one
19 through eight with 17 teachers."

20 That's the combined enrollment cap
21 you're suggesting for both institutions?

22 MS. THOMAS: Right, right.

1 MS. PERRY: Okay. And a cap for
2 the music school of 30 students and ten
3 teachers; am I correct in that?

4 MS. THOMAS: That's correct.

5 MS. PERRY: Okay. I just wanted
6 to make sure. So that's your recommendations
7 on enrollment caps?

8 MS. THOMAS: Yes.

9 MS. PERRY: Okay. Last week the
10 Gorove Slade, I believe, testified that it
11 takes about six seconds for a child to get out
12 of the car. Does OP agree with that analysis
13 based on the fact that these are small
14 children seatbelted into the back seat of a
15 car, that somebody is going to have to open up
16 the car door, take the children out? I mean
17 is that a realistic time frame?

18 MS. THOMAS: I haven't done any
19 tests myself as to the timing of this.

20 (Laughter.)

21 MS. THOMAS: Six seconds? Did you
22 say six seconds?

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1 MS. PERRY: I believe that's what
2 was said last week. I have to go back to my
3 -- you know, to the testimony, but I believe
4 it was something to that effect.

5 MS. THOMAS: I can't say if it's
6 six seconds, ten seconds, 12 seconds.

7 MS. PERRY: I guess the reason I'm
8 raising it, you know, is because of the
9 queuing and the traffic, how fast cars can
10 come in and out when you have small children
11 in backseats.

12 MS. THOMAS: Yes, I understand
13 with small children it's difficult, but as to
14 the timing, I have no idea.

15 MS. PERRY: And I don't know too
16 many parents -- I don't know if you do -- that
17 just basically open a door and push their
18 child out and don't say goodbye or give them
19 a kiss, you know. So I just want to raise
20 that.

21 Can OP predict where the increased
22 enrollment will come from, whether it will

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1 come from D.C. parents in the neighborhood,
2 whether it's going to come from parents in
3 Virginia or Maryland, or can --

4 MS. THOMAS: No, I can't predict
5 that.

6 MS. PERRY: Okay. So you don't
7 know really how many parents will be bringing
8 their children by cars and need the bigger
9 parking lot or parking on site and waiting for
10 their children?

11 MS. THOMAS: No, I can't predict
12 that.

13 MS. PERRY: Okay. So some parents
14 might come, drop off, and go to work or run
15 errands and come back, and then other parents
16 might just sit and wait the 45 minutes or hour
17 that their children are in class in a parking
18 place.

19 MS. THOMAS: I don't know. It's
20 conceivable that they would drop their kids
21 off on their way to work, yeah, but I'm not
22 sure about waiting.

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1 MS. PERRY: I think the reason I'm
2 asking is because some of these classes are
3 only an hour or 45 minutes in length, and you
4 know, depending on where you're coming from --

5 MR. JENNINGS: If I may, I think
6 earlier this week the Applicant may have
7 submitted something into the record stating
8 that they were going to offer a sitting area
9 or some kind of waiting area that would be
10 inside the institution and they can --

11 MS. PERRY: But those cars will be
12 parked in spaces.

13 MS. THOMAS: We --

14 MS. PERRY: I think I'm getting to
15 the 36-28 space lot.

16 MS. THOMAS: We would hope those
17 vehicles would be parking spaces, that they
18 would not -- and I think that was something
19 that they picked up on the comments that DDOT
20 submitted, was how I took in from Commissioner
21 Wiss she had witnessed vehicles idling on
22 Alton Place, and you know, with respect to

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1 them better managing their visitors, that's
2 why DDOT put into the public record that the
3 Applicant needs to better manage the traffic,
4 that they should be putting onto their private
5 property and not putting at the curbside or
6 allowing them to double park.

7 So I do find if -- I do find it an
8 advantage, if you will, that the Applicant
9 would allow a waiting area for the parents to
10 come in, sit down, wait for their children,
11 which would perhaps allow them to park their
12 vehicles and not necessarily invite them to
13 park out on the curbside.

14 MS. PERRY: Okay. That's all I
15 have.

16 BZA CHAIR MILLER: Thank you.

17 Okay. Do the neighbors have cross
18 examination for Office of Planning and DDOT?

19 You have to come to a mic. Okay?

20 MR. HIRSH: I was just going to
21 say that I think the Board is aware of the
22 neighbors' concerns on this, and that in the

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1 interest of time and what's already been
2 asked, we'll pass.

3 BZA CHAIR MILLER: Okay. Great.
4 Okay. I think that where we are in the
5 procedure then is for the ANC to present its
6 case.

7 MEMBER JEFFRIES: Excuse me.
8 What's your sense? How long will your
9 presentation be? Do you have a sense of that?

10 MS. PERRY: I'm going to defer to
11 Ms. Wiss on that. I have an opening statement
12 to make prior, which will probably take less
13 than four minutes.

14 MEMBER JEFFRIES: Okay.

15 MS. PERRY: Or five minutes at the
16 most, and I have to --

17 MEMBER JEFFRIES: So we'll wait
18 for Commissioner --

19 MS. WISS: (Speaking from an
20 unmiked location.)

21 BZA CHAIR MILLER: Okay. We are
22 going to finish this case tonight.

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1 MS. PERRY: And I can go ahead and
2 make the opening statement?

3 BZA CHAIR MILLER: Yeah. I just
4 want to say since it's 6:30 that we started
5 late, and I think you all know we're going
6 late, but if anyone needs to have me stop so
7 that they can make a call for child care
8 arrangements or anything else like that, just
9 let me know. Okay.

10 MEMBER JEFFRIES: Madam Chair, I
11 also want to add because we're going to finish
12 this tonight, my hope is that if there's any
13 information that's duplicative, I mean, let's
14 just keep it in mind that, you know, everybody
15 has lives, and so if we can just move this
16 along and not -- okay. Thank you.

17 MS. PERRY: For the record, again,
18 my name is Karen Perry from ANC-3F.

19 I want to personally thank
20 Commissioner Wiss for preparing her excellent
21 report and her resolution on this case, but at
22 the same time I spoke with our ANC Chair, Jane

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1 Solomon, this morning who couldn't be here
2 today. She asked me to strongly convey to you
3 that we need to preface our report and
4 resolution on the fact that we were misled
5 during our ANC meetings into believing the
6 construction of this building was a matter of
7 right.

8 This was a question that came up
9 numerous times, asked in many different ways
10 and repeatedly answered the same way, that the
11 special exception request for the building was
12 simply an error in their submission. We're
13 not zoning attorneys. Maybe we should have
14 questioned a little more, but it wasn't until
15 last week that we actually heard why the
16 special exception was needed.

17 We had always been told it was
18 simply an error in the submission. Many of us
19 now feel that we were misled into believing
20 that we had no choice but to compromise and
21 put forth just plain operating conditions.
22 The discussion and questions in our meetings

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1 might have been totally different had we known
2 this fact.

3 Large chunks of Cathy's original
4 report were left out because they were based
5 on our assumptions. As our chair would say,
6 we were duped.

7 Unfortunately, we did not have
8 enough time to hold another meeting prior to
9 being here tonight. Input from the neighbors
10 might have also been very different and led to
11 a different report and resolution.

12 The report might have been the
13 same. We just don't know.

14 We also received by E-mail
15 yesterday from Mr. DePuy a list of the
16 conditions he filed with the BZA, which were
17 given to Ms. Miller. We need to inform you
18 that his condition number eight is not
19 accurate. Our ANC never received a
20 construction agreement, nor did we ever
21 discuss a construction agreement at our
22 meetings.

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1 I lost track of time, but
2 somewhere around midnight last night when our
3 ANC voted six, zero, one at our regularly
4 scheduled meeting to bring these matters to
5 your attention so that you know where our
6 resolution and report are coming from.

7 MS. WISS: Good evening, Madam
8 Chair and Board members. My name is Cathy
9 Wiss. I reside at 3810 Albemarle Street,
10 N.W., and I'm the single member district
11 commissioner for ANC-3F-06.

12 I was glad when Reverend Bergfalk
13 first told me that the church would be seeking
14 special exceptions because for years I've seen
15 all sorts of activities going on at the church
16 and had recommended to him to check with a
17 zoning attorney to see if they needed any
18 special exceptions.

19 I will now just turn to the points
20 in our ANC's resolution and elaborate on what
21 they mean and why we wrote it the way we did.

22 In that large packet that I gave

1 you as Attachment A is information from the
2 tax records showing that the National Park
3 Service is the adjacent property owner and
4 also there's a plat of the Square 1779 which
5 shows both the church and the adjacent homes.

6 I know last week somebody asked
7 how close the homes are. This gives you some
8 idea. They're very close. They're on very
9 small lots, about 3,000 square feet, give or
10 take 100 either way, which is why this does
11 have a particular effect on the residents
12 there.

13 Attachment B is a number of
14 documents showing that the lowest level is a
15 basement. We were particularly concerned
16 about this because everything we had showed
17 the lowest level is a basement and not a
18 cellar, as the Applicant has been maintaining
19 for this case. But actually there have been
20 two applications for the same property with
21 the same building in which it has always been
22 called a basement. And the documents that I

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1 gave you are the January 28th, 1980 order in
2 the first BZA application granting the special
3 exception for the property to use the basement
4 and first floor.

5 There also is an October 11th,
6 1979 OP report recommending approval of use of
7 the basement and first floor for a child care
8 center.

9 There's a December 28th, 1979
10 order, proposed order, filed by Jacques DePuy,
11 calling the level that's partially below grade
12 a basement.

13 There's a certificate of occupancy
14 issued by DCRA to use the basement for a child
15 care center, and so on and so forth. Every
16 single document in --

17 BZA CHAIR MILLER: Ms. Wiss.

18 MS. WISS: Yes.

19 BZA CHAIR MILLER: So that we can
20 follow you more carefully and closely, why is
21 that relevant to the application that has been
22 filed before us now that we're considering?

1 Where does this fit in?

2 MS. WISS: Well, it's relevant
3 because originally they did file for it, but
4 throughout their pre-hearing statement filed
5 on May 27th, also during their presentation,
6 they kept calling it a cellar. The Office of
7 Planning has called it a cellar.

8 A cellar is a very technical term.
9 It then allows you to build another floor, and
10 effectively the ANC does not want you to write
11 an order in which it is called a cellar unless
12 you've made some finding that it is, in fact,
13 a cellar.

14 BZA CHAIR MILLER: Okay.
15 Basically it doesn't affect the specific issue
16 in this case, but you don't want us to use the
17 wrong term because it might affect their
18 building in the future.

19 MS. WISS: In the future. That's
20 right.

21 BZA CHAIR MILLER: Okay.

22 MS. WISS: I'm trying to speed

1 things up, but I was going to say that we had
2 a discussion at our February ANC meeting with
3 the architect. He said it's four feet above
4 grade. Therefore, it's a cellar, and we said
5 no. Four feet above grade is a definition of
6 a basement.

7 So effectively, you've hit the
8 nail on the head. That's -- and that's why we
9 ask that the building be built according to
10 the plan submitted on May 27th, because at
11 that point of our ANC meeting, we had not
12 received the May 27th pre-hearing submission
13 with the plans. So we were told that it
14 didn't have that floor, and so we just sort of
15 did a blanket approval. Okay. We want you to
16 build to those plans.

17 We did not have them before us at
18 the time, and I think you should know that.
19 Now --

20 BZA CHAIR MILLER: But you have
21 the plans now. Do you want them to --

22 MS. WISS: Now we do.

1 BZA CHAIR MILLER: -- build
2 according to their plans that have been --

3 MS. WISS: So while --

4 BZA CHAIR MILLER: -- put in the
5 file?

6 MS. WISS: I'm basically telling
7 you what was in our resolution and why we did
8 what we did. So now we have the plans, and
9 yes, they don't have the final floor, but the
10 plans also showed 27 places in the 28 space
11 parking lot, and so we didn't know that until
12 actually a week before the first hearing.

13 Another thing that concerned us, I
14 had gone down to try to understand who these
15 organizations were, and I talked to DCRA's
16 corporation office. In doing that, I found
17 that the Washington Conservatory of Music was
18 originally incorporated in the District of
19 Columbia in 1982, but DCRA has no records of
20 them operating in D.C. since March 28th, 1962.

21 They have been operating in the
22 State of Maryland as a D.C. corporation, but

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1 we're raising this because we believe they
2 should have a certificate of good standing to
3 be able to operate in the district, and this
4 is important for you because you may be
5 approving use by an entity that cannot operate
6 here.

7 And we had this once in the
8 Washington Home BZA case in which the Home
9 never provided the final building plans and,
10 thus, the order was never written and the case
11 was just plain closed.

12 MEMBER JEFFRIES: Madam Chair,
13 didn't we talk about this last week?

14 BZA CHAIR MILLER: I don't
15 remember, but I don't see the correlation
16 between not having plans in the file that
17 you're going to build in accordance with and
18 not having a certificate of good standing.

19 Is there a requirement somewhere
20 in our regulations?

21 MS. WISS: Not in your
22 regulations, but you could approve an

1 organization. Until they are able to operate
2 with a certificate of good standing in the
3 District, you could approve them and they
4 would not be able to operate there.

5 MEMBER JEFFRIES: But that's on
6 the Applicant. I mean, you know, obviously,
7 we have an order, and if the Applicant is not
8 able to satisfy everything for the order, then
9 it's not going to go forward. I mean, it's
10 not going to be able to get a permit to do the
11 work.

12 MS. WISS: Okay. Well, I was just
13 throwing that out there just for your
14 information. That's what that point number
15 four on our resolution means.

16 MEMBER JEFFRIES: Okay. Thank
17 you.

18 MS. WISS: Okay. We were trying
19 to understand the other organizations. In
20 your packet is a brochure showing that the co-
21 op is an organization, is affiliated with an
22 organization known as Citygate, and that is a

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1 nonprofit.

2 MEMBER JEFFRIES: Is that
3 attached?

4 MS. WISS: It's on Attachment C.

5 MEMBER JEFFRIES: Attachment C?
6 Okay.

7 MS. WISS: Attachment C. It's
8 after the conservatory.

9 However, the CommuniKids is a
10 separate organization, and at Attachment D it
11 shows that D.C. certificate of registration as
12 a for-profit corporation. We learned that
13 it's a for-profit at the January 17th meeting.
14 They said they incorporated quickly without
15 much thought.

16 But it turns out that the founders
17 are two lawyers and a former securities
18 trader. So it seems that they should know the
19 difference between a for-profit and not-for-
20 profit.

21 And the articles in the Washington
22 Post shows that they actually do operate like

1 a business, and they have an intent to expand
2 like a business.

3 MEMBER JEFFRIES: Commissioner
4 Wiss, so what's your point here?

5 MS. WISS: My point is that --

6 MEMBER JEFFRIES: In terms of
7 that's in the jurisdiction of the --

8 MS. WISS: Zoning?

9 MEMBER JEFFRIES: Yeah.

10 MS. WISS: We asked the Board to
11 determine whether a for-profit group should be
12 authorized to use a building in an R-1 zone
13 because the Commissioners were unclear about
14 this. On the one hand, Section 205 does not
15 specifically limit child development centers
16 to not-for-profit entities, like some of the
17 other provisions, and we've discussed that
18 earlier.

19 On the other hand, the District
20 has a euclidian form of zoning in which only
21 permitted uses are listed for each zoned
22 district. Uses that are not listed are not

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1 allowed, and successive zoned districts become
2 less restrictive.

3 And to recap, R-1 is the most
4 restrictive, established for low density
5 residential uses, and we've discussed how
6 community centers, church programs and
7 nonprofit organizations all must be not for
8 profit to operate in an R-1 zone.

9 For language instruction, the only
10 exception is tutoring of five children or less
11 as a home occupation.

12 And another thing, I've looked
13 through a number of BZA orders for child
14 development centers in R-1 zones, and they
15 require that articles will not be available
16 for sale, which seems to say that they cannot
17 have commercial activity.

18 I started trying to understand
19 this because in my district, there is Potomac
20 College, and I once asked them why they were
21 located in our commercial zone, and they said,
22 well, they're a for-profit college and they

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1 could not locate in the residential areas like
2 A.U.

3 So they then looked up CommuniKids
4 in the Yellow Pages. It was not listed under
5 child care center and day care centers or even
6 under preschools, the usual functions of a
7 child development center. It was listed under
8 language schools, and this is Attachment D.
9 All the other language schools in the city
10 with two exceptions are located in commercial
11 districts. The two exceptions are, one, the
12 Alliance Francaise, which is operating under
13 a special exception as a nonprofit in an R-3
14 zone, and the Language Key, which seems to be
15 a home occupation in an R-5-A zone. I called
16 them up, and they said, "Well, we'll have
17 someone" -- I left a message and they said,
18 "We'll have someone get back to you."

19 But the classes seem to be taught
20 at the location of the contracting
21 organization's place of work, such as a
22 government office will ask that their

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1 employees be taught Spanish, and so you come
2 to the government office to teach rather than
3 at that apartment building.

4 I then called Berlitz. They too
5 offer language classes for children, but at
6 One Thomas Circle in a C-4 zone.

7 Now, if CommuniKids can get a
8 special exception to locate in a church, why
9 not allow Berlitz to do so?

10 Now, why is this issue important?
11 For one, CommuniKids locating in a church may
12 make the church liable for property taxes
13 which it's not paying now, but since 1999, our
14 neighborhood has been concerned about
15 encroachment of commercial and higher density
16 residential uses into the neighborhood. The
17 church is in the neighborhood conservation
18 area in the comprehensive plan as we pointed
19 out in the ANC report.

20 And this case can serve as a
21 precedent for locating similar groups teaching
22 language classes and other classes in other

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1 churches or even, say, homes throughout the
2 city in R-1 districts, and I already know of
3 one such group operating at another church in
4 Ward 3 without a special exception.

5 Perhaps the real issue is whether
6 CommuniKids is truly a child development
7 center or something else. It does not fit the
8 definition of a child development center. It
9 does not provide general care outside the home
10 by others, which are the uses regulated by the
11 child development facility regulations, but it
12 does offer language instruction. Children
13 attend for only one hour or so a week, not for
14 an appreciable length of time. In fact,
15 parents and caregivers attend class with some
16 of the children.

17 The OP report talks only of the
18 co-op as a child development center, not
19 CommuniKids. CommuniKids says it will pursue
20 licensing, but the record requirements for
21 child development centers may be more onerous
22 than for nonprofits, which it said were too

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1 onerous to fill out, and onerous, too, for
2 families who are signing up for one hour a
3 week language lessons. Each child must have
4 an annual physical and immunizations. Those
5 over three also must have oral exams. Those
6 under six must submit blood tests for lead
7 poisoning, and children may not attend when
8 they are ill.

9 What family is going to want to
10 submit these for a one hour language class?
11 And will the CommuniKids want to keep these
12 records on all of the kids that they teach,
13 which are more than most child development
14 centers, like 161?

15 Licensing as a child development
16 center is required by Zoning Commission Order
17 No. 377, and that I have attached at
18 Attachment E.

19 CommuniKids says it will pursue
20 licensing, but it is unclear whether the
21 Department of Health will approve it. All
22 that has been presented to the Board is a

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1 letter from the Department of Health saying
2 that more licensed child care slots are
3 needed, and the ANC does not dispute that.

4 So I called the Department of
5 Health about their letter. They did not know
6 that two child development centers were
7 involved. They did not know that these
8 programs had been operating for years. They
9 had made no determination as required by
10 zoning regulation Section 205.10 that
11 CommuniKids could meet all of the licensing
12 requirements.

13 CommuniKids told ANC-3F that it
14 qualifies as a child development center
15 because it is like the types of facilities
16 listed in the definition of child development
17 centers in the zoning regulations, in the
18 definitions.

19 The D.C. Court of Appeals made
20 clear in Chagnon v. D.C. Board of Zoning
21 Adjustment that the definition of a child
22 elderly development center does not encompass

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1 other uses that are functionally comparable,
2 and that's at Attachment E.

3 Chagnon involved a center that
4 provided care to adults of all ages, not just
5 the elderly, and the Court of Appeals decided
6 that it did not meet the definition of
7 elderly, but in this case CommuniKids does not
8 seem to be providing the function of care by
9 others outside the home. It does share
10 similarities with the co-op in that it's in
11 the same facility, they're using some of the
12 same materials, and some of the staff may be
13 the same, and they have the same philosophy.

14 But they don't have the same
15 hours. They do not work with the same
16 children. They do not use the same language
17 or teach the same languages or even have the
18 same type of program, and they are different
19 organizations. Thus, they operate separately.

20 Now, unfortunately, I have to say
21 I was using an older copy of the child
22 development center regulations and cited

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1 Sections 327 to 329, in asking that you
2 determine that they can meet the physical
3 requirements for a child development facility.
4 These are now found at Sections 340 to 344.
5 Indoor program space, a minimum of 35 square
6 feet for each child at all times, a separate
7 room for temporary or ongoing care of a child
8 who has to be separated. If a child
9 development center is located in a building
10 that also houses other entities or persons,
11 the portion of the building to which the
12 children from the facility have access shall
13 be for the exclusive use of the children and
14 the staff of the facility during the
15 facility's hours of operation.

16 BZA CHAIR MILLER: What regulation
17 are you reading from?

18 MS. WISS: I'm reading --

19 BZA CHAIR MILLER: I can't find
20 the 340 in my book.

21 MS. WISS: I know, and I can
22 provide it if you want. It's new regulations

1 from the Department of Health. I could not
2 print out the specific pages of these. There
3 are 89 of them, and I will give you these
4 in --

5 BZA CHAIR MILLER: So you're not
6 reading from zoning regulations.

7 MS. WISS: I'm reading from the
8 Department of Health regulations.

9 BZA CHAIR MILLER: Department of
10 Health regulations.

11 MS. WISS: I am.

12 BZA CHAIR MILLER: But we do
13 zoning.

14 MS. WISS: Okay. The zoning
15 regulation, Section 205.10, you issued a press
16 advice as to whether the proposed center can
17 meet all licensing requirements set forth in
18 the applicable laws of the District of
19 Columbia. In other words, physical space is
20 one of them.

21 BZA CHAIR MILLER: Okay, but this
22 calls for a letter to them, and they advise

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1 use. You're going through all of their
2 regulations and advising us.

3 MS. WISS: Okay.

4 BZA CHAIR MILLER: I don't think
5 that's --

6 MS. WISS: Well, I'm telling you
7 what they say, but basically we asked that you
8 determine that they --

9 BZA CHAIR MILLER: That they meet
10 -- well, we need to determine if that --

11 MS. WISS: -- meet the physical
12 requirements.

13 BZA CHAIR MILLER: -- 205 is met.

14 MS. WISS: Right.

15 BZA CHAIR MILLER: Okay. We don't
16 need you to read all of the regulations --

17 MS. WISS: Okay.

18 BZA CHAIR MILLER: -- about the
19 health, right?

20 MS. WISS: Okay. I won't do that.
21 That's fine.

22 BZA CHAIR MILLER: Is that in the

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1 record? Did you put it in the record for us?

2 MS. WISS: I did.

3 BZA CHAIR MILLER: Okay.

4 MS. WISS: What I was saying is
5 that they are new regulations.

6 BZA CHAIR MILLER: Okay.

7 MS. WISS: They are 89 pages long,
8 and I thought I had handed you more than
9 enough.

10 BZA CHAIR MILLER: Okay. That's
11 fine, but I don't think it's a good use of our
12 time because --

13 MS. WISS: Okay.

14 BZA CHAIR MILLER: -- we're not
15 the ones that are going to be determining
16 whether they comply with that.

17 MEMBER JEFFRIES: And,
18 Commissioner Wiss, it would be very helpful.
19 I mean, you've done a lot of research, and I
20 was particularly struck with your statement
21 about being concerned that there are
22 commercial uses that are within an R-1 zone.

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1 You know, that resonates with me.

2 I just want you, if you could,
3 just what's the thrust of your statement here
4 in just a couple of sentences or three
5 sentences? I mean, what point are you trying
6 to make?

7 MS. WISS: The point is that I'm
8 trying to elucidate the points in our
9 resolution. The point about this is that we
10 were particularly unclear from the materials
11 that we received whether the facility had the
12 space that was required for the programs that
13 they are trying to put in it because we never
14 got a full discussion of how it would all
15 work. And this was in --

16 BZA CHAIR MILLER: Is that a
17 Department of Health determination or another
18 department, whether there's enough space for
19 the number of children? Is that what you're
20 saying?

21 Because, again, that wouldn't be
22 in our jurisdiction.

1 MS. WISS: Well, in some zoning
2 orders you go through, in fact, this happened
3 in the earlier zoning orders. It said exactly
4 what space they would be using to assure you
5 that there would be sufficient space.

6 MEMBER JEFFRIES: See, what I'm
7 hearing -- that's why I sort of asked you if
8 you could just capsulize it just in -- you
9 know.

10 MS. WISS: Okay.

11 MEMBER JEFFRIES: I'm just trying
12 to understand what your thrust is here. I
13 mean, rather than recounting chronically what
14 they didn't do, and so forth, what's your
15 concern about this development from a zoning
16 perspective?

17 MS. WISS: From a zoning
18 perspective is that the building will have
19 sufficient space and the right kinds of space
20 for a child development center to operate.

21 BZA CHAIR MILLER: Who's going to
22 tell us that? Is that Department of Human

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1 Services? Who is that?

2 MS. WISS: I believe it's the
3 Department of Health.

4 BZA CHAIR MILLER: Health? And
5 where? Because 205.10 talks about Department
6 of Human Services.

7 MS. WISS: Human Services, I know.

8 BZA CHAIR MILLER: Are you saying
9 they don't meet 205.10, that we don't have the
10 information?

11 MS. WISS: I think you need more
12 information, yes. I think it's now the
13 Department of Health. It may have changed
14 since your regulations were written, moved
15 from one agency to another.

16 MS. PERRY: If I may also, from
17 our ANC perspective, we were concerned about
18 a for-profit building being built in an R-1
19 neighborhood because a couple of these uses
20 are for profit. They are -- the church is
21 also going to be getting rent. It's not an
22 altruistic program.

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1 BZA CHAIR MILLER: Okay. So your
2 issue, and you don't --

3 MS. PERRY: That is one of the
4 issues.

5 BZA CHAIR MILLER: -- have the
6 answer, right?

7 MS. PERRY: That is one of the
8 issues that our ANC did raise.

9 BZA CHAIR MILLER: Okay.

10 MEMBER JEFFRIES: But the
11 regulations don't talk about, it's silent on
12 for-profit. As relates to a church, it's
13 silent on whether they can have for-profit or
14 not-for-profit business.

15 MS. PERRY: No, the regulations on
16 church programs say they can have --

17 MEMBER JEFFRIES: On church
18 programs.

19 MS. PERRY: -- for-profits. And
20 yet this is a building being built on church
21 land that's basically going to have, you know,
22 special exceptions, two of which are basically

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1 -- I don't know about the conservatory. It
2 might be a nonprofit, but CommuniKids is a
3 for-profit.

4 So I think that was a concern, is
5 whether this -- you know.

6 BZA CHAIR MILLER: Okay. Your
7 concern --

8 MS. PERRY: That was one of the
9 concerns raised at the ANC, yes.

10 BZA CHAIR MILLER: -- is a for-
11 profit use allowed under the regulations --

12 MS. PERRY: Yeah.

13 BZA CHAIR MILLER: -- within the
14 church or even within the R-1 --

15 MS. PERRY: Yeah, this building is
16 being built basically, you know, with rent.
17 These organizations are going to be paying
18 rent to the church. It's not just, you know,
19 church uses. Let me put it that way.

20 BZA CHAIR MILLER: Right. Okay,
21 and did you decide some regulations that we
22 should look at to make that decision?

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1 MS. PERRY: I'd have to go back to
2 my --

3 BZA CHAIR MILLER: Otherwise, I
4 mean, we'll look at it ourselves, but I mean,
5 I don't know whether you --

6 MS. PERRY: I think it's under
7 church programs, if I'm not mistaken, and I
8 forgot the regulation.

9 BZA CHAIR MILLER: My
10 understanding is not everything here is a
11 church program.

12 MS. PERRY: Yeah, and I think that
13 was just one of our, you know, concerns, is
14 that is this more like a -- you know, should
15 this building even be built and would this
16 Board approve three special exceptions in an
17 R-1 neighborhood and the intensity of the use?
18 Would you be approving it if this was not on
19 church land, you know?

20 MEMBER JEFFRIES: That's what I'm
21 trying to get to.

22 MS. PERRY: Is that --

1 MEMBER JEFFRIES: I just want to
2 get a thrust of what --

3 MS. PERRY: That was one of the
4 concerns that was raised.

5 MEMBER JEFFRIES: Yeah, because
6 Commissioner Wiss is talking about, you know,
7 language schools, you know, and it seems to be
8 these schools that you cited are a very
9 different setting than this setting. I mean,
10 I'm just trying to make sure, that that's the
11 thrust here. You think --

12 MS. PERRY: That was one of the
13 thrusts, yes.

14 MEMBER JEFFRIES: -- the intensity
15 of use, you know, at this R-1 location, you
16 think there's commercial properties,
17 businesses that somehow encroach upon the
18 residential district.

19 MS. PERRY: You know, I think part
20 of what we looked at was the ANC once we
21 realized last week all of what was going on
22 is, you know, this is more like an office

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1 building being built in an R-1 neighborhood,
2 and would you really approve this if it wasn't
3 on church land, three special exceptions, you
4 know, two a child development center, a
5 private school, et cetera, that would go from
6 the morning until nine o'clock at night?
7 That's one of the concerns that was raised.

8 And I'll turn it back over to
9 Cathy.

10 MS. WISS: Well, another thing
11 that we had talked -- and, again, I'm just
12 going through our resolution, and if this is
13 not helpful, let me know -- we did ask that
14 there be no increase allowed in the number of
15 participants beyond current levels until the
16 addition and parking lot are built because
17 they're occupying the one building now, but
18 they're seeking the expansion to expand the
19 programs.

20 We have had varying documents
21 showing what the number of participants is
22 now, and it's pretty unclear how many people

1 are in the programs. At Attachment F is a
2 chart that was handed out at the January 17th
3 meeting that differs from a chart that we
4 received in February, and also at Attachment
5 F are some of the schedules for CommuniKids
6 that shows how the number of participants
7 actually change over time.

8 They may schedule a certain number
9 of classes. There were, say, 34 classes that
10 were advertised to start up in March. Not all
11 of them happened. Two of the teachers dropped
12 out. They can have up to eight kids per
13 class, but you can still, it seems, join
14 throughout the spring.

15 They said they were not going to
16 have summer classes, but indeed they are.
17 That's on the Website.

18 So we are really concerned that
19 there is no really good way of getting a
20 handle on how many people are actually using
21 the site and how many people would be using,
22 and this is important because we're trying to

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1 find out, trying to figure out what the cap
2 should be.

3 Now, last week you asked about
4 enforcement. The co-op seems fairly easy to
5 understand how you could have a cap and
6 enforce it. You'd have general enrollment.
7 It stayed the same, and you could get
8 enrollment figures as we do get from schools
9 and other organizations.

10 The Conservatory of Music does
11 have, you know, a 40-person cap at any one
12 time, although while during shifts between
13 ensembles, there would be more people coming
14 and going in the building at the same time,
15 and that may be possible to come up with a cap
16 of no more than a certain number of people at
17 any one time.

18 They have not provided, say, a
19 total enrollment cap as the Levine School did
20 in their BZA application.

21 BZA CHAIR MILLER: Well, do you
22 think it would be better if they had an

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1 enrollment cap, like if they said, "Okay. We
2 have 100 students total"?

3 That's arbitrary. I have no idea
4 how many they have.

5 MS. WISS: You know, I almost
6 would defer to you on how best to fashion
7 caps.

8 BZA CHAIR MILLER: Okay.

9 MS. WISS: Because, you know,
10 obviously the need for the building is that
11 you don't have huge numbers of people there at
12 one time, but when you come down to it, having
13 somebody with a clicker trying to decide how
14 many people are actually in the building,
15 you'd actually have to employ someone to do
16 this. The reports will be voluminous. I'm
17 not sure as a commissioner I'd really like to
18 go through them as fully as they should be
19 done.

20 I may not be -- I may not be the
21 commissioner. You never know. There's an
22 election in November.

1 And for me the CommuniKids is most
2 difficult to try to figure out how you could
3 put an enrollment cap on this because it
4 changes so much. They have several terms
5 throughout the year and students coming and
6 going, and some have parents in class with
7 them.

8 BZA CHAIR MILLER: Why can't you
9 just have a map that would reflect how many
10 people the building can accommodate?

11 MS. WISS: Well, the 97 is what
12 has been proposed once the --

13 BZA CHAIR MILLER: Is it 97 at one
14 time?

15 MS. WISS: At any one time.
16 That's what's been proposed.

17 BZA CHAIR MILLER: Yes, but I
18 mean, I think we have to ask the Applicant,
19 but if you had an enrollment number that never
20 changed, that somehow controlled the numbers
21 adequately so that you don't -- I think
22 personally the idea of counting the number of

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1 people in a building at one time is difficult.

2 MS. WISS: Yes, I agree.

3 BZA CHAIR MILLER: And it changes
4 all the time. Five minutes later it's a
5 different number, yeah.

6 MS. WISS: Yes. I can't say that
7 I have the solution, but now, I just want to
8 go through some of the final points on parking
9 and traffic.

10 The ANC believes that the curb cut
11 on Yuma was needed for safe dropoff and pickup
12 on site.

13 BZA CHAIR MILLER: So you want
14 that in addition; is that correct?

15 MS. WISS: The curb cut on Yuma
16 Street?

17 BZA CHAIR MILLER: Yes.

18 MS. WISS: Yeah.

19 BZA CHAIR MILLER: In addition,
20 not to -- I doubt that you discussed this, but
21 Mr. Jennings talked about getting the Yuma one
22 and then closing the Alton one?

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1 MS. WISS: We did not discuss
2 closing the Alton. We did not realize that at
3 all.

4 BZA CHAIR MILLER: Okay. You just
5 discussed the --

6 MS. WISS: What we thought at our
7 ANC meeting was that they would not approve a
8 curb cut on Yuma at all, and that seemed to
9 defeat the purpose of a safe dropoff and
10 pickup on site and also defeat the purpose of
11 using a parking lot because people were not
12 using it perhaps because the driveway was so
13 narrow.

14 BZA CHAIR MILLER: Why do you
15 think they wouldn't approve it?

16 MS. WISS: Well, he's come through
17 telling us that it may not get approved. Very
18 clear about that, and I've seen some E-mails
19 to that effect.

20 I have to confess that I am the
21 commissioner who told him, Mr. Jennings, in a
22 conversation that I'd prefer more green space,

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1 but I did vote for the 36 space lot because it
2 seemed to me that the programs had told their
3 participants about public transportation.
4 That's written up in the ANC report, but there
5 doesn't seem to be that much utilization of
6 it.

7 Also, the church has spent a lot
8 of time, many, many days going out and
9 studying how much parking is available on
10 street in the neighborhood and stating that
11 really it won't have an effect on the
12 neighbors at all. So it didn't seem to me as
13 if there was a huge commitment to making sure
14 that the transportation demand management
15 strategies worked.

16 However, the ANC would like to
17 have them implemented. We're not opposed to
18 them. I mean, we are not opposed to the
19 transportation demand management strategies.
20 We think they should be implemented.

21 There was some discussion here
22 about landscaping. We did not have a

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1 landscaping plan at the time of our ANC
2 meeting. Right now there are crape myrtles
3 that screen the parking lot from Yuma Street.
4 They're beautiful. They are nice and tall,
5 but you can see through them. You can see the
6 cars underneath. They can serve as the
7 minimum five percent of landscaping in the
8 parking lot perhaps because they do sort of go
9 over and shade the cars a little bit.

10 But we did want to make sure that
11 there was some additional lower screening to
12 screen the view of cars, and the zoning
13 regulations provide the possibilities of a
14 hedge or a brick wall to take care of this,
15 and we put that in our resolution.

16 And finally, the last attachment,
17 Attachment G, is an E-mail that Mr. Jennings
18 referred to a little while ago about the
19 difficulties that a woman had a couple of
20 weeks ago trying to get to the Tenleytown
21 Metro Station by wheelchair from about the
22 place of the church on Alton Place, and some

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1 of the difficulties that she encountered.
2 It's not easy, and the only reason I am
3 bringing it up is to try to make sure that
4 DDOT makes this church accessible to everyone
5 because when I've watched a child being
6 brought to the co-op, they didn't use the
7 stoplight that only gives you ten seconds to
8 cross Nebraska Avenue, which is not nearly
9 enough. They chose what's actually the safer
10 route, which is to cross without a traffic
11 signal between Tenley Circle and Albemarle
12 Street because at least you can get some
13 separation between you and the cars.

14 So that basically wraps up my
15 testimony.

16 BZA CHAIR MILLER: So you're
17 saying that DDOT is trying to encourage more
18 use of the Metro, but that it's not that safe
19 at this point getting to and from the Metro?

20 MS. WISS: It's not as safe as I
21 think it should be, and we did -- Commissioner
22 Perry is reminding me we did pass a resolution

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1 last night asking DDOT to evaluate the
2 accessibility within a quarter mile of the
3 Tenleytown Metro stop and also to take certain
4 specific actions, which we have been
5 requesting for years, I have to say, and
6 getting no results, where there are no
7 wheelchair ramps on the corners of Alton and
8 39th Street, which is right next to the
9 church. So it's --

10 BZA CHAIR MILLER: Well, I guess
11 my question goes to it's clear that that
12 affects people with disabilities. Do you
13 think that it affects the users of these
14 special exceptions?

15 MS. WISS: I will affect them a
16 little bit, and I'll tell you why.

17 BZA CHAIR MILLER: The children,
18 the strollers, the --

19 MS. WISS: The children with
20 strollers, but, yes, people do have to bring
21 their instruments to the Washington
22 Conservatory for Music. It's in their rules,

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1 and we've seen them, and some of those
2 instruments are quite large, and the larger
3 ones come in cases now with wheels.

4 So being able to get to the subway
5 requires that you can wheel your instrument to
6 it.

7 BZA CHAIR MILLER: Did you raise
8 the landscaping issues with the Applicant, for
9 instance, your request for shrubbery or a wall
10 for screening?

11 MS. WISS: We talked at our ANC
12 meeting on May 27th about it.

13 BZA CHAIR MILLER: The Applicant
14 or just within the community?

15 MS. WISS: The Applicant was all -
16 - the ap was represented by Reverend Bergfalk
17 and CommuniKids. And the co-op also?

18 They were there, and also, Mr.
19 Andres, you may have been there. I don't
20 know.

21 MS. PERRY: I think he was.

22 MS. WISS: Yeah, I think so.

1 BZA CHAIR MILLER: Okay. Well,
2 I'm sure we'll hear from them about it.

3 MS. PERRY: If I may, I just
4 pulled the zoning regs. because you asked a
5 question earlier. Two, oh, five, point, nine
6 says that before taking final action on an
7 application for use as a child early
8 development center, the Board shall submit the
9 report to, you know, the institution, D.C.
10 Office of Aging, Planning, Human Services.

11 And then 205.10 says the referral
12 to the D.C. Department of Human Services shall
13 request advice as to whether the proposed
14 center can meet all licensing requirements set
15 forth in the applicable laws of the District.
16 So that's where Commissioner Wiss, I believe,
17 was, the regs. she was quoting from.

18 MEMBER WALKER: All right. I have
19 a question for Commissioner Wiss.

20 You said that you don't believe
21 that CommuniKids and the conservatory fall
22 within our definition of a child development

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1 center, but I didn't hear from you how you
2 think they should be characterized, I mean, as
3 a private school, as a community center. I
4 mean, where should the Board look in its
5 regulations?

6 MS. WISS: Well, the conservatory
7 is coming as a private school, and we don't --
8 the ANC does not have a problem with that.
9 That's definitions of private school.

10 CommuniKids, it's hard to say. We
11 did ask them if they wanted to become a
12 nonprofit because then it could come in as a
13 nonprofit, but no, a nonprofit is a nonprofit.
14 I suppose it could come in as a school. I
15 don't know too much of how that works, but
16 they did not come to us as a school. We did
17 talk to them at our May 27th meeting about the
18 possibility of becoming a nonprofit, which
19 could be allowed.

20 MEMBER JEFFRIES: How they could
21 come ot you? You say they didn't come to you
22 as a school. How did they come to you?

1 MS. WISS: They came as a child
2 development center, so an extension of the co-
3 op. But as a single child development center
4 in the application, I have to say originally
5 I thought it was one child development center
6 and two schools until I was corrected. It is
7 one child development center which includes
8 both the co-op, which seems to be a child
9 development center and CommuniKids, which does
10 not seem to be a child development center.

11 BZA CHAIR MILLER: Why isn't it a
12 child development center?

13 MS. WISS: CommuniKids?

14 BZA CHAIR MILLER: Un-huh.

15 MS. WISS: Well, it does not
16 provide care away from home by others for a
17 significant period of time. It's a language
18 instruction school for about one hour, and you
19 know, the program regulations talk about
20 actual supervision and care of children.

21 BZA CHAIR MILLER: Do you think
22 it's more appropriately a school as opposed to

1 a child development center?

2 MEMBER JEFFRIES: You just said a
3 school.

4 MS. WISS: It might be a school.
5 It's listed in the phone book under language
6 schools. We had asked it about becoming a
7 nonprofit, changing their status so that they
8 could then be considered as a nonprofit under
9 I forget which section it is.

10 MEMBER JEFFRIES: I had a
11 question.

12 BZA CHAIR MILLER: No, go ahead.
13 No, go right ahead.

14 MEMBER JEFFRIES: Okay. I just
15 want to get to the crux of this, and I'm
16 looking at your 3F resolution, and I'm looking
17 at all the conditions that you stated, and I'm
18 just trying to get my arms around which ones
19 are still outstanding.

20 I mean in terms of your
21 conversations with the Applicant, which ones
22 are outstanding in terms of the conditions?

1 MS. WISS: Well, number three,
2 determine the appropriateness of the use of
3 the building for any groups engaged in
4 commercial activity organized for profit.

5 MEMBER JEFFRIES: Okay. You don't
6 have to read them. Just give me the numbers.

7 MS. WISS: Okay. Number three.
8 From our point of view, number four has not
9 been answered.

10 MEMBER JEFFRIES: Okay, wait. Let
11 me step back. We're just going to deal with
12 things that are zoning issues, right?

13 MS. WISS: Okay.

14 MEMBER JEFFRIES: So I just want
15 to mark the ones that are really, I think, in
16 our jurisdiction.

17 BZA CHAIR MILLER: What are you
18 all looking at?

19 MEMBER JEFFRIES: We're looking at
20 the ANC-3F resolution concerning BZA
21 application. That's Exhibit 55.

22 So you said number three. Okay.

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1 MS. WISS: I don't think we have
2 an actual number of participants now in number
3 seven.

4 MEMBER JEFFRIES: Okay.

5 MS. WISS: I think the issue,
6 number 12, as to whether 36 spaces or 28
7 spaces is still at issue.

8 MEMBER JEFFRIES: Okay.

9 MS. WISS: I'm not certain whether
10 the landscaping plan has been resolved.

11 MEMBER JEFFRIES: When you're done
12 I'm going to have -- I mean, we'll hear from
13 the Applicant on the ones that you are
14 pointing out here, but continue.

15 MS. WISS: Okay. Number 14. I
16 don't know whether they have discontinued
17 renting spaces in the parking lot to outside
18 parties or that they presently now direct all
19 participants in the programs -- this is number
20 15 -- who drive to the facility to park in the
21 parking lot and not on surrounding streets.

22 MEMBER JEFFRIES: Is that it? Is

1 that all of the conditions? Number three,
2 number seven, 12, and the parking in traffic,
3 and then 14 and 15, are those the only --

4 MS. WISS: And 13.

5 MEMBER JEFFRIES: And 13.

6 MS. WISS: Well, 13, we don't know
7 about the landscaping.

8 MEMBER JEFFRIES: Okay.

9 MS. WISS: The basement or cellar,
10 yeah, but they've removed the top floor, but
11 we do request that you not use the word
12 "cellar" in your order.

13 MEMBER JEFFRIES: If it's in terms
14 of not using the word "cellar"?

15 BZA CHAIR MILLER: I mean, I think
16 that just requires us to take a look at it
17 ourselves and make that decision --

18 MEMBER JEFFRIES: Right, right,
19 okay.

20 BZA CHAIR MILLER: -- and use the
21 right word.

22 MEMBER JEFFRIES: Okay. I mean,

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1 Madam Chair, I just wanted to make certain
2 because I'm looking at all of the conditions
3 here, and it seems as if some of these things
4 have already been addressed. So, you know, if
5 we could just focus on the outstanding issues
6 and wrap this up. Okay? I mean, you know,
7 unless I'm missing something here.

8 BZA CHAIR MILLER: Did you finish?
9 I can't remember. I thought you finished
10 anyway.

11 I have a question for the Office
12 of Planning, going back, because the ANC has
13 brought up the question of 205.9 and 205.10,
14 which calls for referrals to Department of
15 Human Services, you know, about whether they
16 meet the licensing requirements or can meet
17 the licensing requirements.

18 And I didn't see that addressed, I
19 don't think, in your report, and so I'm just
20 wondering if that has happened.

21 MS. THOMAS: We did not send it.
22 I don't know if the Board itself sent it

1 through the office, but typically we ask
2 sometimes for a response from the Department
3 of Health. Sometimes we do, typically we
4 don't get it. So it's usually left up to the
5 end stage that they need to get it before they
6 get the C of O anyway. So it's usually left
7 at that stage because typically we don't get
8 the response in a timely fashion if we do get
9 it.

10 BZA CHAIR MILLER: Okay. Looking
11 at 205.9, the application has obviously been
12 referred to Office of Planning and Department
13 of Transportation. Okay. It seems to me that
14 we should be referring it to Human Services
15 according to the regulations.

16 Do you all agree? I mean, it
17 doesn't say necessarily that we have to get an
18 answer, but it says we're supposed to do that
19 before taking final action on the application.
20 You know, I mean, it does say the Board shall
21 do this, but --

22 MS. THOMAS: We usually follow

1 up.

2 BZA CHAIR MILLER: -- Office of
3 Planning usually does it for us. Okay.

4 So is that something you -- we're
5 not going to decide this case tonight I don't
6 believe. So is that something you would be
7 doing?

8 MS. THOMAS: We could file a
9 request.

10 BZA CHAIR MILLER: Okay.

11 MS. THOMAS: And ask for the
12 opinion.

13 BZA CHAIR MILLER: Thank you.

14 All right.

15 MEMBER JEFFRIES: So, Madam Chair,
16 in terms of the conditions set forth here, I
17 mean, you know -- and I'm looking at some of
18 these, and you know, some of these it seems
19 that we could potentially accommodate in our
20 order some of the things that were stated by
21 Commissioner Wiss in terms of outstanding
22 issues.

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1 I mean, the 36 parking spaces
2 we're going to make a determination here. You
3 know, I'm just wondering whether, you know,
4 there is much more that we need to discuss
5 here of the outstanding conditions.

6 BZA CHAIR MILLER: Well, yeah.

7 MEMBER JEFFRIES: If I'm missing
8 something.

9 BZA CHAIR MILLER: Yeah. Well, I
10 mean, our normal procedure is that Applicant
11 gets a chance to cross examine the ANC.

12 MEMBER JEFFRIES: Yeah, but what I
13 think I'm doing is trying to narrow. I mean,
14 they can do what they want to. I recognize
15 that.

16 BZA CHAIR MILLER: Yeah.

17 MEMBER JEFFRIES: But what I'm
18 saying, in the interest of time, you know, if
19 there's a few outstanding issues, if we can
20 get people to address those issues so that
21 we're not here all night.

22 BZA CHAIR MILLER: I mean, I agree

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1 that it's obviously to everybody's advantage
2 to be focused, you know, and not just
3 reiterate what has been submitted in writing,
4 but the Applicant has an opportunity to cross.
5 The neighbors have an opportunity to cross.

6 MEMBER JEFFRIES: I am not at
7 all --

8 BZA CHAIR MILLER: And they have
9 an opportunity to put on their case.

10 MEMBER JEFFRIES: I'm not trying
11 to circumvent the process. People, please
12 understand I'm not trying to circumvent the
13 process.

14 MS. PERRY: It's okay. We all
15 want to go home, too.

16 MEMBER JEFFRIES: It's just that
17 we all have things to do, and so I'm just
18 saying if there are like four or five issues
19 outstanding, if you could address those issues
20 so that we can move on here. That's all I'm
21 asking.

22 MR. PERRY: Mr. Jeffries, if I

1 may, you know, I think I don't want the
2 neighbors to sense that you've already
3 predetermined this case before hearing from
4 them and that you're going to go ahead and go
5 forward just based on conditions, and that's
6 kind of the sense I'm getting, and I'm hoping
7 the neighbors don't.

8 You know, I've been here before.
9 So I know you don't mean it, but for people
10 that are new.

11 MEMBER JEFFRIES: Okay, but I'm
12 just going on the conditions that you wrote.

13 MS. PERRY: Okay. No, I just
14 wanted to --

15 MEMBER JEFFRIES: Okay? I mean if
16 you didn't put these down here --

17 MS. PERRY: I just wanted to be
18 clear because --

19 MEMBER JEFFRIES: -- I would not
20 respond this way, but it seems to me --

21 MS. PERRY: I think you also have
22 to realize --

1 MEMBER JEFFRIES: -- that there's
2 a road map here, you know, and you've set the
3 road map up, and I'm just trying to respond to
4 the road map.

5 MS. PERRY: Now, that's fine.
6 That's fine. I just didn't want the neighbors
7 that are sitting here to get the feeling that
8 it was predisposed, you know.

9 MEMBER JEFFRIES: No. You know,
10 neighbors? If I can respond, I mean, there's
11 been no decisions up here made at all. It's
12 just that I just want to make certain that
13 we're all clear where we're at in these
14 discussions because we can move all around and
15 discuss sections and so forth and so on, but
16 I just want to make certain that based on what
17 the ANC has put forward, I'm just responding
18 to it.

19 MS. PERRY: I think you have to go
20 back to my initial statement, too. The ANC
21 put this forward based on certain assumptions
22 that we learned last week were not totally

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1 accurate. So you know, we're kind of limited
2 in what we can say tonight.

3 BZA CHAIR MILLER: In the
4 meantime, I just want to bring to people's
5 attention, especially the Office of Planning,
6 that we don't need to have you, I guess, do a
7 refer -- we do have a referral to the
8 Department of Health that was made, pursuant
9 to 205.9, and we got a response from them, and
10 that is in the record as Exhibit No. 19. I
11 might as well read it since we're on this
12 point.

13 It says Department of Health
14 Regulation and Licensing Administration, Child
15 and Residential Care Facilities Division,
16 recommends that the Applicant be granted
17 special exception pursuant to Title 11, DCMR,
18 Section 3404.1, under Section 205 to establish
19 a child development center. Additional
20 licensed child care slots would be greatly
21 beneficial to the city's increasing demand for
22 licensed child care facilities, and then they

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1 have a number for further questions.

2 So I think it's only if we want to
3 ask further questions, I guess. We'll have to
4 assess that.

5 MS. PERRY: May I ask --

6 BZA CHAIR MILLER: But at least we
7 did make the referral that was required.

8 MS. PERRY: I don't know whether
9 they were referring to CommuniKids or to the
10 co-op. That would be our question.

11 BZA CHAIR MILLER: It looks like
12 they were referring to the application.

13 MS. WISS: That was --

14 BZA CHAIR MILLER: No, I
15 understand. I understand.

16 MS. WISS: I did call them. Their
17 phone number on that letter is not correct.
18 It's 442, not 422. They were not aware that
19 there were two entities involved, and they did
20 not make a determination. They did not know
21 that it was both the co-op and CommuniKids.
22 They did not know that --

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1 BZA CHAIR MILLER: Now you're
2 testifying for them or what are you --

3 MS. WISS: This was my telephone
4 call.

5 BZA CHAIR MILLER: You talked to
6 them.

7 MS. WISS: I talked to them by
8 phone.

9 BZA CHAIR MILLER: Okay, and your
10 testimony is?

11 MS. WISS: My testimony was that
12 after I did reach them, that --

13 MR. DePUY: I've got to object.
14 That's hearsay. I'm not able to cross examine
15 the party who made that statement. So we
16 would request that that testimony not be
17 allowed.

18 BZA CHAIR MILLER: Well, we do
19 allow hearsay all the time, but it's relevant.

20 MS. WISS: I wish it weren't
21 hearsay. I wish that --

22 BZA CHAIR MILLER: I don't --

1 MS. WISS: -- someone were here so
2 that we could question them because I would
3 like to know more myself.

4 BZA CHAIR MILLER: Okay.

5 MS. WISS: But this is what she
6 told me, that she had not made any
7 determination about licensing, that simply the
8 letter states --

9 BZA CHAIR MILLER: The licensing
10 occurs later, correct? They won't get
11 licensed if they don't meet the licensing
12 requirements; is that correct?

13 MS. WISS: But that's what your
14 regulations asked for. But she just said they
15 need child care slots, which we don't dispute.

16 MS. PERRY: And I think the
17 referral does say in here that the Board
18 shall request advice as to whether the
19 proposed center can meet all licensing
20 requirements. You know, our question to
21 Health would be basically is this CommuniKids,
22 is it the co-op. What are they referring to

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1 and can both be licensed?

2 BZA CHAIR MILLER: Okay. I hear
3 what you're saying. I hear what you're
4 saying. I mean, I think that our regulations
5 at least require that we make the referral,
6 which we did. Whether or not the response is,
7 you know, helpful is another issue.

8 Do you have cross examination?

9 MR. DePUY: I do briefly, yes.

10 BZA CHAIR MILLER: Okay.

11 MR. DePUY: Ms. Perry, in view of
12 the serious allegation you have made about
13 misrepresentation, I have a question for you.

14 MS. PERRY: Sure.

15 MR. DePUY: Did the ANC not
16 receive the January 14th amended application
17 which requested a special exception to
18 construct an addition to the existing building
19 and to allow the use of a portion of the
20 property as a child development center and the
21 attached statement which summarized the
22 amended application, which said the amended

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1 application adds the request under this
2 special exception for permission to construct
3 an addition to the property?

4 Did the ANC not receive that?

5 MS. PERRY: Yes, we did, sir,
6 and --

7 MR. DePUY: Thank you. That's my
8 only question.

9 MS. PERRY: I would like to finish
10 answering your question. We did ask the
11 Applicant or the reverend that was at our
12 ANC's meeting and our response was that that
13 was erroneous and that it was just a mistake
14 in the application. So it was asked and
15 answered on two separate meetings by two or
16 three different commissioners, and we got the
17 same response that it was just a mistake.

18 BZA CHAIR MILLER: Can I just
19 ask --

20 MS. PERRY: You were not at our
21 meeting unfortunately.

22 BZA CHAIR MILLER: You're not

1 saying that an attorney said it was a mistake.

2 MS. PERRY: Not an attorney.

3 BZA CHAIR MILLER: Right? You're
4 saying that the --

5 MS. PERRY: We had no attorney at
6 our meeting. We asked the reverend --

7 BZA CHAIR MILLER: Okay.

8 MS. PERRY: -- because he was the
9 only person at two of our -- three of our
10 meetings.

11 BZA CHAIR MILLER: Okay.

12 MR. DePUY: Ms. Wiss, in your
13 testimony I must have missed it, but did you
14 testify that the ANC resolution ended with a
15 statement that now, therefore, be it resolved
16 that ANC-3F does not object to BZA Application
17 No. 17726, provided that the conditions below,
18 which address most, if not all, concerns of
19 our community, are incorporated into the
20 order?

21 Is that from the resolution?

22 MS. WISS: That is correct, yes.

1 MR. DePUY: Thank you.

2 No further cross examination.

3 BZA CHAIR MILLER: Do the
4 neighbors have cross examination of the ANC?
5 Okay. Thank you.

6 Any other --

7 MS. WISS: Can I just make one
8 statement?

9 You know, number three was
10 determine the appropriateness of use of the
11 building by groups engaged in commercial
12 activity, and this, we did not agree and we
13 wanted that to come to you, and what I set
14 forth for you was the two schools of thought
15 in our ANC.

16 I don't know if that applies to
17 what Mr. DePuy was just asking.

18 Oh, okay. I'm sorry. We did --
19 fine, okay. He's correct that the resolution
20 that we adopted on May 27th does have that
21 particular phrase in it.

22 BZA CHAIR MILLER: I just want to

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1 understand what you were misled about and the
2 ramifications of that. Do you think you were
3 misled about their needing a special exception
4 for the addition?

5 MS. PERRY: I do.

6 BZA CHAIR MILLER: No, but I mean,
7 that's the issue?

8 MS. PERRY: No. Many of the
9 commissioners, we -- how do I explain this
10 nicely? We -- they adopted our resolution and
11 the report that Mr. DePuy -- based on the fact
12 that we were under the impression that this
13 was a matter-of-right building, and we asked
14 the neighbors to negotiate based on the fact
15 that we were under the impression that
16 everything was being done as a matter of
17 right. The construction was a matter of right
18 and the building itself.

19 BZA CHAIR MILLER: But isn't what
20 you're opposed to is the intensity of use?

21 MS. PERRY: Well, had we -- it's
22 possible that the ANC's questioning our

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1 resolution and our conditions might have been
2 a lot different. We might not have said in
3 our resolution we support this project. We
4 might have had a different conclusion is what
5 our chairman wanted me to tell you today.

6 Had we felt differently, the
7 neighbors might not have sent you the
8 voluminous stuff on just operating conditions.
9 We might have come out and opposed it. We
10 don't know what would have happened.

11 We might have had the same
12 resolution. Don't get me wrong, you know, but
13 we didn't have that. We forced everybody kind
14 of to negotiate.

15 BZA CHAIR MILLER: Ms. Perry,
16 know you're not going to speak for the ANC.

17 MS. PERRY: I can't.

18 BZA CHAIR MILLER: You can't.

19 MS. PERRY: I can't, but I can
20 speak only to what we did last night.

21 BZA CHAIR MILLER: But is there a
22 concern that goes to the addition?

1 MS. PERRY: Yes, there is.

2 BZA CHAIR MILLER: What's your
3 concern there?

4 MS. PERRY: The fact -- and I
5 think I tried to explain this earlier -- the
6 fact that this is a -- this construction of
7 this building, whatever, is going to bring
8 three special exceptions into a residential
9 neighborhood.

10 BZA CHAIR MILLER: And I don't
11 want to belabor this, but it still comes down
12 to all of these uses as opposed to, you know,
13 the effect on somebody's light and air or from
14 the physical building.

15 MS. PERRY: That's true. That's
16 true.

17 BZA CHAIR MILLER: Okay. So we're
18 still looking at the same issues.

19 MS. PERRY: For the most part,
20 yeah.

21 BZA CHAIR MILLER: Okay. All
22 right.

1 MS. PERRY: But our resolution
2 might have been different or conditions might
3 have been different. That's where I guess I'm
4 coming from.

5 BZA CHAIR MILLER: But nobody said
6 to withdraw the resolution or anything like
7 that.

8 MS. PERRY: No. We just did not
9 -- we just voted last night based on the two
10 things that we heard last week, you know. One
11 was that this was a for-profit -- that this
12 building was not matter-of-right, and on Mr.
13 DePuy's E-mail to us yesterday in these
14 operating conditions that the church sent to
15 you to let you know that number eight was not
16 accurate and we never got nor did we ever
17 discuss a construction agreement.

18 And you know, basically we didn't
19 discuss one or even get one because we said
20 that was not a zoning -- something Zoning
21 could do anything about.

22 BZA CHAIR MILLER: Okay. Now --

1 MS. PERRY: You got something
2 yesterday.

3 BZA CHAIR MILLER: We got another
4 resolution from the ANC yesterday?

5 MS. PERRY: No, you got from Mr.
6 DePuy on behalf of the church a letter
7 addressed to Ms. Miller. We got a copy of it
8 by E-mail.

9 BZA CHAIR MILLER: With proposed
10 conditions.

11 MS. PERRY: Proposed conditions.

12 BZA CHAIR MILLER: Okay, but my
13 question is --

14 MS. PERRY: We want to tell you
15 number eight is not an accurate statement.

16 BZA CHAIR MILLER: You had another
17 ANC meeting after --

18 MS. PERRY: Last night.

19 BZA CHAIR MILLER: -- you
20 discovered different information.

21 MS. PERRY: Last night.

22 BZA CHAIR MILLER: And there's no

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1 new ANC resolution that we should be
2 considering that says --

3 MS. PERRY: No, no.

4 BZA CHAIR MILLER: -- we withdraw
5 our whatever.

6 MS. PERRY: No.

7 BZA CHAIR MILLER: So we're
8 looking at the resolution that's in the
9 record.

10 MS. PERRY: We just wanted to make
11 it clear that we -- those two items, one, that
12 we might have done it differently. We just
13 wanted you to be aware that --

14 BZA CHAIR MILLER: You're saying
15 that, but there's no resolution before us.

16 MS. PERRY: We will have it in our
17 minutes, and we did not have at midnight last
18 night, which is when this came up because we
19 had a very long agenda yesterday on other
20 issues.

21 BZA CHAIR MILLER: Okay. So you
22 can --

1 MS. PERRY: We did not. It will
2 be reflected in our minutes when we pass them.

3 BZA CHAIR MILLER: Besides your
4 minutes, don't you -- you didn't pass a
5 resolution?

6 MS. PERRY: No. We -- well, we --
7 it wasn't a resolution.

8 BZA CHAIR MILLER: Okay.

9 VICE CHAIR LOUD: Yes, just a very
10 quick follow-up to both Commission Jeffries
11 and your questions.

12 So basically, as I understand it -
13 - I think I get it now -- you learned about
14 this special exception when?

15 MS. PERRY: Actually we learned
16 about the need for the special exception, that
17 it really was a special exception, last week
18 at your meeting.

19 VICE CHAIR LOUD: Okay, and has
20 your ANC affirmed or reaffirmed the resolution
21 that's our Exhibit 55?

22 MS. PERRY: We did not reaffirm

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1 it, no.

2 VICE CHAIR LOUD: Have you
3 rejected it specifically?

4 MS. PERRY: We did not reject it.
5 We didn't have time to do that at midnight.

6 VICE CHAIR LOUD: Okay, and have
7 you seen -- this does not have an exhibit
8 number, but it's from the families neighboring
9 Wisconsin Avenue Baptist Church. It's dated
10 June 16th, and it's a spreadsheet that lists
11 Wisconsin Avenue Baptist Church, the
12 neighbors, and the ANC, and then it purports
13 to list where there is agreement and
14 disagreement over conditions.

15 MS. PERRY: That was done by the
16 neighbors. I did see it briefly yesterday for
17 the first time.

18 VICE CHAIR LOUD: And so what they
19 purport to represent is ANC agreement with
20 conditions. Does that accurately reflect ANC
21 conditions?

22 MS. PERRY: No.

1 MS. WISS: No. There are a couple
2 of points where it doesn't, and I told the
3 neighbors that I think one of the points that
4 they're going to be --

5 MS. PERRY: I think they're going
6 to testify on it.

7 MS. WISS: Yes.

8 MS. PERRY: They're going to
9 testify on that.

10 VICE CHAIR LOUD: Well, are they
11 going to testify on where your agreement is or
12 is not?

13 MS. WISS: I can just tell you
14 that.

15 VICE CHAIR LOUD: Why don't you go
16 ahead if you can do it briefly?

17 MS. WISS: There was a requirement
18 of whether there should be a half hour between
19 classes.

20 VICE CHAIR LOUD: Okay. I think
21 that's --

22 MS. WISS: We did not take any

1 position on that.

2 VICE CHAIR LOUD: -- number five.

3 Okay.

4 MS. WISS: And then there was one
5 about --

6 VICE CHAIR LOUD: So let me just
7 stop right there.

8 MS. WISS: Yeah.

9 VICE CHAIR LOUD: Let me stop
10 right there. That's their number five. So
11 where they represent that you were in
12 agreement with the WABC, that's inaccurate.
13 You're not.

14 MS. WISS: We took no position on
15 that. So it should be blank.

16 The other one is a somewhat
17 technical point about screening. We only
18 looked at the regulations having to do with
19 screening of parking lots which require a
20 hedge or a brick wall 42 inches high. We did
21 not look at the screening requirements under
22 205 and 206 which could be higher.

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1 VICE CHAIR LOUD: Okay. Apart
2 from those two, number five and number 11, is
3 their representation in this document -- does
4 it capture accurately where the ANC is on
5 these positions?

6 MS. WISS: I think it does.

7 VICE CHAIR LOUD: Okay.

8 MS. WISS: I mean we don't have it
9 in front of us.

10 MS. PERRY: We don't have it in
11 front of us.

12 MS. WISS: I can go get it.

13 (Pause in proceedings.)

14 VICE CHAIR LOUD: Have you had a
15 chance to review it right quick?

16 MS. WISS: I don't know that we
17 required a certificate of occupancy for all
18 tenant groups.

19 VICE CHAIR LOUD: What number is
20 that?

21 MS. WISS: Number 12. I'm not
22 sure I'm fully understanding that, and the

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1 neighbors may be able to explain it better.

2 VICE CHAIR LOUD: Okay.

3 MS. WISS: They assumed that they
4 would be getting certificates of occupancy,
5 but we don't say anything about them
6 specifically.

7 VICE CHAIR LOUD: Anything else?

8 MS. PERRY: We're just checking or
9 resolution because I'm not sure that we said
10 that the curb cut on Yuma was essential, but
11 I'm not -- I have to --

12 MS. WISS: Well, number 12 we talk
13 about --

14 MS. PERRY: I don't think we said
15 it was essential.

16 MS. WISS: We assume that it will
17 happen.

18 VICE CHAIR LOUD: Can we look at
19 it while we're hearing from the neighbors and
20 then we can discuss it?

21 Why don't we come back to you on
22 that? We'll discuss the neighbors' conditions

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1 and then you can use that time to identify any
2 that are misrepresented.

3 MS. WISS: Thank you, yes.

4 MS. PERRY: Yeah, because we only
5 saw this --

6 BZA CHAIR MILLER: Yeah.

7 MS. PERRY: -- before our meeting
8 last night.

9 BZA CHAIR MILLER: Okay, okay.
10 That's great.

11 I just want to ask the Applicant a
12 basic question which is related to what you
13 were saying, and that is what is the -- what
14 regulation requires you to seek or why are you
15 seeking a special exception for the addition?
16 Because I think it is somewhat confusing in
17 that it's a church building that's getting an
18 addition.

19 MR. DePUY: If the church were to
20 use the building for its own purposes, we
21 would not need a special exception for the use
22 of that portion of the building for the

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1 special exception users, but since it's being
2 constructed primarily though not exclusively
3 for the use by the special exception users,
4 then it needs to fall under the umbrella of
5 the special exception.

6 Similarly, the parking lot is used
7 both by the church and by the special
8 exception users, and so permission to
9 reconfigure the parking lot and expand it for
10 the use by the special exception users is
11 required.

12 BZA CHAIR MILLER: Thank you.

13 Okay. Now we're ready for the
14 neighbors' presentation of their case.

15 All right. We're going to take
16 just a very quick five-minute break. So if
17 anybody else needs to take a break and make
18 any phone calls or anything, now is a good
19 time.

20 (Whereupon, the foregoing matter
21 went off the record at 7:47 p.m.
22 and went back on the record at

1 8:03 p.m.)

2 BZA CHAIR MILLER: Okay. We're
3 back on the record.

4 Mr. Jeffries, did you want to say
5 something?

6 MEMBER JEFFRIES: Yeah. I just
7 wanted to have a sense from the neighbors.
8 How long do you think your presentation will
9 be?

10 MS. CHESSER: About two percent of
11 the amount of time we've spent on this to date
12 in the last six months. How's that? I'm
13 going to guess about 15 minutes.

14 MEMBER JEFFRIES: Okay.

15 MS. CHESSER: Because we're going
16 to try to use our PowerPoint to sort of keep
17 ourselves structured, but toward the
18 beginning, some of my neighbors are going to
19 make their personal statement and then we'll
20 come back to presenting some more of the facts
21 of the application.

22 MEMBER JEFFRIES: And the other

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1 thing I just wanted us to be clear. Based on
2 I think it's number 60, I get the impression
3 that you are supportive of this application
4 based on conditions.

5 MS. CHESSER: That's incorrect.

6 MEMBER JEFFRIES: Okay.

7 MS. CHESSER: We are opposed to
8 this application.

9 MEMBER JEFFRIES: You're opposed.
10 Okay. Thank you.

11 MS. CHESSER: And I --

12 VICE CHAIR LOUD: However, you've
13 know all along that it was a special
14 exception?

15 MS. CHESSER: We did not. We knew
16 it was an exception for the occupancy of the
17 groups, but we were specifically told by the
18 church that the construction was a matter of
19 right, and they also did testify to that
20 before the ANC, and we have all of that on
21 tape.

22 So if you want us to bring forth

1 the tapes and find out the mark where they
2 said it and all of that, we'd be glad to do
3 that.

4 BZA CHAIR MILLER: I just want to
5 say that, you know, we don't have a specific
6 regulation that says that a special exception
7 is required for the construction of that
8 building, and I believe that the Applicant is
9 making an interpretation and going with that
10 interpretation.

11 And I also believe, so that we can
12 stay focused, that it all evolves around the
13 uses.

14 MS. CHESSER: Correct.

15 BZA CHAIR MILLER: They are saying
16 that they think that they need a special
17 exception for the construction of that
18 building because of the uses that are going to
19 be housed in it, and my understanding is that
20 the opposition or concerns that are here are
21 related to the uses.

22 So I don't think that we should

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1 spend too much time discussing the question
2 about whether a special exception was required
3 or is required --

4 MS. CHESSER: Okay. I --

5 BZA CHAIR MILLER: -- for the
6 addition.

7 MS. CHESSER: I'm sorry.

8 BZA CHAIR MILLER: No, that's
9 okay.

10 MS. CHESSER: Can I say one thing?

11 BZA CHAIR MILLER: Go ahead.

12 MS. CHESSER: I'm sorry. I'm Judy
13 Chesser.

14 BZA CHAIR MILLER: And your
15 address?

16 MS. CHESSER: 3901 Alton Place.

17 When Steve Gell was representing
18 us, we had a question about this. Could they
19 do it as a matter of right? And he actually
20 called Mr. DePuy, and he E-mailed me saying
21 that Mr. DePuy did not recognize the phrase
22 "an exception for construction."

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1 So we were trying to clarify, and
2 then we were specifically told it was all a
3 matter of right, and as I understand it, it's
4 not really different. It happens to be on
5 church property, but if it was a vacant lot,
6 would you allow this building to be built in
7 this place for these tenants?

8 Because the fact that it's a
9 church becomes irrelevant because the church
10 isn't going to use it.

11 BZA CHAIR MILLER: Okay. All I
12 can say is I think the Board is focusing on
13 the uses --

14 MS. CHESSER: Okay.

15 BZA CHAIR MILLER: -- and the
16 intensity of uses, you know, regardless of
17 whether this was an addition to a church.

18 MS. CHESSER: Okay. I would also
19 say that if we had been told it was not a
20 matter of right forthrightly, we would have
21 come in with more information about noise and
22 the like because this is extremely close to

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1 the houses on 39th Street, but we thought we
2 had to just accept the construction. That's
3 what we were told.

4 So it would have been a very
5 different presentation.

6 BZA CHAIR MILLER: Okay. Let me
7 just say also though I don't know. This Board
8 doesn't deal with noise from construction. We
9 deal with --

10 MS. CHESSER: No, I didn't say
11 noise from construction. This is a music
12 school, for example.

13 BZA CHAIR MILLER: Well, that's --

14 MS. CHESSER: And it cuts off
15 light to the backyards of those houses on 39th
16 Street just by adding -- by filling in the L.
17 They're building 4,500 square feet, three
18 stories. It's a big addition.

19 Shall we start?

20 BZA CHAIR MILLER: Yes.

21 MS. CHESSER: Okay. We're the
22 families neighboring WABC. We are all single

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1 family, detached homes. We all live within 20
2 to 120 feet of the building, and we do oppose
3 the application both because of the volume of
4 the usage, as well as the construction.

5 Existing conditions are such that
6 100 percent of the neighbors on Alton, 39th,
7 and Yuma signed a petition, which is in your
8 record, opposed to this application.

9 We have tried to work in a sincere
10 and cooperative manner with WABC. I don't
11 think we were anything but forthright through
12 the whole process. We met with them many
13 times. We went to many ANC meetings. We met
14 with D.C. departments. I have many documents
15 to show all of the back-and-forth between us
16 and the church, which I'd be more than happy
17 to provide if you'd like them, but I think you
18 felt you had too much paper already.

19 We did not know the construction
20 was not a matter of right until last Tuesday
21 when it was finally revealed. We would like
22 to assert our rights that this does not belong

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1 in an R-1-B zone. We have an aerial picture
2 of the neighborhood, I think, and just so you
3 kind of get an idea, the church -- it would be
4 easier if I'd do it on a pointer -- but let me
5 just walk up here a second.

6 BZA CHAIR MILLER: You won't be
7 picked up on the record unless you're on mic.

8 MR. ALLEN-GIFFORD: As Judy
9 points, I'll describe the thing she's pointing
10 to.

11 BZA CHAIR MILLER: Okay.

12 MR. ALLEN-GIFFORD: My name is
13 John Allen-Gifford. I live at 4412 39th
14 Street.

15 She is pointing to the junction of
16 the sanctuary and the wing of the church where
17 the construction is proposed to take place.

18 MS. CHESSER: (Speaking off
19 microphone.)

20 MR. ALLEN-GIFFORD: When we bought
21 here this was all R-1-B, and that is federal
22 -- are we going to get a portable microphone

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1 here? This is proving --

2 BZA CHAIR MILLER: We're going to
3 get a mic for you.

4 MR. ALLEN-GIFFORD: Hold up, Judy.

5 BZA CHAIR MILLER: Okay. You've
6 got a different pointer.

7 MR. ALLEN-GIFFORD: That's a
8 better solution.

9 MS. CHESSER: This is like the
10 United Nations.

11 When we bought, we had a justified
12 assumption that this would remain a fairly
13 quiet neighborhood. Much of the land you see
14 to the left of the church is federal park
15 land. So one would assume nothing is going to
16 happen there.

17 The street to the top is
18 historically preserved, Grant Road. You don't
19 get to commercial until you go out the corner
20 of that building, which is almost two blocks
21 from us. Although the church is called
22 Wisconsin Avenue Baptist Church, it is not on

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1 Wisconsin Avenue, as you can see.

2 Okay. This is a neighborhood of
3 families with children and pets. I think that
4 our purchase price of our homes reflected the
5 fact that this was a nice, quiet, residential
6 neighborhood, and I would hope that you would
7 keep it that way.

8 This is my house, I think. This
9 is my house. then we're taking you on to 39th
10 Street. My house, by the way, is directly
11 across the church from Alton Place. There's
12 three houses across.

13 The next slide is 39th Street.
14 The back yards of these homes border the
15 parking lot of the church.

16 This is another view of 39th
17 Street. You can see how perfectly nice it is,
18 tree lined, little kids, and then Yuma Street,
19 which is, again, very much tree lined, a nice,
20 little residential neighborhood.

21 This is not commercial. It's not
22 even close to commercial, and with that I

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1 would like to allow my neighbors to each
2 present their individual personal stories, and
3 Lisa will go first.

4 MS. BHANSALI: My name is Lisa
5 Bhansali. I live at 3903 Alton Place with my
6 nine year old son, Milan, and my husband, Jose
7 Miguel.

8 My son attends D.C. public school,
9 and we live directly across the street from
10 Wisconsin Avenue Baptist Church, which I think
11 we've all made clear is not on Wisconsin
12 Avenue but like on my house, on Alton Place,
13 which is blocks in on a residential street.

14 That's actually a picture of my
15 house.

16 When I bought this home in an R-1-
17 B neighborhood, I bought in 2000, and I loved
18 the idea of living in the city, but also
19 living in a neighborhood, and I remember
20 asking my real estate agent what was the
21 building across the street, and he said that
22 that was a Baptist Church. So I said okay.

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1 I understand that that means more activities
2 on Sundays, with churchgoers attending
3 different services.

4 In fact, the sign as you can see
5 in front of the church there right in front of
6 my house, which is the gray house in the
7 middle, refers to sermons that are held on
8 Sunday.

9 Now, over the past few years my
10 neighborhood has changed for the worse, and
11 in large part because some of these non-church
12 program are asking for special exceptions.
13 The neighborhood is no longer as quiet, and
14 the quality of life, such as my son being able
15 to ride his bike on the neighborhood streets,
16 has diminished.

17 The traffic situation has become
18 much more burdensome and dangerous to the
19 children. There's now a constant turnover.
20 In fact, Sunday, the very day that I thought
21 would be the busiest day turns out to be the
22 quietest day.

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1 The WABC has asked you for special
2 exceptions to support the community, but it
3 has not been good for the immediate community
4 or neighborhood. For example, putting in a
5 school for troubled youth without even
6 informing the neighbors was not exactly
7 neighborly. I found myself too scared to go
8 out sometimes. We had teenagers who were
9 belligerent and called us nasty names. We had
10 buses that were double parked on Alton and
11 idle for hours, made it impossible to go in
12 and out of Alton Place.

13 Alton is a very small street.
14 It's only 30 feet wide, in fact. I'm telling
15 you this because I think that past conduct is
16 a pretty good indicator of future conduct.

17 Now we have these traffic problems
18 with the clients that are attending these
19 various non-church programs like the language
20 skill Communikids and the music conservatory.
21 These clients often park idly and wait outside
22 on Alton Place for their kids to come out. So

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1 they need, we all need a dropoff/pickup place
2 that is on the premises of the church.

3 There's also a sign outside, as
4 you'll see later on, that says parking permit
5 only. That discourages people from using the
6 parking lot. Mr. Jeffries made reference to
7 the fact that he often saw that there were
8 spaces available inside the parking lot of the
9 church. Part of that is because there's a
10 sign that says parking by permit only. Any
11 person that goes in that usually would go park
12 on the street if you saw that. No one that we
13 know has permits.

14 When I've gone over to ask people
15 who are parked illegally to move into the
16 church parking lot or to use a legal spot that
17 might be available on the street, they usually
18 get aggressive, and we've already had more
19 than a few incidents.

20 On one occasion I went into the
21 church to find Pastor Bergfalk to ask him to
22 help and intercede. It was a Saturday. The

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1 hall was full of kids and people. None of
2 them even knew who I was talking about. In
3 fact, they didn't seem to know that they were
4 even in a church.

5 My point is that many of the
6 tenants there, who we have already established
7 from last week's hearing pay rent to the
8 church, are making this building into some
9 kind of a mini mall, and the enforcement is
10 now largely left in the hands of neighbors.

11 So with the program increases,
12 it's just going to get worse. Now, I'm not a
13 zoning lawyer, but I've tried to understand
14 the regulations, and as I understand Section
15 216.2 states that a church program cannot be
16 organized for profit.

17 Well, CommuniKids is a for-profit
18 language school, like was mentioned earlier,
19 like Berlitz, and shouldn't be allowed to
20 function in even a church building in an R-1-B
21 neighborhood. It seem to me that allowing for
22 a special exception defeats the purpose of R-

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1 1-B zoning.

2 I'm not sure how it's determined
3 what's a church program or not. It seem to be
4 almost a matter of convenience.

5 I also understand that Section
6 216.3 and 216.5 in BZA regs. refer to church
7 programs need to be conducted within existing
8 church buildings or structures. Well,
9 constructing an addition to house tenants for
10 non-church use, which they recognize now by
11 asking for an exception for construction, is
12 objectionable because of traffic and noise.

13 If these BZA permits these
14 exceptions, what does that mean for other R-1-
15 B neighborhoods?

16 Finally, my family and I love our
17 home, but let me say that I'm back in touch
18 with my real estate agent, and I'm considering
19 whether I might not move pending the outcome
20 of this case. Madam Chair, members of the
21 BZA, I'm glad to have had the opportunity to
22 speak before you, and I'm counting on you to

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1 enforce the R-1-B zoning requirements that are
2 applicable to my neighborhood.

3 Thank you.

4 My neighbor, Pamela Roberts, now
5 will speak.

6 MS. ROBERTS: Hi. My name is
7 Pamela Roberts, and I live at 3900 Alton Place
8 with my husband, Jose Antonio Mejia, my five
9 year old daughter Isabel and my two year old
10 son Ian.

11 We've lived in the property for
12 seven years, and this is my house which is at
13 the corner of Alton Place and 39th. We live
14 right next door to the church. You can see
15 the church. Actually if we go back up, the
16 church is right there. So we are right there.
17 We are divided by the 20 foot driveway --
18 well, the 12 foot, 20 space.

19 So we get the traffic on Alton,
20 and we also get the issues by bordering the
21 property. So pretty much we get it all.

22 And I wanted to say for the record

1 that both my husband and I fully support the
2 objectives of the programs of the church. Our
3 family is bilingual and bi-cultural, and we
4 work hard to maintain this as a key element
5 for our family life.

6 And also, like the parents in the
7 co-op, have had first hand opportunity -- I'm
8 sorry -- experience with the lack of
9 affordable preschools in the area, and we
10 actually had applied for a spot for the co-op
11 for my son, but we decided not to take it
12 because we got a spot somewhere else.

13 So we support the objectives of
14 the programs of the church, and we also
15 support the objectives of the programs that
16 are not included in the application. So we
17 support the mission of the church, but we
18 understand that because these programs are not
19 included in the application, they're not
20 included in any of the counts. So it's almost
21 as if any of the traffic or any of the
22 problems that are caused because of these

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1 church programs don't really matter, and
2 they're not going to be addressed in any way.

3 From the inception of WABC's
4 proposed expansion, my husband and I have been
5 opposed. We have continuously been affected
6 by parking, traffic and safety issues and
7 noise pretty much since we moved in.

8 We installed a stockade fence to
9 shield our yard from the driveway primarily
10 for the safety of my two young children, but
11 also for the privacy and to eliminate some of
12 the environmental issues, such as the fumes
13 from trash and exhaust from the cars coming
14 in.

15 Despite what the Applicant has
16 said, we have complained both in writing and
17 verbally on several occasions well prior to
18 the September '07 application. WABC even took
19 action on at least one complaint.

20 And I say this because it's
21 important for me for the D.C. officials to
22 understand that there is misrepresented

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1 information in their application. We did
2 complain despite the fact that they say that
3 there were no complaints.

4 Again, despite the fact that my
5 husband and I were continuously opposed to the
6 expansion, both the construction and the
7 increase in programs, we really understood
8 that the construction was a matter of right,
9 and so, therefore, any of the negotiations or
10 any of the conversations that we had were
11 based on the fact that the construction which
12 would, in fact -- it does, in fact, affect us
13 -- was a matter of right, and so therefore,
14 some of the things that we may have negotiated
15 and conceded on were not necessarily what we
16 would have done otherwise.

17 And, you know, some of the things
18 that have come across that I wanted to point
19 out is that -- you know, that were very hard
20 for us to understand through the whole
21 negotiation process -- is how can some groups
22 count and other groups not count in terms of

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1 the traffic coming in simply because of their
2 affiliation with or not with the church.

3 I'm sorry. WABC was, during the
4 negotiations, was very specific about how they
5 conceded the top floor and so, therefore, we
6 should concede on some other things, and I
7 just don't understand how that could have
8 happened when pretty much everything that
9 we've seen shows that the fourth floor
10 couldn't have been done. It's a basement.
11 The measurements, and so on and so forth, and
12 I don't have all the details in my head, but
13 I just don't understand that.

14 And I can't understand how it can
15 be that two organizations can apply for one
16 special exception. That makes no sense to me
17 and also how one organization would be
18 required special licensing when the other one
19 would not. That makes no sense to me.

20 I have to say honestly and
21 truthfully that I was rejuvenated last week
22 when I learned that the construction was not

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1 matter-of-right.

2 You know, as a closing note, when
3 I was rereading this statement yesterday, I
4 was wondering if I was being too harsh. We do
5 support the church. We do support their
6 programs.

7 And then I heard noises and I
8 looked out my window, and the street was
9 packed and it remained so throughout the
10 morning. On my street cars were idling. They
11 were parked illegal. They were double parked,
12 and one car was playing loud music. Hardly
13 any of the cars use their driveway, and one
14 car even blocked the driveway to deliver three
15 huge packages of pizza.

16 Okay. So it's summer camp, and I
17 also understand that this program that was
18 starting yesterday was a D.C. youth employment
19 program. However, that program would not be
20 counted and, therefore, we wouldn't have to
21 consider any of the traffic impacts of this
22 program because I understand, although I'm not

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1 sure, that since it's not included in the
2 application that it really doesn't matter.

3 Before I finish what I'm saying, I
4 wanted to point out two very specific things
5 that we are asking for. With regards to the
6 driveway, this is the drive. My house is
7 right here. The church is right here. There
8 are 12 feet. We've got the rubbish over here.
9 We've got people coming in. We've got cars
10 coming out. We have cars trying to come in.

11 Okay. This is not safe. This is
12 substandard, and for that reason it really is
13 essential that if any expansion happens,
14 either the construction or the increase in
15 programs, we need the Yuma cut. This cannot
16 be a two-way. There are issues now, period.
17 I mean even if there weren't construction and
18 even if there weren't increases in the
19 program. We need a cut on Yuma. Okay? This
20 is really not safe.

21 And then the second thing I wanted
22 to say is with regards to trash. My house is

1 right here and the trash is right there. Now,
2 my two year old son loves this. We go out all
3 the time when the trash comes. It happens a
4 couple of times a week, but it's noisy. It's
5 unsafe. It's very hard for that truck to back
6 in. It's a problem.

7 And so I would request regardless
8 of whether there's any construction or not
9 that we put in place a trash management
10 protocol. Right now they're using residential
11 bins. That that protocol be sufficient with
12 the size and magnitude of the church and its
13 programs, and that the rubbish be moved as far
14 away from the residential homes as possible on
15 the property.

16 And with that I will pass it on to
17 John Allen, who is my neighbor on 39th side.

18 MR. ALLEN-GIFFORD: My name is
19 John Allen-Gifford, and I live at 4412 39th
20 Street, N.W., along with my wife Patrice and
21 11 year old son Todd.

22 My family has owned and lived in

1 this house built in 1942 since 1990. We moved
2 to the District from New York in 1989 and
3 rented a house for a year to get to know the
4 city. Having grown up in New York, my wife
5 did not drive. So we needed a house close to
6 Metro and close enough in where taxis could
7 also be a viable option if necessary.

8 We looked all around the region,
9 but found the perfect area in Tenleytown. We
10 marveled at what a wonderful, almost suburban
11 to New Yorkers, at least, neighborhood it was
12 right within the city.

13 Here's a picture of some of the
14 houses along my western side of 39th Street
15 and my son Todd, and this is a picture of the
16 east side of 39th Street looking out from my
17 front porch. That's Todd again and my wife
18 Patrice.

19 My family has always been active
20 in our church. So when we considered buying
21 the house, we really did not have any concerns
22 about the church with which we would share our

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1 property line, but several people in the
2 neighborhood assured us that the WABC was
3 quite, low key establishment, and it was,
4 after all, in an R-1-B zone.

5 For a number of years that was our
6 experience with the church. Every once in a
7 while there would be a Sunday where the
8 congregation stayed and how outdoor
9 festivities and would invite the neighborhood,
10 but it was always in a very courteous, low
11 key, friendly manner.

12 There were summer camps, too, but
13 they, too, were lower key activities and
14 seemed to take place on the side of the
15 property bordering the National Park Service
16 land where there was the most shade.

17 Then gradually things changed.
18 Banners for a couple of other congregations
19 appeared near the sign for the WABC
20 congregation seen in an earlier slide. On
21 many days besides Sunday, we began to hear a
22 lot more noise from people coming and going

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1 or, rather, not going in the parking lot area
2 on the side of the church near our backyard.
3 Saturdays brought a lot of people.

4 Here's a photo showing the parking
5 lot and the back yard of my house and my
6 neighbor's houses along the west side of 39th
7 Street. There is not much to buffer us from
8 the church and its parking lot. Until this
9 BZA case, I did not know that regulations call
10 for parking lots in R-1-B zones to be screened
11 from residences by a wall of evergreens,
12 brick, or stone of at least 12 inches in depth
13 and 42 inches in height.

14 You'll note there is no such
15 barrier between this parking lot and our
16 backyards. Especially in the evening when we
17 were trying to rest and the noise was
18 particularly bothersome, my wife and I
19 considered complaining to the church but
20 decided it would be un-Christian to complain
21 about church activities.

22 It didn't occur to us that the

1 noise might be from something that was not a
2 church activity, never mind thinking that
3 activities were taking place that were simply
4 not permitted. We were bothered by the
5 persistent presence of alcohol abusing
6 homeless people using the church grounds, but
7 neighbors told us they had pointed out the
8 problem to the pastor.

9 Our tolerance and goodwill pretty
10 much evaporated, however, when we learned that
11 the church has essentially been operating as
12 a landlord, renting space to a for-profit
13 business in our R-1-B neighborhood and wanted
14 not only permission for the unpermitted
15 activities it had been undertaking, but to
16 greatly expand them and its physical plant.
17 No building expansion is necessary for a
18 congregation of at most 100 people.

19 Although it has dropped its plan
20 to add an additional story that would have
21 been higher than the existing sanctuary roof,
22 it still wants to fill in the open area in its

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1 L-shaped rental wing with a three-story
2 addition totaling 4,500 square feet of floor
3 space. This would decrease the sunlight I get
4 in my backyard. It would also nearly double
5 the length of its substandard 12 foot long
6 driveway, which is already a bottleneck
7 problem for the parking lot, making it harder
8 to get in and out by further narrowing the
9 driveway, will only increase the exhaust fumes
10 spewing between the slats in my stockade fence
11 from queued up cars.

12 As the neighbors started to look
13 closely at the church, we realized that the
14 programs for which they were requesting these
15 exceptions were just a part of what was going
16 on at the church. I still don't know why a
17 one hour language class is considered a child
18 development center and a one hour music lesson
19 is a private school.

20 But why doesn't a Bulgarian
21 language class require a special exception if
22 a Spanish language class needs one?

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1 The church has not been candid and
2 forthcoming with its neighbors. As I
3 contemplate how to enforce any caps that are
4 agreed upon, I come to the conclusion that the
5 only practical control on the church's
6 tendency to take any and all comers -- witness
7 the school for troubled youth and the large
8 choir that met Monday nights -- is to limit
9 them to the space they already have in their
10 current facility. They can renovate it and
11 make it ADA compliant, but it is plenty large
12 enough for a congregation of 100 or even 300
13 people.

14 Thank you for your time.

15 MS. BHANSALI: Madam Chair, could
16 we ask for the lights to come back on?

17 BZA CHAIR MILLER: Can I ask you
18 what you're referring to when you talk about
19 the school for troubled youth? Is that still
20 there?

21 No, that was it --

22 MS. CHESSER: I guess it was there

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1 for about a year, and that was when every
2 morning we had a terrible time with the buses
3 because they would literally block the street
4 and just sit there and idle.

5 MR. ALLEN-GIFFORD: Also, the
6 people coming to that school would just sit
7 out in front of the school as people were
8 going to work in the morning and --

9 BZA CHAIR MILLER: But it's not at
10 issue. It's only at issue as far as when
11 we're considering the history of what's
12 happened.

13 MR. ALLEN-GIFFORD: Exactly, as my
14 neighbor Lisa pointed out.

15 BZA CHAIR MILLER: Okay.

16 MR. ALLEN-GIFFORD: I also
17 consider that past performance is a good
18 indicator of future likely events.

19 BZA CHAIR MILLER: Okay, and then
20 another question I have with respect to
21 programs that aren't counted. What are you
22 all referring to?

1 MS. CHESSER: I think I should say
2 we're not done with our PowerPoint yet, but
3 we're about to do this and then the
4 PowerPoint, but you were about to say?

5 BZA CHAIR MILLER: Well, you asked
6 for the lights.

7 MS. CHESSER: No, I was trying to
8 do the placard, which I thought you could see
9 better with the light on, and then we were
10 going back to the power point.

11 MR. ALLEN-GIFFORD: We're in the
12 middle of the presentation. Sorry.

13 MS. CHESSER: But let me answer
14 your question if you ask it again. What are
15 we referring to programs that don't count?

16 BZA CHAIR MILLER: Programs not
17 being counted because -- I want an answer for
18 that, but the context is that these are
19 special exceptions that are being sought, and
20 we are looking at, you know, adverse impacts
21 that could result. That's the relevancy of a
22 lot of the ---

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1 MS. CHESSER: Correct.

2 BZA CHAIR MILLER: -- the
3 presentations. If we were to grant any or all
4 of the special exception requests.

5 So you made a reference to or Ms.
6 Roberts made a reference to programs that
7 weren't being counted, and so I --

8 MS. CHESSER: Right, and some of
9 that, when we go through the placard here,
10 which you now have in front of you, I can
11 point out to you, but it's like certain church
12 programs are not counted if you were to impose
13 caps, which are hard to structure, as I'm sure
14 you're aware, but if you impose caps like the
15 English is a second language doesn't count,
16 but and then the category would count,
17 although both of them seem to be under the
18 City Gate.

19 So it's difficult to figure out
20 exactly what's a church program and what's not
21 a church program, but anything that's a church
22 program, the church doesn't want to count

1 toward any caps, any maximum at a time or
2 maximum for the day.

3 BZA CHAIR MILLER: Okay. Because
4 I think we're looking at this in two ways.
5 One is, you know, the cumulative impact of all
6 of these programs.

7 MS. CHESSER: Correct.

8 BZA CHAIR MILLER: So they all
9 count as far as I'm concerned in evaluating
10 impacts.

11 MS. CHESSER: Okay.

12 BZA CHAIR MILLER: Okay? And then
13 later we would be looking at counts, all the
14 different programs with respect to whatever
15 conditions would need to be imposed in order
16 to avoid or mitigate any adverse impact.

17 MS. CHESSER: Right.

18 MS. ROBERTS: Can I just add a
19 clarification? When I was referring to that,
20 it's that the WABC has put in an application
21 for three programs, and so any of the
22 discussions that we have had regarding

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1 anything really is only -- they have said is
2 only about these three programs, despite the
3 fact that we slowly have learned that there
4 are three, four, five, six, seven other
5 activities that are going on in the church.

6 So when we talk about caps or even
7 when we talk about issues relating to parking,
8 well, that's not one of our programs that are
9 in this application. So we don't need to
10 worry about it.

11 BZA CHAIR MILLER: Okay. When
12 we're looking at these three programs that are
13 before us, we would also be considering though
14 the context in which they apply.

15 MS. ROBERTS: Right, exactly.

16 BZA CHAIR MILLER: You know, they
17 operate.

18 MS. ROBERTS: Exactly, and that's
19 our point as well.

20 BZA CHAIR MILLER: Okay.

21 MS. CHESSER: Are we done?

22 I wanted to just sort of walk you

1 through because I think some of the schedules
2 that have been provided you might look at them
3 and think, oh, well. And I can tell you on
4 this schedule, everything on this chart that
5 you have in front of you was taken from
6 materials that were provided by the WABC, and
7 they're both to be found at -- one of them is
8 at Exhibit C in their submission, and another
9 one is at Exhibit C in our submission, but
10 they're the future schedule, and then for a
11 few of the programs, because we didn't get any
12 future schedule because they weren't one of
13 the three groups contained in this
14 application, we used the current or existing
15 schedule, which is at our Exhibit C.

16 Okay. So all of these, all of
17 this schedule is based on that, and what we
18 did here was in the morning the co-op comes
19 with the Caterpillar Co-op. They stay in the
20 morning, which is one reason why if Jeff
21 Jennings only came in the morning there's not
22 as much traffic turnover in the morning,

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1 because he said he came in the morning,
2 because they do tend to come and stay, as you
3 might envision most of these groups do. But
4 most of these groups don't.

5 We put in the conservatory their
6 average lesson is every 45 minutes. Now, some
7 of their lessons are a half hour. Some are 45
8 minutes. Some are an hour. They have ten
9 teachers and 30 students at a time.

10 Although they took off the top
11 floor, they did not reduce the number of
12 people they're bringing to the site because
13 when they had the top floor, they said they
14 were going to have 20 teacher and 20 students.
15 Now they're going to have ten teachers and 30
16 students. It actually added to the traffic
17 because the students come and go more than the
18 teachers.

19 As you're looking down Monday, for
20 example, Washington Girls Chorus is not --
21 they're not asking for a certificate of
22 occupancy, and there's two sessions on Monday,

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1 20 at a session, and they have told us that
2 they expect to expand that, but I don't have
3 any expansion numbers.

4 And the conservatory would go
5 until nine o'clock. So if you assume their
6 general, everyday Monday, you can arrive at
7 549 people, and it continues throughout the
8 week.

9 The English as a second language,
10 which is here at -- where is it here? DDT,
11 English as a second language, somewhere here
12 we have -- oh, ESL. ESL is on Tuesday and
13 Thursday at ten o'clock, and they're here with
14 20 to 25 people. Those they would say is a
15 church program and, therefore, they shouldn't
16 count toward any caps.

17 The same with the Agapi Bible or
18 the Real Life, Real Life on Tuesday; Agapi
19 Bible is on Wednesday. As you can see, this
20 adds up to a lot of people though. On
21 Saturday you have 780, and then there's the
22 summer camp I put down in the corner. I mean,

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1 this is operating 12 hours a day, nine to
2 nine, which is what they are projecting to do,
3 and it's a constant coming and going.

4 Someone told me maybe I shouldn't
5 say that any gas station would be proud to
6 have this many guaranteed customers, but I
7 mean, it's pretty overwhelming, and you can
8 see how close it is to our homes.

9 There's also Over Eaters that they
10 don't want to count, et cetera. So as I said,
11 I thought it would be easier to just try to
12 lay it all out for you because I think it's
13 very easy to look at some of these and think,
14 well, if there's 94 people here from nine to
15 one, there's a total of 94 people. But that's
16 not true. There's 94 coming and going every 45
17 minutes or whatever.

18 So this give you an idea of our
19 tremendous concern.

20 BZA CHAIR MILLER: Did you say
21 that you have in your filing the current
22 schedule?

1 MS. CHESSER: Yes, on Exhibit C,
2 and it looks -- this one is written on -- but
3 it looks like this, cross-hatch, and so what
4 we did was we used only the future schedule
5 that was provided, but for some of them
6 because we didn't have any future schedule, we
7 just took the existing. So this would be a
8 minimum for these groups.

9 And as I said, I did this partly
10 because I thought people are going to look at
11 this and they're going to say, "Well, I can
12 add 94 and 40 and I get only 134 people on
13 Saturday," but, no, it's more like 780.

14 MEMBER JEFFRIES: I just have a
15 question. So this doesn't assume that we're
16 going to be -- I mean, teachers stay the same,
17 right during the course?

18 MS. CHESSER: Not entirely. Well,
19 first of all, the teachers stay sometimes. I
20 mean --

21 MEMBER JEFFRIES: But you're not
22 adding those like at yours for Tuesday, six --

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1 MS. CHESSER: As a maximum you
2 could take. If you want to act like every
3 teacher comes in the morning and stays all
4 day, all the teachers that we have on this,
5 you can take 90 people off Monday through
6 Friday. You can take 110 off on Saturday.
7 It's not as much as you think because you've
8 only got ten teachers at a slug on
9 conservatory, but a lot of the teachers don't
10 stay.

11 I mean, a teacher might come,
12 teach a few hours and then leave because
13 somebody else comes because there's different
14 instruments being taught, et cetera. The same
15 way with the CommuniKids because it's
16 different languages. So different teachers
17 are teaching different languages.

18 MEMBER JEFFRIES: Is it possible
19 to -- I guess we should talk with the
20 Applicant, but also, you know, certain
21 students will, you know, do back-to-back.

22 MS. CHESSER: I'm going to guess

1 that not very many students do back-to-back
2 music lessons. Nobody at any point told us
3 what there were a lot of back-to-back lessons
4 by the students.

5 MEMBER JEFFRIES: Okay.

6 MS. CHESSER: And realize also
7 it's not like -- this is part of the reason
8 why doing an enrollment cap is very difficult,
9 because the same people who come on Monday,
10 for example, for the conservatory or for like
11 the CommuniKids, they're not the same people
12 that come on Tuesday. It's all different
13 people.

14 MEMBER JEFFRIES: Okay. I have to
15 tell you this is a very revealing chart. Is
16 this the first time the Applicant has actually
17 seen this chart?

18 MS. CHESSER: Yes, because --

19 MEMBER JEFFRIES: Okay.

20 MS. CHESSER: -- as I said, this
21 is what -- it's all off of their material.
22 I'd like to think they have a chart like this

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1 in the church myself, but what do I know?

2 MEMBER JEFFRIES: But you know
3 these things can be misinterpreted, and so
4 forth and so on. I just wanted to -- I mean,
5 this is a wonderful -- I mean, this is very
6 informative, but I just want to --

7 MS. CHESSER: Do we have an extra
8 copy?

9 MS. CHESSER: Also, the other
10 thing that you need to know is that for a lot
11 of these, a parent comes with their child. A
12 parent comes with their child, drops off their
13 child. They may leave for the hour, you know,
14 go over to Wisconsin Avenue, and then come
15 back. So for some of these it's two trips.

16 They self-surveyed that 80 percent
17 of their people come to their site by car.
18 Every single group came up with pretty much
19 the same number. Eighty percent come to the
20 site by car, and that's also included in one
21 of our exhibits, and I included the surveys
22 they handed us, that 80 percent come by car.

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1 So if 80 percent come by car but
2 in addition some of these -- I mean, a lot of
3 them, if I'm coming with my kid, I drop my kid
4 off; I go away for an hour. It's enough time
5 that I'd go to the Whole Foods or something
6 and then I'd come back. So for some of them
7 it's two trips, but I had no way. I was just
8 trying to do trips, and I gave up on that, and
9 I thought I just don't have enough
10 information.

11 MEMBER JEFFRIES: Okay. I hear
12 what you're saying. It just looks like a lot
13 of work went into this, and you know, if you
14 could have sat down and spoken with the church
15 to make certain that this really reflects
16 what's going on because you know how these
17 charts can be. I mean, you know, I mean, you
18 know.

19 MS. CHESSER: It reflects totally
20 the information that they already gave us.

21 MEMBER JEFFRIES: Right.

22 MS. CHESSER: I mean, you yourself

1 can look at their own exhibits --

2 MEMBER JEFFRIES: Right.

3 MS. CHESSER: -- and how often
4 they turn over, and I didn't try to play with
5 it and make it more people than it was or
6 anything else. I took exactly their numbers.

7 MEMBER JEFFRIES: And that's fine.

8 MS. CHESSER: I'm sure they are,
9 but that's because they would like you to
10 look at this and have you think, oh, 134
11 people are there on Saturday, when it's really
12 there's 94 people there over this slug, but
13 they're changing some of them every 45
14 minutes, some of them every hour, et cetera.

15 MEMBER JEFFRIES: Okay. Thank
16 you.

17 MS. CHESSER: You know?

18 MEMBER JEFFRIES: Thank you.

19 MS. CHESSER: I note they didn't
20 share their exhibits with us.

21 BZA CHAIR MILLER: Can I ask you
22 something though? I was trying to compare.

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1 This is a very readable chart which is future
2 if we were to approve all of the special
3 exception requests. Now, with this and
4 Exhibit 57, titled "Weekly Schedule in Faculty
5 Usage," what I'm supposed to be looking at to
6 look at what it is now?

7 MS. CHESSER: Yes.

8 BZA CHAIR MILLER: Because I'm
9 having trouble comparing the current numbers
10 with the future numbers.

11 MS. CHESSER: Well, and first of
12 all, I only used this for the groups where I
13 didn't have any future schedule. Most of
14 those numbers, this is the future. This is
15 what they have given to you. It's at their
16 Exhibit C and --

17 BZA CHAIR MILLER: Who's "their"?

18 MS. CHESSER: -- this, this is
19 their -- these are all their papers. None of
20 these are mine. I just combined them to get
21 that chart, the big chart. This is their
22 existing class schedule, and you have these

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1 documents. This is Exhibit C in mine. This
2 is Exhibit C in theirs. This is the future,
3 and I just picked up off of this, you know,
4 like the Bulgarian school, the Washington
5 Girls Chorus, the Agapi Bible. I did not pick
6 up CommuniKids or conservatory or Caterpillar
7 Co-op from this because I had better numbers.
8 I had the future for those three.

9 I might -- what?

10 BZA CHAIR MILLER: For me, as one
11 Board member analyzing this, I'd be interested
12 in knowing how this increases from the status
13 quo.

14 MS. CHESSER: Well, interestingly,
15 for CommuniKids, it's less in the future than
16 the current, which is what I was sort of cross
17 examining Raul on last Tuesday, because if you
18 look at the time frames for the CommuniKids on
19 existing, they're operating more than they are
20 in the future, which I find unlikely. How's
21 that for a good word?

22 We're going to have all of this

1 expansion and we are going to have fewer
2 sessions. So you actually have fewer
3 CommuniKids on that big chart than you do
4 today, but I didn't want to say I'll take
5 existing CommuniKids even though it's more
6 people because I thought that's not what
7 they've said. They've said they're going to
8 have fewer sessions.

9 I'm sure that's not the way it
10 will work out.

11 BZA CHAIR MILLER: It doesn't
12 sound like a point -- for us to try to assess
13 the impact in the future, it's not just to
14 look at numbers. It's for me, my experience
15 has been also to look at, well, what are the
16 numbers now and what has the experience been
17 with these numbers, and then that would help
18 me kind of assess what the impacts might be
19 with greater numbers.

20 MEMBER JEFFRIES: I mean, you're
21 saying you need historicals.

22 BZA CHAIR MILLER: I mean like

1 now. They say, for instance -- I mean, I
2 don't know -- that these are certain impacts
3 that --

4 MS. CHESSER: Right.

5 BZA CHAIR MILLER: -- you're
6 showing us in the PowerPoint and talking about
7 trash and this and that based on a usage of
8 a certain amount of people, you know, and so
9 that's relevant to what the impact is going to
10 be with more people. To me it is.

11 MEMBER JEFFRIES: I'm just having
12 difficulty with these totals. It just seems
13 counterintuitive to me. It just -- I mean --

14 MS. CHESSER: We do, too.

15 MEMBER JEFFRIES: If you are
16 correct, I mean, you know, this is -- I mean,
17 you know, I mean, 780 people coming through
18 this church on a Saturday. That just
19 doesn't --

20 MS. CHESSER: It's busy now, but
21 that is what they are --

22 MEMBER JEFFRIES: That's a lot of

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1 people.

2 MS. CHESSER: Now, this begs --
3 I'm with you, but they want 30 -- these aren't
4 my numbers. These are their numbers -- they
5 want 30 students and ten teachers and their
6 average lesson is 45 minutes, and they want to
7 operate from nine to five. It's like you do
8 the math.

9 MEMBER JEFFRIES: But they might
10 not --

11 MS. CHESSER: They might not get
12 there?

13 MEMBER JEFFRIES: You're making
14 assumptions that, you know, it's going to be
15 such a great demand and you know. I hear what
16 you're saying, and they have the capacity.

17 MS. CHESSER: But then they won't
18 mind if you cap them at far less if they're
19 not going to come anyway, but this is --

20 MEMBER JEFFRIES: This says
21 "Summary of Future Daily Occupancy."

22 MS. CHESSER: That's correct.

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1 These aren't my numbers.

2 MEMBER JEFFRIES: This is the
3 worst case scenario. This is the situation --

4 MS. CHESSER: These are their --
5 these are their numbers. They want and they
6 put it out there; they want, and you can look
7 at this --

8 MEMBER JEFFRIES: Right.

9 MS. CHESSER: -- they want
10 conservatory, 30 students, ten teachers, nine
11 to five. It actually goes more like almost
12 six on Saturday, 5:30, whatever, 5:45, and
13 their average lesson is every 45 minutes they
14 turn over.

15 Now, that's their average lesson.
16 Some lessons are a half an hour. Some are an
17 hour, but I didn't think you needed that chart
18 more complicated than it already was. I could
19 do it, but I didn't think you wanted to do it
20 any more complicated than it already was.

21 As I said, and I did it because I
22 think that people look at this and think, oh,

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1 it's not that big a deal, but this isn't an
2 office building where people come at nine
3 o'clock and leave at five. This is Karen
4 called it a mini mall. I don't know what to
5 call it, a help clinic, a mini mall. It's a
6 place where the structure of their programs
7 that they are proposing is to have constant
8 turnover of a lot of people in an R-1-B
9 neighborhood in a matter of feet from my
10 houses.

11 Shall we go back to the
12 PowerPoint?

13 So what we're doing is we're
14 asking for some kind of caps for a limitation
15 on tenant use, and try as I might, I keep
16 trying to structure caps and it's very
17 difficult to come up with caps, you know, like
18 enrollment caps. If you add up 291 times six,
19 you get like 1746. Then you take out the
20 Caterpillar co-op, but of course, you have to
21 take them out five times a week because you've
22 got your 7046 over six days, yaddy, yadda, da.

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1 i ended up with about 650
2 enrollment for CommuniKids, 650 for the
3 conservatory. If you don't allow CommuniKids,
4 which we would say they're a for-profit and
5 they shouldn't be there, then do you allow the
6 conservatory 1,300 enrollment?

7 I mean, I'm like I don't know how
8 to structure a cap with this kind of deal.
9 This gas station can only have ten cars every
10 two hours. I mean, I don't know how to do
11 that.

12 What we agreed to was 90 --
13 realize we did all of these agreements
14 thinking we had to eat the construction and we
15 know we don't have to now, but be that as it
16 may, we agreed to a 97 maximum at a time, 189
17 until -- because we thought the daily
18 aggregate caps would be better at pushing it
19 down, but 97 gave them flexibility. So 189
20 for the whole day, and 291 if construction was
21 allowed.

22 And another question arises. If

1 the CommuniKids had said that they would
2 allow a 30 minute interval between classes.
3 That gives people time to leave and time to
4 come back. The conservatory does not want to
5 allow any interval. So do both classes, the
6 class that's coming and going at the same
7 time, do they both count toward the maximum
8 caps?

9 I would suggest perhaps they
10 should because you've got double the people
11 there, and hours, we think that the
12 conservatory should end at 7:30 because going
13 till nine o'clock Monday through Friday so
14 close to the homes is -- it's just too late.

15 And then we have the slide on the
16 number of rooms. They have ten classrooms now
17 that by the time they're done with
18 construction they would have 22 classrooms.
19 I'm sorry. They have 12 now, and they would
20 want to add 22, end up with 22. Twelve now,
21 add ten, end up with 22.

22 One way to try to keep a handle on

1 this constant rotating crowd would be to deny
2 the construction. Then they are limited by
3 the size of the building.

4 We would urge you not to approve
5 the construction. If you're going to have
6 3,000 people there over the course of a week,
7 maybe the size of the building will help tamp
8 that down. As I said, we were misled into
9 thinking that construction with as a right,
10 this construction is not for the church. It's
11 for three tenants, one a commercial for-profit
12 right in an R-1-B zone, not particularly close
13 to any commercial area.

14 Parking lots, we would strongly
15 support the 36 space parking lot and you may
16 see it better when the lights are on, but we
17 try to do sort of like -- I'm going to say
18 Pacman people tell me it shows my age, but we
19 tried to do what the traffic pattern would be
20 because we think the 36 space parking lot
21 allows for much smoother traffic pattern and
22 would allow one of the aisles to be dedicated

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1 to dropoff and pickup, whereas the 28 space
2 parking lot just sort of pushes everybody into
3 that same area, which to us seems very
4 dangerous for dropoff and pickup.

5 Moving on to our next slide, we
6 would strongly support the curb cut. Jeff
7 probably meant to bring up closing the Alton
8 Place when he met with us, but him and I don't
9 remember that. That's sort of a new one for
10 us here, and I'm not sure we are together
11 enough on that idea to comment on it tonight.
12 I mean I could say in many ways could I live
13 in Alton and I'd say, "Great. Close it," but
14 since I think a lot of people would think they
15 can get into the building on that side, they'd
16 just park on the street when they couldn't get
17 through the driveway. So I have rather mixed
18 emotions about that.

19 We think speed bumps might be a
20 good idea because you've got all of these
21 little kids involved, both the neighborhood
22 kids as well as the kids at the school for

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1 wherever there are driveways just to slow
2 people down a little bit because sometimes now
3 they'll come zooming out and zooming in.

4 We think the traffic management
5 plan is a great idea, but I think that people
6 carrying instruments and little kids, they're
7 not probably the most optimal group to get on
8 the subway. We think that they should not be
9 allowed to charge any fees because I think the
10 market would immediately just push them back
11 out on the street. I mean, would you pay a
12 fee or would you just park for free out on the
13 street?

14 And buses. We had this
15 conversation last week, but one question I
16 would have is I don't know if they close the
17 Alton Place side, how that impacts on the
18 buses because at one point there was a
19 conversation about the buses would pull into
20 the parking lot for dropoff and pickup once
21 there was a parking lot adequate to
22 accommodate them, and right now the buses

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1 can't get in the parking lot right now, and I
2 understand that. I mean, if they drop off and
3 pick up in front of the church and then go
4 park outside of the island, I think that's the
5 best that can happen right now, but once that
6 parking lot is improved, I think the buses
7 should be there.

8 If they want to figure out how to
9 park them outside of R-1-B, you know, I don't
10 care where they're parked as long as they're
11 not parked on the city streets.

12 But as I said, I think whatever
13 the configuration is of the parking lot, they
14 need to factor in the whole bus issue.

15 Environment and noise and, as I
16 said, we would have done more on noise had we
17 been addressing the construction more. We
18 think there should be a greater barrier
19 between the parking lot and the 39th Street
20 houses.

21 We made a little mistake on our
22 grid because we refer to mixing apples and

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1 oranges. Apparently it says 42 inches in
2 12 -- excuse me -- 12 inches wide and 42
3 inches high or matured trees for the parking
4 lot, but the day care centers apparently
5 actually contemplate that it could be a much
6 higher barrier, and I think something better
7 needs to be done between the parking lot and
8 the 39th Street houses. That stockade fence
9 you saw was constructed totally by the
10 neighbors, not by the church. That was their
11 attempt.

12 I think that all rooms that are
13 used by the conservatory need to be
14 soundproofed. At one point we contemplated,
15 well, maybe they could just close the windows,
16 but when we asked where on these concept
17 drawings, which rooms would be soundproofed,
18 nobody could tell us, which made me think that
19 they weren't going to soundproof any. They
20 were just going to say, well, we'll close the
21 windows.

22 And closing the windows is not the

1 same as soundproofing. I would make the
2 exception for the sanctuary where the piano
3 lessons are. It's on the other side, anyway,
4 more away from where the houses are.

5 Pamela mentioned the rodent
6 problem. That does need to be addressed.
7 They put some stockade fencing around the
8 current residential super cans, and they kind
9 of pushed the rodents across the street to the
10 neighbors' houses.

11 Finally, we did provide you with
12 the grid which we discussed, and I don't think
13 we made anymore -- hopefully we didn't make
14 anymore mistakes on it. We put a construction
15 plan on that, and we added in elements that
16 had been included in what the church had
17 provided. I can sort of understand why the
18 ANC didn't realize that the church had given
19 them a construction plan at the ANC because it
20 was at the back of a booklet, but it was there
21 but it was at the back.

22 And we took elements from their

1 construction plan, and we put them in our
2 grid, and then we also put elements of our own
3 construction plant which we attached to our
4 submission.

5 Finally, is it a basement? We've
6 sort of gone over this, but the earlier BZA
7 order, the certificate of occupancy from 1980,
8 the requirement about what would constitute a
9 church, they kind of have to count the
10 basement square footage to still look like a
11 church, and they can't do that if it's a
12 cellar.

13 In response to the ANC's
14 questions, they specifically testified that it
15 was more than four feet out of the ground.
16 It's a basement, and we strongly urge that you
17 keep that terminology because we don't want
18 somebody in the future to come back and go,
19 well, the BZA called it a cellar.

20 We think that all of the groups
21 need certificates of occupancy, the Bulgarian
22 school, the 30 people that come for the

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1 Bulgarian school on Saturday; the Washington
2 Girls Chorus. We think they all should have
3 certificates of occupancy.

4 We don't think that CommuniKids,
5 which is a for-profit -- why is a for-profit
6 being located at this R-1-B location? And
7 it's certainly not a church program where it
8 talks about nonprofit and 75 percent
9 volunteer. This is a for-profit business.

10 And finally, we think there should
11 be some sort of time limits on whatever you do
12 allow just so you get resolution of the issues
13 so that, you know, whatever they're going to
14 do they have a certain number of years to do
15 it.

16 Finally, we are very concerned
17 about these increases in volume of the
18 program, as well as the construction. We
19 don't want to see 3,000 to 3,500 people there.
20 We don't want to turn over every 30, 45 or 60
21 minutes 12 hours a day, six days a week.

22 It's an R-1-B single family,

1 detached neighborhood. You saw what our
2 neighborhood looks like. We are not right
3 next to Wisconsin Avenue. We're buffered by
4 the federal parkland. We're buffered by an
5 historically preserved street, and we would
6 like permission to submit a draft order after
7 today's hearing if you would be willing to
8 allow us to do that.

9 And with that, I'd like to really
10 much thank you for your time.

11 BZA CHAIR MILLER: Okay. I guess
12 we could put the lights on, right?

13 I want to ask about the
14 conservatory use in the evening. You wanted
15 it to stop at 7:30 and I want to ask you what
16 is it about that, you know, that creates an
17 adverse impact for you. Is it the number of
18 cars that come in or what is it?

19 MR. ALLEN-GIFFORD: Well, I'd like
20 to address one issue since I'm immediately
21 behind the church. I have in the past heard
22 never mind saxophone or drum lessons. I've

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1 heard flute lessons. Now --

2 BZA CHAIR MILLER: Wait, wait,
3 wait. So that could be addressed in
4 soundproofing.

5 MR. ALLEN-GIFFORD: So it's noise,
6 noise from the classes.

7 BZA CHAIR MILLER: That could be
8 addressed as soundproofing, right?

9 MR. ALLEN-GIFFORD: Yes.

10 BZA CHAIR MILLER: Okay. Go
11 ahead. I just want to make -- is that it?

12 MR. ALLEN-GIFFORD: That was the
13 point I wanted to make. In addition, yes,
14 it's the activity in the area. I mean, people
15 when they leave these lessons will sometimes
16 run into a fellow student and chat in the
17 parking lot for a while. That's relatively
18 benign, but you get a bunch of these kids
19 together, real exuberant, and they can be very
20 loud.

21 MS. CHESSER: And we chose 7:30
22 because that was when the previous certificate

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1 of occupancy for the church had the then Baker
2 Center -- had to end at 7:30.

3 BZA CHAIR MILLER: When was that?

4 MS. CHESSER: 1980.

5 BZA CHAIR MILLER: 1980? So
6 what's happened after 1980 then?

7 MS. CHESSER: Apparently they
8 left. Although it was the TV and
9 broadcaster's day care center and they had a
10 whole arrangement that a certain number of the
11 kids had to be from the direct neighborhood,
12 it was apparently primarily for kids where the
13 parents worked at the local TV and radio
14 stations and the like, and they were located
15 at the church. I'm going to guess they were
16 there for about two years.

17 BZA CHAIR MILLER: It gives
18 current usage, Washington Conservatory of
19 Music.

20 MS. CHESSER: Yes. Well, none of
21 these have certificates of occupancy.

22 BZA CHAIR MILLER: Okay, okay. So

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1 they're there. They don't have a certificate
2 of occupancy.

3 MS. CHESSER: Exactly.

4 BZA CHAIR MILLER: Okay. I guess
5 my other general question is I guess you all
6 have been living there for a while, and maybe
7 this has been slowly increasing anyway. I
8 don't know, but do you have like a feel for
9 what's acceptable? Do you feel like some of
10 this activity is acceptable or for you it's
11 like none of it is acceptable?

12 MR. ALLEN-GIFFORD: I have no
13 problem with Caterpillar Co-op. I embrace
14 that wholeheartedly. I have a big problem
15 with CommuniKids, a less problem with
16 conservatory.

17 CommuniKids is my big beef.
18 Conservatory, less.

19 BZA CHAIR MILLER: Why is that?
20 What's the difference with them?

21 MR. ALLEN-GIFFORD: It has got the
22 most -- well, I object to the for-profit part,

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1 the precedent it might set. They also have a
2 lot of activity on Saturday. I'm gone mostly
3 during the week, but Saturday is a busy day
4 for them, and I happen to have a musical
5 background so I have a soft place in my heart
6 for the conservatory.

7 (Laughter.)

8 BZA CHAIR MILLER: Okay. The
9 CommuniKids though, forget the precedent
10 because that's not like a measurable impact,
11 you know, on you as a neighbor. I mean, is it
12 that there's so much activity, much more
13 activity with respect to that operation?

14 MR. ALLEN-GIFFORD: Commissioner
15 Wiss touched on the concern of some of the
16 neighbors about encroachment into -- I view
17 our immediate area of Tenleytown as a buffer,
18 if you will for the broader neighborhood
19 heading in the direction of Connecticut on our
20 side of Wisconsin, and Grant Road, the
21 granting of that historic district and the
22 fact that there's a Park Service in Tenley

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1 Circle is also a buffer, but our property is
2 like the leading edge of this residential
3 neighborhood. I do not want an office
4 building right next to my property.

5 Now, I don't, you know, mean to
6 mischaracterize the church activities, but
7 that's my concern, that it will set a
8 precedent for my immediate property.

9 MS. CHESSER: I personally have
10 problems with both the CommuniKids -- I'm also
11 sort of into the Caterpillar Co-op. They
12 come. They stay for three and a half hours.
13 They leave; they're there in the morning. I
14 mean, to some extent they seem pretty easy to
15 get along with.

16 I personally have problems with
17 the CommuniKids, and I have problems with the
18 fact that they're for profit. You know, maybe
19 that's the lawyer in me, but this whole idea
20 that a for-profit can suddenly move in next
21 door seems a little scary.

22 But in addition, both CommuniKids

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1 and the conservatory -- and I love music --
2 but John is saying that he's got problems on
3 Saturday, but the conservatory is expanding to
4 Saturday. So he may not have problems with
5 the conservatory on Saturday now, but he will.

6 And the conservatory actually has
7 more people than CommuniKids, albeit as I
8 said, I know the numbers on Communikids for
9 the future are just wrong because they can't
10 be less than they are today. So, you know,
11 that's a little bit of an unknown black box as
12 far as CommuniKids in the future.

13 CommuniKids to me is a for-profit
14 and needs to go over in the commercial area.
15 If the conservatory is going to be there, it
16 needs to be at far less volume than this
17 proposal.

18 MR. ALLEN-GIFFORD: Yeah, when I
19 said I have less problem with the
20 conservatory, I was, of course, referring to
21 the current level of conservatory activity.
22 Mr. Spurlock gave me pause when he said that

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1 they would expand to whatever you let them
2 expand to. That did concern me.

3 They're using it for about 15
4 hours a week now. What they're proposing is
5 vastly greater.

6 MS. ROBERTS: If I could add
7 something, too, you know, with regards to the
8 different programs, for me that's not
9 necessarily an issue, although I guess I could
10 speak to the three programs, but the thing is
11 that right now even without any expansion,
12 there are issues with the driveway. There are
13 issues with cars coming in and out. I mean
14 there are issues, whether it's the intervals,
15 time, whatever, who's associated with it, and
16 we really do need to address those with the
17 curb cut.

18 And the thing is there are issues
19 now, and we're proposing a phenomenal
20 increase, and who knows what that limit can be
21 or who those people should be?

22 I mean, we have talked about the

1 different things, but you know, you ask what
2 could we handle, and it's really difficult to
3 know, but we do know -- at least I know --
4 that that is a very dangerous driveway, and we
5 need it to be addressed now with the curb cut
6 in any case.

7 MS. BHANSALI: For me the
8 CommuniKids is -- I know that I made reference
9 to what should other R-1-B neighborhoods
10 expect. It's not so much the precedent. It's
11 sort of getting a sense of the numbers.
12 CommuniKids is something that has a lot of
13 different classes. You've got French, you've
14 got German, you've got Spanish, you've got
15 Russian. Then there's this Bulgarian school,
16 which is outside of CommuniKids, and so you
17 can take a Bulgarian class, but that doesn't
18 need a special exception.

19 It's all rather confusing, but for
20 me CommuniKids is a question of numbers, pure
21 and simple. There's just too many people
22 coming in and out.

1 MS. CHESSER: But realize the
2 conservatory in the future would be 30 lessons
3 at a time, which is actually bigger. I'm
4 sorry. Ten lessons at a time, 30 students.

5 I mean, the conservatory actually
6 -- it's hard to keep track, but I'm trying --
7 the conservatory actually gets -- I would say
8 it gets bigger than the CommuniKids in the
9 future, except that I'm back to this. The
10 CommuniKids numbers just can't be right with
11 what they've given us in the future because it
12 gets smaller.

13 MS. ROBERTS: And can I say one
14 more thing? And I don't think that we're
15 speaking against each other, but you know,
16 what could we absorb? I think that we would
17 all agree, and maybe we have to come back to
18 this; I think that we would all agree that the
19 least obstructive is the co-op. They come in
20 at one time and they stay till one time. You
21 know, as long as we address the pickup and
22 dropoff, and if they increased their program

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1 to the size that they're looking at, and I
2 think the number is 70 -- I can't remember
3 offhand. Fifty-something for the students and
4 however many for the teachers -- that alone,
5 without the construction, because there are
6 issues associated with the construction; that
7 the co-op stays. You know, they're in and
8 out; that they increase to the number that
9 they're looking at and no construction, and
10 they can fix their property the way they need
11 to in order for them to meet the compliance
12 regulations for bathrooms, ADA, so on and so
13 forth.

14 And that, you know, we may say,
15 "Well, what about the other two programs?"
16 Well, maybe we can forget about the other two
17 program because there are already other
18 programs at the church that we aren't even
19 looking at.

20 So that's what I wanted to say to
21 that.

22 MR. ALLEN-GIFFORD: And, by the

1 way, I suspect the Caterpillar Co-op would be
2 much better off without the construction
3 because I'm not sure where they would go
4 during the construction.

5 BZA CHAIR MILLER: Okay. I made
6 reference to this point earlier, and I think
7 that we probably will be leaving the record
8 open for other submissions. For me it would
9 be helpful, if you're so inclined to do a
10 chart showing the current usage to compare
11 because we are kind of comparing from that
12 point of reference.

13 Okay. Any other questions from
14 the Board?

15 (No response.)

16 BZA CHAIR MILLER: Applicant? Oh,
17 go ahead. We have another question from the
18 Board.

19 VICE CHAIR LOUD: Just a very
20 quick question on the grid that you
21 referenced. Does this have any value to us
22 any longer in light of some of the comments

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1 regarding support, I guess, for Caterpillar,
2 but no longer support --

3 MS. CHESSER: Yeah, we actually
4 did that at the request of the Chair, but yes.
5 Because I don't know what your decision is
6 going to be, if you're going to decide to let
7 things go forward, there are some things on
8 that chart that we would encourage you to
9 impose as conditions, and I guess --

10 VICE CHAIR LOUD: So assuming we
11 don't agree with the limitations to just
12 supporting the Caterpillar Co-op?

13 MS. CHESSER: Right.

14 VICE CHAIR LOUD: But also think
15 that there's some merit under the regulations
16 for the CommuniKids and the conservatory,
17 these are the conditions that you think are
18 appropriate.

19 MS. CHESSER: Right. And --

20 VICE CHAIR LOUD: Now, let me see
21 if I -- I'm sorry.

22 MS. CHESSER: No, I was just going

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1 to say one of the great struggles in this
2 whole thing is trying to figure out how to
3 structure and enforce caps. I mean, as we
4 keep discussing, you know, we came up to 97 at
5 a time and 189 over the course of the day, but
6 I don't know how to -- unless somebody is
7 sitting with a clicker, I just don't know how
8 to enforce them.

9 And when we tried to back it out
10 and add them all up over the course of the
11 week and then say, well, it would be
12 enrollment, as I said, I could come up with
13 650 for CommuniKids, 650 for the conservatory.
14 So if there's no CommuniKids, then they could
15 have -- then the conservatory could have 1,300
16 people, and I was like, "That seems like a
17 lot."

18 And it's because if you add 289
19 times six and then start backing out the
20 groups, do you know what I'm saying? It's
21 like I know at one point the pastor said,
22 well, we met with the neighbors and they said

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1 they wanted caps, but they didn't even have
2 them, like we weren't being cooperative.

3 I don't know how to structure caps
4 in this situation.

5 VICE CHAIR LOUD: Okay, and I
6 don't know the answer to that either, but just
7 taking a look at the grid, you represent that
8 WABC agree to a cap of 97.

9 MS. CHESSER: They did.

10 VICE CHAIR LOUD: Okay, and --

11 MS. CHESSER: At any one time, and
12 then they agreed to 189 existing and 291 in
13 the future for the aggregate over the course
14 of a day.

15 VICE CHAIR LOUD: And so you were
16 in agreement as well with increasing the total
17 cap. It was about 100 increase, from --

18 MS. CHESSER: Right.

19 VICE CHAIR LOUD: -- 189 to 291.

20 MS. CHESSER: Right. I mean, this
21 was when we thought we had -- we had to
22 support the -- we thought that we had no

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1 rights as to the construction. That was when
2 we negotiated all of these things.

3 VICE CHAIR LOUD: Well, this is
4 dated June 16th though.

5 MS. CHESSER: Yes.

6 MR. ALLEN-GIFFORD: But the
7 mandate, as we understood it from the Board
8 was to reference the ANC decision, which
9 predated that date. So for comparison
10 purposes, apples to apples, we had to take
11 that perspective.

12 MS. CHESSER: Well, actually I
13 thought that --

14 BZA CHAIR MILLER: I don't know
15 what you're referring to. What mandate?

16 MS. CHESSER: I thought, yeah, it
17 wasn't really a mandate.

18 MR. ALLEN-GIFFORD: Request.
19 Sorry, sorry.

20 MS. CHESSER: Yeah, I was going to
21 say I thought that the Chair asked us to just
22 lay out what had been agreed to up until that

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1 point by the three different entities, ANC and
2 us and the WABC, with our many, many
3 negotiations and the ANC resolutions. So that
4 grid was our stab at that.

5 And I realize that the ANC pointed
6 out we made two mistakes, but hopefully we
7 came pretty close to laying it out because you
8 said that there was too much paper and you
9 wanted to be able to do a comparison.

10 VICE CHAIR LOUD: Well, also, I
11 don't know if we were fully -- at least I know
12 I wasn't fully aware that both the families
13 and the ANC did not understand that this was
14 a special exception request.

15 MS. CHESSER: Yes.

16 VICE CHAIR LOUD: Okay. All
17 right. Thanks.

18 MS. CHESSER: Somewhere at the
19 very end, we have a neighbor that's not a
20 party that would like to speak, but I don't
21 know exactly when that would occur. I just
22 didn't want us to --

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1 MR. ALLEN-GIFFORD: A Yuma Street
2 person.

3 MS. CHESSER: Yes, a Yuma Street
4 person.

5 BZA CHAIR MILLER: Well, if
6 they're part of your case, they would testify
7 now. If they want to testify independently,
8 they would be at the end. We're almost at the
9 end.

10 After you, anyway.

11 MS. CHESSER: So does she want to
12 just join us here?

13 BZA CHAIR MILLER: That's fine if
14 she wants to put on her testimony. It's
15 already after nine.

16 MS. CHESSER: I think she's going
17 to be at the other one.

18 BZA CHAIR MILLER: Thank you for
19 waiting. Be sure to identify yourself, name
20 and address, and then go ahead.

21 MS. UNION: Sure. My name is
22 Gayle Union, and along with Jason Hegi, own

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1 and occupy a house at 3900 Yuma Street.

2 As, I think, stated, I'm not a
3 party, meaning I'm not a member of the Friends
4 Neighboring WABC, but speak as a concerned
5 neighbor living across the street from WABC.

6 And I agree with most of what we
7 have heard so far, and I'm not going to
8 reiterate for the 115th time, and being a food
9 person and starving at the moment, I wouldn't
10 be here this late if I really didn't care
11 about the issue. So I'll say that.

12 We moved to our current house from
13 Chesapeake and River Road, N.W., and while we
14 lived there, we lived through the Georgetown
15 Day School expansion, and that part of
16 Georgetown Day School backs to River Road near
17 Chesapeake Street.

18 We had friends who lived on River
19 Road, and they ended up moving out of the
20 neighborhood in part because of the noise from
21 the construction. It went on well into the
22 evening and it prevented their young child

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1 from being able to sleep.

2 I know noise is not the issue, but
3 it kind of is all tied together.

4 The cars on the neighborhood were
5 covered with construction dirt and all that
6 the residents got for their inconvenience were
7 coupons for car washes. Dirt was everywhere.
8 The streets were blocked with construction
9 vehicles, and the congestion was horrible, and
10 I just wanted to share that as my experience
11 with dealing with construction, and I don't
12 think there's any way around the fact that
13 there will be neighborhood disruption.

14 Even if it's temporary it's going
15 to happen, and who will pay the cost of the
16 construction are the neighbors who have to
17 deal with it.

18 Yuma is a quiet residential street
19 in an R-1-B neighborhood, and we would like to
20 keep it that way. My concerns about the
21 expansion stem from the impact on the R-1-B
22 neighborhood: more traffic, more congestion,

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1 more noise, more people, more air pollution.

2 And contrary to what I heard from
3 the DDOT person, I can't believe that if
4 you're adding people and programs that there's
5 not going to be an impact.

6 First, my understanding is that
7 WABC has a smaller congregation than they
8 might have had in the past, numbering about
9 100 people, and declining numbers is not
10 unusual in many churches.

11 In my opinion, and I underscore
12 "in my opinion," WABC wants this expansion to
13 raise the money for the operating programs
14 that are not church related. These programs
15 would be operated by existing tenants, some of
16 whom are operating without certificates of
17 occupancy and who would pay rent to the
18 church.

19 My impression is that if WABC
20 could sustain itself financially, why would it
21 need the revenue from these tenants for
22 support or why would it be building this

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1 addition?

2 The cost of this non-church
3 related expansion would be paid for dearly by
4 the neighbors who live now in a quiet R-1-B
5 neighborhood. Why should the neighborhood
6 bear the burden of this expansion to support
7 a church which doesn't appear to me to be able
8 to sustain itself? Why else would be building
9 this expansion if it's not for church
10 programs, for non-church programs.

11 WABC says that 80 percent of the
12 class attendees arrive by car, not public
13 transportation. You've already heard from
14 Friends of the Neighborhood that the
15 attendance post expansion is estimated at over
16 3,000 weekly, and that's before the growth of
17 these programs that I understand is wanted.
18 This is a significant increase. Many churches
19 and citizens are concerned about global
20 warming and reducing the carbon footprint, but
21 this is an expansion project that will
22 dramatically increase the carbon footprint,

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1 again, at what cost to the neighborhood?

2 The Fort Road, Nebraska, Wisconsin
3 Avenue intersection is already congested and
4 gridlocked. This additional number of cars
5 arriving weekly will only increase the
6 emissions into the air that we would rather
7 have reduced. Why should we encourage a
8 project that expands this carbon footprint in
9 an R-1-B neighborhood?

10 The ANC resolution -- and I think
11 we've already talked about this -- approved
12 the application with certain conditions, was
13 based on the understanding that the church
14 could build this addition as a matter of
15 right. Since the addition is not for church
16 related business, WABC cannot build this
17 addition as a matter of right.

18 We ask that the Board give little
19 weight to this resolution as a result.

20 Just as an example and a personal
21 experience, last summer church buses were
22 parked on our block of Yuma Street idling and

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1 revving their engines, which forced us to
2 leave our quiet front porch because of the
3 noise, the emissions, and the smell.

4 We did not appreciate the fact
5 that no one from WABC took the neighborhood
6 and the neighbors into consideration when
7 these buses were allowed to do this.

8 This expansion also includes a
9 curb cut on Yuma and contrary to what you've
10 heard previously, this is something we would
11 obviously vehemently oppose. It's a very,
12 very quiet street. There are six houses on
13 this block of Yuma. The street is already
14 crowded with cars, many of which are not from
15 the neighborhood and they're not just people
16 moving who are coming from further out in Ward
17 3. It's a quiet street that will become a
18 noisy, congested block as these 2,400 cars --
19 that's the 80 percent of the 3,000, if these
20 cars exit onto our block throughout the day
21 six days a week. That's a lot of additional
22 cars, noise, congestion, and pollution that

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1 an R-1-B neighborhood, this particular
2 resident does not want to happen.

3 And I don't see how you can expand
4 these programs and not expect that there's
5 going to be an impact on the neighborhood.
6 It's a residential neighborhood, and it's very
7 quiet. We didn't move in there to be part of
8 this, you know, big operation, and I think as
9 you've heard from everybody else, I think
10 people pretty much feel the same.

11 Thank you for your time.

12 BZA CHAIR MILLER: Thank you.

13 Let me ask you this. You know, on
14 the one hand, you say it's a very quiet
15 neighborhood, and then I --

16 MS. UNION: It is.

17 BZA CHAIR MILLER: -- thought I
18 heard you complain about the congestion from
19 the traffic.

20 MS. UNION: No, no.

21 BZA CHAIR MILLER: No.

22 MS. UNION: I said there would

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1 be --

2 BZA CHAIR MILLER: Is it okay
3 right now? That's kind of my question.

4 MS. UNION: We're not close to
5 that intersection. I don't hear Wisconsin
6 Avenue from my house, but if I'm on my front
7 porch and there are buses idling in front of
8 me, yes, I'm going to hear that, and if cars
9 are pulling out onto Yuma Street all day long,
10 yes, I'm going to hear that.

11 So I'm talking about just adding
12 to what's already there.

13 BZA CHAIR MILLER: Now are you
14 experiencing any adverse impacts from what
15 goes on at the church now?

16 MS. UNION: Well, just what I
17 mentioned about the buses, and the street is
18 filled during the day, and I happen to be home
19 during the day now, and I can, you know,
20 witness that, and there are not cars. I mean
21 there are a lot of Virginia and Maryland
22 plates. I can't tell you where they all come

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1 from, but the fact that if you're adding more
2 cars to this mix, some of them are going to
3 spill out into the neighborhood. It's just
4 going to happen. They're not all going to fit
5 in the parking lot and they're not all going
6 to park in the parking lot.

7 BZA CHAIR MILLER: Right. Okay.
8 So right now there aren't that many cars that
9 impact you personally?

10 MS. UNION: Well, I'm just saying
11 the street itself. I'm giving you the current
12 conditions, and they're going to change, and
13 that's going to cause an impact on the
14 neighborhood. You can't expect the status quo
15 when there's going to be an influx of this
16 many people all day long. It's just not
17 reasonable to expect it.

18 BZA CHAIR MILLER: Okay. I just
19 want to say something about the building, and
20 this is just me. This is not, you know, the
21 word of the Board because we're not making any
22 decisions, but my impression with respect to

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1 this whole issue about the construction of the
2 building, my impression is they can construct
3 this building as a matter of right. They're
4 not seeking any area variances or anything
5 like that, and that the issue is whether they
6 can use it for these purposes that require
7 special exception relief.

8 So, again, I think there's kind of
9 like a distinction without a difference. They
10 could build this building. The question is:
11 can they have all of these uses in that
12 building. I think that's where I see this.

13 MS. UNION: But I think you have
14 to take into account the impact on the
15 neighborhood. I mean, yes, you --

16 BZA CHAIR MILLER: You do have to
17 take -- absolutely.

18 MS. UNION: But that doesn't mean
19 that nothing will happen as a result of it.

20 BZA CHAIR MILLER: Absolutely.

21 MS. UNION: So I think there --

22 BZA CHAIR MILLER: If they built

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1 this building and we said they can't have
2 these special exception reliefs to operate a
3 school or a child development center, they
4 could, you know, have their church programs in
5 it.

6 The issue is at least, you know,
7 we may come back in our deliberations and we
8 may decide differently as a Board, but I'm
9 just saying the way I see it is that the issue
10 is the uses that they want to put in it, not
11 the structure itself.

12 MS. UNION: I would see it as the
13 uses, but also just the volume of what it's
14 going to do to the neighborhood. I don't care
15 who -- I mean you have that. Who uses it is
16 a very valid issue, and I totally agree with
17 what's been said about that, but I think that
18 at the end of the day when you add a structure
19 in a residential neighborhood that's going to
20 be filled with a volume of people, there's an
21 impact.

22 BZA CHAIR MILLER: And that we'll

1 be evaluating, and I understand your point,
2 that if they build a structure they're going
3 to have more places in order to offer
4 programs. I understand that connection.

5 MS. UNION: That aren't church
6 related. I mean, I think that's a real valid
7 point that everybody's made. I mean, we don't
8 need to reiterate that.

9 MS. CHESSER: I'm almost asking a
10 question, and I'm not sure who's supposed to
11 answer it. It was my understanding as of last
12 week that they could build the building as a
13 matter of right if it were a church building
14 and they were building for church purposes,
15 but as soon as they were building it for three
16 paying tenants, the construction itself needed
17 an exception before they could construct
18 because it's not really a church building
19 anymore. It's a building for day care and a
20 school.

21 BZA CHAIR MILLER: Okay.

22 MS. CHESSER: It might seem like a

1 minor point, but --

2 BZA CHAIR MILLER: No, I
3 understand what you're saying. You know,
4 perhaps the Board will come back and make a
5 real definitive decision on it.

6 My impression of the law basically
7 is that they can build that structure, and
8 there are no -- they don't need relief from
9 any area requirements or anything like that,
10 height or, you know, too much lot occupancy or
11 anything like that. They can build that
12 building.

13 I hear I think if they were going
14 to use it for church purposes they wouldn't be
15 coming in here to ask for a special exception.

16 MS. CHESSER: But then let me ask
17 you this. If it was an empty lot -- forget
18 that it's a church -- if it was an empty lot
19 and someone wanted to come along and build a
20 building for two schools and a day care center
21 or two day care centers and a school or child
22 development center, whatever we wanted to call

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1 it, someone just wanted to build a building
2 for those purposes. Would they need to come
3 to you and ask for your permission to build
4 the building?

5 BZA CHAIR MILLER: Okay. I don't
6 think I'm going to go there at this point at
7 9:25.

8 MS. CHESSER: Okay, okay.

9 BZA CHAIR MILLER: So --

10 MS. BHANSALI: I'm sorry. Could I
11 just say you made reference to zoning laws.
12 I think the one person here who sort of
13 clarified that for us to some extent is Mr.
14 DePuy himself. As a zoning lawyer, he has
15 asked you for a special exception, and I think
16 that to some extent -- to construct, and that
17 that required a special exception. He
18 explained why he was asking for a special
19 exception.

20 As a zoning lawyer, for me I'm not
21 a zoning lawyer, but as he is a zoning lawyer,
22 I understand that sort of speaks to some of

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1 the legal obligations that he has when he asks
2 you for an exception. There's a reason for
3 that. I'm not sure what it is since this is
4 not my area, but I think when you have a
5 zoning lawyer asking you for an exception that
6 that does mean something.

7 BZA CHAIR MILLER: Okay, and if
8 Mr. DePuy wants to address it further, he can.
9 What I was saying is that I don't believe
10 there's a regulation that specifically says
11 it, and I think that Mr. DePuy is interpreting
12 the zoning regulations in that manner, and
13 there's nothing, you know, wrong with that.
14 I don't think there's a definitive answer on
15 it.

16 I think there might be different
17 opinions as to whether or not that's necessary
18 or how it's related.

19 Okay. Are we at cross
20 examination? You're finished, correct?

21 Okay. Does the Applicant have
22 cross? No.

1 Okay. Does the ANC have cross?

2 Okay.

3 MS. PERRY: Just to clarify
4 something in your testimony, Ms. Union, does
5 Yuma Street currently have a curb cut from the
6 church at the parking lot?

7 MS. UNION: No, it does not.

8 MS. PERRY: So if the parking lot
9 is built and a curb cut added to Yuma Street,
10 wouldn't that increase the intensity of the
11 uses on your street?

12 MS. UNION: Absolutely.

13 MS. PERRY: That was my only
14 question. I don't know if the Applicant has
15 any.

16 MS. WISS: I had one question for
17 Ms. Union.

18 MS. CHESSER: Okay.

19 MS. WISS: Do people currently
20 coming to WABC in these programs currently
21 park on Yuma Street?

22 MS. UNION: I haven't done a

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1 traffic management study or a parking study.
2 So I couldn't really answer that question, but
3 you know, you have to figure there's going to
4 be some people from the Metro. There are
5 going to be some people from residential, and
6 if it has been pointed out that the parking
7 lot looks like it has not been fully utilized,
8 then I would interpolate that to mean that
9 there are people that are parking there.

10 MS. BHANSALI: Madam Chair, as a
11 party, am I permitted to ask a question to the
12 non-party person who spoke? I'm asking if I
13 can ask a question to the lady from Yuma
14 Street.

15 MS. UNION: Everybody else has.

16 BZA CHAIR MILLER: She's not a
17 party, but she's testifying individually, not
18 as part of --

19 MS. BHANSALI: She's raising some
20 concerns about Yuma Street --

21 BZA CHAIR MILLER: Yeah, go ahead.

22 MS. BHANSALI: -- which are quite

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1 different from Alton Street, but in some sense
2 also similar, and my question really is how
3 many of the houses on Yuma Street have
4 individual driveways for their own parking.
5 Do you know that in your block?

6 MS. UNION: Well, I'm thinking.
7 There are four individual homes on Yuma Street
8 on this block. There's a condo building of
9 four units, and then a house that I think is
10 broken into units. And of those I think only
11 two have -- only two of the houses has
12 driveways.

13 PARTICIPANT: I think they all
14 have them in the back.

15 MS. UNION: Well, no, because the
16 house next to us, for example, you could see
17 where their garage was, but there's no place
18 to park a car.

19 MS. BHANSALI: So do most people
20 tend to park on Yuma Street who live on Yuma
21 Street?

22 MS. UNION: The people that I

1 know, my neighbor across the street and the
2 two houses down from us park on Yuma Street.

3 BZA CHAIR MILLER: Okay. Thank
4 you very much.

5 Is there anybody else here to
6 testify?

7 MS. PERRY: Ms. Miller, I just
8 have one question.

9 BZA CHAIR MILLER: Oh, you have
10 another question?

11 MS. PERRY: I have a question for
12 them.

13 BZA CHAIR MILLER: Oh.

14 MS. PERRY: Were you ever able to
15 make your presentation to the ANC, this
16 presentation? Did you ever make it?

17 MR. ANDRES: No.

18 MR. ALLEN-GIFFORD: No.

19 BZA CHAIR MILLER: Why not?

20 MS. CHESSER: There were so many
21 different sessions at the ANC that I can't
22 even remember when we presented it. It was

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1 now like -- February? February.

2 MR. ALLEN-GIFFORD: We couldn't
3 have made this presentation until --

4 MS. CHESSER: A lot of the
5 information --

6 MR. ALLEN-GIFFORD: -- until the
7 period since last meeting of this body on this
8 matter. So we would have had to have done
9 this presentation within the past week.

10 PARTICIPANT: We just finished it
11 last night.

12 MS. CHESSER: But in addition,
13 some of this information wasn't even provided
14 us until long after we were at the ANC.

15 BZA CHAIR MILLER: But you
16 testified before the AN -- not testified --
17 you spoke before the ANC?

18 MS. CHESSER: Yes, we did.

19 BZA CHAIR MILLER: Okay. You just
20 didn't have your charts and all of that stuff,
21 right?

22 MS. CHESSER: Correct.

1 BZA CHAIR MILLER: Okay. So they
2 considered your point of view in their
3 resolution?

4 MR. ALLEN-GIFFORD: No. Our point
5 of view changed once we learned about the
6 nature of the special exception for building.
7 The other matters, yes, they considered those,
8 but not that particular rather crucial matter.

9 MS. CHESSER: Because everybody
10 kept telling us we had to accept the
11 construction and we had better start
12 negotiating caps and parking lots.

13 BZA CHAIR MILLER: Okay. Thank
14 you.

15 Now, is there anybody else in the
16 audience who wishes to testify in this
17 application?

18 (No response.)

19 BZA CHAIR MILLER: Okay. Not
20 hearing from anyone.

21 Does the Applicant have some
22 closing remarks? Oh, wait. Why don't you

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1 come forward. Do you have closing remarks?

2 Okay, and also for questions.

3 MS. CHESSER: Can I ask you one
4 question? You said the record was going to
5 stay open. Is there a deadline that you want
6 the --

7 BZA CHAIR MILLER: We'll go into
8 that at the end of the proceeding.

9 MS. CHESSER: Oh, okay. Cool.

10 MR. DePUY: We have rebuttal
11 testimony and closing remarks, Madam Chair.

12 BZA CHAIR MILLER: I have a
13 question for you. Is there a traffic
14 management plan that's in the record?

15 There's been a lot of reference to
16 that.

17 MR. DePUY: Yes.

18 BZA CHAIR MILLER: Okay. That's
19 attached to your prehearing statement or
20 something like that or what?

21 MR. DePUY: It was submitted with
22 the prehearing and it may have been submitted,

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1 an earlier version, prior to that, but it was
2 with the prehearing submittal.

3 I'd like to start with Mr. Andres.

4 Mr. Andrew, you heard the
5 testimony of the Department of Transportation
6 with respect to its opposition or potential
7 opposition to a curb cut on -- or, two,
8 keeping open the driveway from Alton Place if
9 a curb cut is granted on Yuma, and again,
10 while the curb cut issue may be beyond the
11 jurisdiction of this Board, it does affect the
12 circulation, the driveway and the use of the
13 property.

14 Do you have an opinion on that
15 matter? And if so, would you give it to the
16 Board, please?

17 MR. ANDRES: Yes. Confirming my
18 previous testimony, the plan with the 36
19 spaces does provide efficient circulation
20 through the lot from Yuma Street. If you were
21 to remove the Alton Place driveway for the 36
22 parking space condition, would it be able to

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1 operate if you only had one driveway on Yuma
2 Street? Potentially, yes, but the drawbacks
3 would be taking away the Alton Place driveway,
4 as I mentioned, there are a lot of visitors
5 that come to this location.

6 What happens is once you get to
7 Alton place and you're looking to access the
8 lot because you want to pull all of the
9 visitors off of the street into the lot,
10 they'll realize, wait a minute; there's no
11 driveway in Alton Place.

12 They get down to the corner and
13 39th Street is one way in the opposite
14 direction. So you can't even get to the Yuma
15 Place -- excuse me -- Yuma Street driveway.
16 So then at that point in time they're
17 circulating unnecessarily through the
18 neighborhood, which is something we want to
19 minimize.

20 Now, with respect to the smaller
21 lot, which is the 28 space parking lot, if you
22 were to remove the Alton Place driveway, you

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1 would basically have a similar condition that
2 you have today because of the fact that you
3 would have -- there's no way to circulate and
4 drop off somebody. You'd end up making three-
5 point turns in the driveway.

6 So, you know, with respect to our
7 position, regardless of what plan you use, we
8 believe that the Alton Place driveway is still
9 in the central part of this regulation plan.

10 MR. DePUY: Thank you.

11 Reverend Bergfalk, you've heard
12 the testimony of the ANC. You've reviewed the
13 ANC resolution, I assume, and you've heard
14 that testimony from Ms. Wiss that there are a
15 number of potentially outstanding issues in
16 the ANC list of conditions. Drawing your
17 attention to those items which were testified
18 as being outstanding, putting aside Item 3
19 which pertains to a statement regarding
20 commercial activity organized for profit, I'll
21 move to the item number seven, which refers to
22 allowing no increase in the number of

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1 participants and staff in the programs beyond
2 current levels until the addition and the
3 parking lot are built and ask your position
4 with respect to that particular condition.

5 REV. BERGFALK: This was a
6 concession that the church was willing to
7 accept.

8 MR. DePUY: Looking next at the
9 next item, which was testified to by Ms. Wiss
10 as being an outstanding item, namely, Item 12,
11 this pertains to approval of the proposed 36
12 space parking lot. You previously testified
13 that you would support this lot provided that
14 the Board did not determine to go with the
15 smaller lot.

16 What is your view on Item 12 with
17 respect to the 36 space parking lot.

18 REV. BERGFALK: Well, clearly
19 there are a number of people who have
20 different views. We support the 36 space lot,
21 and if that is not recommended by the BZA, our
22 parking demand analysis does show that the

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1 smaller lot would meet the needs. We want to
2 leave that up to the BZA, but our preference
3 is the 36 space lot.

4 MR. DePUY: Thank you.

5 The next item is Item 13 with
6 respect to landscaping and screening. Is it
7 the Applicant's position that you've complied
8 with applicable requirements with respect to
9 landscaping and screening as set forth in the
10 zoning regulations?

11 REV. BERGFALK: Yes, that is our
12 position, and that information was actually
13 presented to the ANC at the May 19th meeting,
14 and site plans showing the proposed shrubs and
15 so forth were included in a handout that was
16 given to the ANC Commissioners, to others, and
17 to the neighbors, and was referenced in our
18 presentation.

19 MR. DePUY: The next item
20 indicated as being outstanding is number 14,
21 which states, "Require that the Applicant
22 discontinue renting spaces in the parking lot

1 to outside parties."

2 What is the Applicant's position
3 on that item?

4 REV. BERGFALK: I wrote a letter
5 and sent it out after our initial -- I believe
6 it was after our initial ANC meeting or in
7 early March, stating that because of concerns
8 of neighbors and the ANC, that the church
9 would discontinue this practice, which has
10 been a longstanding practice of the church to
11 provide neighbors and the business community
12 primarily who need a place to park to use our
13 lot.

14 So that letter went out in March.

15 MR. DePUY: And the last item
16 indicated as being outstanding is number 15,
17 which states, "Require that the Applicant
18 direct all participants in the programs who
19 drive to the facility to park in the parking
20 lot and not on surrounding streets."

21 What is the Applicant's position
22 with respect to that item?

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1 REV. BERGFALK: So far as I know,
2 all of our programs have made that request to
3 program participants. With the existing
4 condition of the narrow parking lot, there are
5 a few -- there are at least a few families who
6 do park on the street briefly, but it's --
7 it's -- it's minor, and I believe all of the
8 organizations have requested their
9 participants to use the parking lot.

10 MR. DePUY: Finally, two questions
11 with respect to the testimony of Ms. Perry.
12 You heard Ms. perry testify that the Applicant
13 did not provide construction management plan
14 to the ANC as represented in our proposed
15 conditions submitted to this Board on Monday.
16 Would you address that statement, please?

17 REV. BERGFALK: That statement was
18 incorrect. A construction management plan was
19 drafted. It was included in a booklet like
20 this that was distributed to the ANC on April
21 21st. I referenced the construction
22 management plan in my presentation to the ANC.

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1 It was not discussed directly by the ANC, but
2 it was referenced.

3 And in our presentation to the ANC
4 on May 19th, again, we referenced the
5 submission of a construction management plan
6 the preceding month, was referenced in writing
7 in the booklet that we distributed to the
8 commissioners, and it was mentioned again, but
9 not discussed.

10 MR. DePUY: And finally, you heard
11 testimony from both Ms. Perry and from some of
12 the neighbors that the church or the Applicant
13 misrepresented the relief required
14 specifically with respect to whether or not
15 the addition was a matter of right. Would you
16 address that, those allegations, please?

17 REV. BERGFALK: First of all, in
18 several successive prehearing statements in
19 our BZA -- in the amended application, in the
20 prehearing statement submitted to the BZA, and
21 copied of course to everybody in February, and
22 again in our prehearing statement for this

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1 meeting, which was distributed in May, it was
2 -- the special exception language was clearly
3 included and stated.

4 What I said is what Chair --

5 BZA CHAIR MILLER: Chair, yeah.

6 REV. BERGFALK: -- Miller -- I
7 heard you say. That is at least what I have
8 tried to say, that we don't need any zoning
9 relief to build that. If it was built simply
10 by the church, there would be no need for a
11 special exception; that we included it in our
12 application because some of the use -- now,
13 especially with the third floor removed, that
14 addition is as much or more now for church use
15 as it is -- certainly not some kind of
16 addition for business projects or something
17 like that. For all of the reasons that I have
18 mentioned in my testimony last week, the
19 church needs that.

20 But we included it because some of
21 the use would, in fact, be for the special
22 exception programs. Commissioner Perry

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1 specifically asked me and mentioned in the
2 public ANC meeting, I believe, on May 19th
3 that there was a new statement in the
4 prehearing statement that we were asking for
5 another special exception, and Chairman
6 Solomon pointed out to Commissioner Perry that
7 actually it was the same language that had
8 been in the February submission, and I tried
9 to explain, but after hearing everybody speak
10 tonight, I clearly was unsuccessful.

11 I tried again to explain it. It
12 is not a third special exception, and that it
13 is not necessary to construct the building,
14 but because of the uses.

15 MR. DePUY: That completes our
16 rebuttal. Does the Board have questions?

17 BZA CHAIR MILLER: I have a
18 question. I do. I have a question. It's not
19 necessarily purely based on your rebuttal,
20 though I think the Board can have deference to
21 ask beyond that. But the other parties can't.

22 I'm looking at Table 4 in the

1 transportation, traffic and parking summary
2 that's attached to the prehearing statement,
3 and I look at that, and that has a table of
4 vehicles associated with the students and
5 teachers and total vehicles that are
6 projected, I believe, to incur in conjunction
7 with the increase in enrollment and in
8 conjunction with the special exception relief
9 that's being sought here.

10 And then I compare it with the
11 chart that was submitted by the neighbors, and
12 the numbers are hugely different, though they
13 are measuring -- yeah, this is the neighbors',
14 which talks about number of people using the
15 building. The chart talks about vehicles
16 connected to the number of people using the
17 building. Not everybody drives, but 80
18 percent drives according to what we've been
19 hearing.

20 Is there any way to reconcile
21 these two or do you -- I mean, you didn't
22 address the neighbors' chart that has big

1 numbers in it for usage of this building. Is
2 it something you're prepared to do now?

3 REV. BERGFALK: Certainly.

4 BZA CHAIR MILLER: Okay.

5 MR. ANDRES: Actually, Reverend, I
6 think it might be easier if I go through this
7 since we prepared this document.

8 BZA CHAIR MILLER: The table
9 dealing with the vehicles.

10 MR. ANDRES: Yes.

11 BZA CHAIR MILLER: Okay.

12 MR. ANDRES: I believe is this the
13 document?

14 MEMBER JEFFRIES: I don't think we
15 need a -- I'm sorry. Go ahead.

16 BZA CHAIR MILLER: The thing is
17 that to me it sounds like the greatest adverse
18 impact that I'm hearing is related to the
19 traffic and the vehicles, and that's related
20 to the number of people, especially if 80
21 percent are driving.

22 But when I look at your table and

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1 I look at their table, they're worlds apart,
2 I think, unless I'm --

3 MR. ANDRES: Well, it's important
4 to note that what we did and as part of
5 traffic engineers what we do is usually -- and
6 this is consistent with any traffic study
7 you'll look at -- is you take a snapshot of
8 the peak hour. You know, if you look at
9 something in the middle of the day, chances
10 are we're not going to evaluate that because
11 of the fact that the traffic levels in that
12 area in the middle parts of the day are on the
13 low side.

14 Now, with respect to the amount of
15 activity, if you look at basically that chart,
16 if you pick out the peak hour of the day, what
17 day would that be?

18 And I haven't seen their chart.
19 So I'm not sure what they picked out. What we
20 picked out when we laid out the existing --
21 with the existing programs and the future
22 programs is a condition where on a weekday the

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1 co-op and the CommuniKids are there at the
2 same time, and that's where we identified 97,
3 the 97 total.

4 Because if you look at Table 3,
5 which is the table above Table 4, if you
6 notice, the peak that we identified consists
7 of 80 students, ten teachers and seven parents
8 for a total of 97 people. So that's how the
9 reverend came to that 97 total at one time.
10 Because when we lay out all of the different
11 programs and took the snapshot of when the
12 most people would be in the facility at any
13 one time, that's the snapshot that we took a
14 look at.

15 Now, given the mix of programs on
16 Saturdays, the conservatory plays more of a
17 bigger role, and that's why if you took a
18 snapshot on a Saturday, the mix of uses is
19 different. So that's what we identified in
20 Table 3.

21 MEMBER JEFFRIES: You just dealt
22 with snapshots. You didn't -- I mean, because

1 this is not a snapshot, right? I mean, this
2 is a cumulative -- this -- I mean, so if they
3 sort of took from your chart a snapshot, I
4 mean, --

5 MR. ANDRES: Well, I guess the
6 point that I was getting at is the snapshot
7 isn't any arbitrary snapshot. It's a snapshot
8 with the biggest impact.

9 Can we do a traffic study of every
10 single snapshot? Yeah, we could, but you
11 know, as traffic engineers and with respect to
12 how we normally take a look at traffic
13 impacts, you take the peak hour because of the
14 fact that it has that greatest impact on the
15 surrounding community.

16 BZA CHAIR MILLER: Let me ask. If
17 we take their numbers as true, okay, let's
18 just say Monday they say there are 549 people
19 that come to the building over the course of
20 the day. So to determine the number of
21 vehicles would we say, okay, that's 80 percent
22 of 549 because 80 percent drive?

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1 MR. ANDRES: Well, no, no. You
2 see, this number, this 549 number is related
3 to all the people coming in and out throughout
4 the day. You know, if you were to take a
5 supermarket, for example, that number would be
6 enormous, probably would be in the thousands,
7 but when we do a traffic study, we normally
8 look at the impacts during that peak hour
9 relative to the surrounding roadway network.

10 So if you ever take out any
11 traffic study done by a traffic engineering
12 firm, it's usually taken at the peak hour, and
13 that entire spectrum of things that are going
14 on that day.

15 BZA CHAIR MILLER: What would be
16 wrong with -- if we want to know how much
17 traffic this project is generating, what would
18 be wrong with taking 80 percent of 549?

19 MR. ANDRES: Well, because that
20 549 number represents the number of people.
21 Now, there's a lot of things that go into
22 translating the number of people --

1 REV. BERGFALK: And it's not a
2 real number. I mean, that's what we have to
3 get to.

4 BZA CHAIR MILLER: Well, I know.
5 I'm saying and you can challenge that number,
6 but I'm just wondering --

7 MR. ANDRES: Yes, but
8 hypothetically, you know, 549 people doesn't
9 represent 80 percent cars. You know,
10 something on a much different scale is
11 national stadiums. You know, a national
12 stadium holds 40,000 people, but you know, the
13 number of cars, you know, there's less than
14 3,000 spaces.

15 BZA CHAIR MILLER: All right, but
16 the way you have heard, just tell us what's
17 wrong with that. If we hear that 80 percent
18 drive, that that's a figure that people agree
19 on, why can't you take 80 percent of 549?

20 MR. ANDRES: Well, first of all,
21 that number, 80 percent, is only associated
22 with the conservatory. For the co-op it's

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1 lower -- excuse me -- for the co-op it's 78
2 percent. For CommuniKids it's 75 percent, but
3 that's just for the participants. The number
4 for the teachers, if you look on a previous
5 page, if you notice the mode choice for
6 teacher, the co-op and CommuniKids, there's
7 actually a significant amount of transit that
8 those groups are taking because they only have
9 to really just think about themselves as a
10 single teacher.

11 REV. BERGFALK: And, Erwin, you
12 may want to add that even though 75 percent of
13 the CommuniKids drive, that because of the
14 high number of carpooling, it's only 44
15 percent of that number that actually comes in
16 cars.

17 MR. ANDRES: Yes

18 REV. BERGFALK: And it's in the
19 report.

20 MR. ANDRES: It's in the report.
21 You know, it's imbedded in here, but yes.

22 BZA CHAIR MILLER: Forty-four

1 percent of which group is that?

2 REV. BERGFALK: CommuniKids.

3 BZA CHAIR MILLER: CommuniKids.

4 MR. ANDRES: CommuniKids.

5 BZA CHAIR MILLER: Okay.

6 MR. ANDRES: But you know, that 80
7 percent was just a rough number. You know,
8 does that number incrementally go down with
9 all of the different components if you reduce
10 the number of teacher cars, if you take into
11 account the students that carpool, if you take
12 into account siblings? Yeah, that number
13 comes down.

14 So that's where you reconcile, I
15 guess that 549 number and the number that we
16 have in our report.

17 BZA CHAIR MILLER: Then do you
18 have that number in your report? I mean, can
19 you give us that number?

20 MR. ANDRES: Yes, and this was
21 sort of related to Board Member Jeffries'
22 question about queuing because he was

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1 concerned about the number of cars that are
2 coming to the site, and with that we identify
3 Table 4 which lays out the number of vehicles
4 in that peak hour associated with these two
5 programs, with the peak programs.

6 So if you look at Table 4, when
7 you translate the highest hour of use to the
8 number of vehicles coming to the site, what
9 you get is Table 4, and of these vehicles, if
10 you take, for example, the weekday, total
11 vehicles, it says 53. Of those 53 cars coming
12 during that peak hour for these programs, you
13 know, some of those 53 will park, go in, drop
14 a kid off, and then leave, and some of those
15 53 are the teachers who will park and stay for
16 however long they're teaching.

17 BZA CHAIR MILLER: But you're
18 giving us -- that represents one hour. So
19 what about all the other hours?

20 MR. ANDRES: That represents --

21 MEMBER WALKER: And what about all
22 the other programs? I mean, there are only

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1 two programs listed here, and this is the
2 first time this evening that I've heard of all
3 the other programs that we have listed on the
4 neighbors' chart.

5 MR. ANDRES: Yes. Well, what we
6 did is we looked at that chart, and the only
7 other overlap associated with this hour that
8 we picked out was the ESL class, which is the
9 English as a second language, and in the text
10 on the following page, when the English as a
11 second language class takes place, first of
12 all, there's a significantly high transit rate
13 associated with participants in that English
14 as a second language class.

15 In addition to that, the way that
16 that traffic is accounted for is because as we
17 mentioned, co-op is a program where parents
18 come, drop off, and don't actually stay there.
19 For the participants of that English as a
20 second language class, they're actually taking
21 the spaces after the co-op does their dropoff
22 and their pickup.

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1 If you take a parking space
2 associated with the co-op, that parking space
3 isn't full for that three hour period because
4 the parent comes in, drops off their child,
5 and then leaves. Okay?

6 REV. BERGFALK: I also was
7 confused until I read through the report
8 several times and had several conferences with
9 Erwin, and what I believe he is saying is that
10 -- and this is my understanding of a maximum
11 cap -- that what is the highest number of
12 people that can be in the facility at one
13 time?

14 It is 97. That is based on the
15 calculations for the co-op and the CommuniKids
16 or CommuniKids and the conservatory because
17 conservatory and co-op don't overlap.

18 If you take that 97 peak time,
19 now, this is not what happens from nine in the
20 morning till nine in the evening. Most of the
21 time it's far below that. My understanding of
22 what Mr. Andres has said is we take the worst

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1 case scenario to figure out what parking
2 demand is for your parking lot and what issues
3 are related to traffic.

4 So it's not addressing -- his
5 chart isn't addressing this chart, but I would
6 like to address this chart.

7 MEMBER JEFFRIES: Okay. Go on.

8 REV. BERGFALK: The thing that was
9 encouraging to me about this chart is that
10 when I had spoken to Judy Chesser at one of
11 our neighborhood meetings, she had a number of
12 11,000. So we're down to 3,500, and if we
13 take eight percent, if we take eight percent
14 of this number, we'll have the actual number.

15 Now, the reason that that's true
16 is that this is why we have two caps. Now, I
17 think the second cap for maximum daily
18 participation should be a little higher, but
19 that is a concession that the church made
20 because the neighbors were concerned about
21 people coming and going.

22 So we have agreed that under

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1 current use that we would be permitted 189,
2 that when the parking lot is expanded and when
3 the addition is in place, we would raise that
4 to 291. so all of the --

5 MEMBER JEFFRIES: As a weekly
6 total.

7 REV. BERGFALK: That's a daily
8 total.

9 MEMBER JEFFRIES: A daily total.

10 REV. BERGFALK: Daily total, daily
11 total. So if you multiply --

12 BZA CHAIR MILLER: Daily total of
13 people who will be using the building in a day
14 is 200 and --

15 MEMBER JEFFRIES: Coming in and
16 out.

17 BZA CHAIR MILLER: Okay.

18 REV. BERGFALK: Coming in and out
19 who are a part of the programs for which we
20 are applying for a special exception.

21 Just as a footnote, there are very
22 few other activities, and they are fairly low

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1 in participation count that even overlap with
2 the program activities for co-op, CommuniKids
3 or the conservatory.

4 MEMBER JEFFRIES: Okay.

5 REV. BERGFALK: So then 291 times
6 six would give you somewhere, 1,700 or
7 something. That would be the number that
8 should be on this chart. That's why we've
9 agreed to caps, so that you don't -- what this
10 chart says is if the BZA granted us the caps
11 that we are requesting and if we had the
12 facility full to that 97 all the time and if
13 we had in some hours 40 people twice for the
14 conservatory, if you add all of that up,
15 that's how you would get these numbers down
16 here.

17 MEMBER JEFFRIES: But why would
18 they match to that? Of course they would show
19 -- they're showing the worst case scenario.

20 REV. BERGFALK: Sure, but that's
21 why we have a cap.

22 MEMBER JEFFRIES: They're saying

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1 this is the max that you can do, and so of
2 course they're going to show the absolute
3 worst case scenario and why would they not do
4 that?

5 REV. BERGFALK: Oh, I don't have
6 an answer to that. I'm just saying that the
7 caps that we have already agreed to are 291,
8 and -- is that right, 291? -- and 97. So that
9 would be the maximum participation.

10 MEMBER JEFFRIES: Okay. Listen.
11 Okay. Because I'm going to have to leave
12 shortly and pick up my kid. first of all, I
13 think this whole notion that the neighbors
14 have made in terms of intensity of use is a
15 compelling one to me, you know, and I think
16 that this chart can be a very damning chart to
17 you.

18 If you don't effectively during
19 this period where the record is going to be
20 open -- you get this nailed down because, you
21 know, there is some concern and I don't know
22 whether it's just how you set it up here.

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1 Perhaps there needs to be a day by day sort of
2 blow as to exactly who is going in, who's
3 going out, overlap so that each day we're
4 clear about what's going on because beyond
5 just vehicular traffic, there is the case
6 about people going in and out, in and out. I
7 mean this intensity of use.

8 Let me finish.

9 We had a case in the Zoning
10 Commission. I think Commissioner Perry was on
11 this. I think it was the Sibley case, and the
12 concern there was the same thing. It was a
13 medical office building, and we were concerned
14 that there was going to be too much traffic
15 and people going in and out of that, and it
16 was not appropriate for a residential zone.

17 So I have to tell you I think that
18 they've done a decent job of sort of recasting
19 this for me, and I'm just saying to you, at
20 least for me -- and I can't speak for my other
21 Board members here -- but you have to get your
22 arms around communicating or illustrating to

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1 at least me exactly how many people are going
2 in and out of this thing and being very clear
3 about what the activities are on a daily basis
4 going in and out of this so that we're clear.

5 I hear you saying 291. I'm not
6 quite certain about how you get to 291. I
7 appreciate that you're at 291, and Mr. Andres
8 has said here that perhaps these numbers are
9 not so unusual because, you know, buildings
10 get used. People go in and out.

11 But, again, I am dealing with
12 encroachment on a residential zone, and I'm
13 probably having my Commissioner hat on here,
14 but you know, I just think you need to get
15 your arms around that, and that's the only
16 point I'm making to you.

17 You know, this whole intensity of
18 use is something, and there's a lot of
19 different groups going in and out of this
20 building, you know, and even explaining it and
21 even enforcing it, it's starting to become a
22 little complicated.

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1 Do you follow what I'm saying?

2 And that's the concern I have.

3 REV. BERGFALK: Yeah, I'm
4 confused. I understand the question about
5 intensity of use, and we have taken that very,
6 very, very seriously. We have looked at
7 current use and we have looked at projected
8 use. I'm confused because I believe we have
9 answered all of these questions, but clearly
10 we haven't.

11 Currently if you add up
12 everything, you would come up with something
13 like 189 people maximum on a day. There's
14 nothing like any of these --

15 BZA CHAIR MILLER: Now?

16 REV. BERGFALK: Now.

17 BZA CHAIR MILLER: So that's the
18 current use.

19 REV. BERGFALK: Right.

20 BZA CHAIR MILLER: One hundred and
21 eighty-nine a day.

22 REV. BERGFALK: Right, and then

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1 there --

2 BZA CHAIR MILLER: All of the
3 groups.

4 REV. BERGFALK: Yes.

5 BZA CHAIR MILLER: All of the --

6 REV. BERGFALK: Now that wouldn't
7 include -- there are a couple of things that
8 wouldn't include.

9 BZA CHAIR MILLER: Well, see, we
10 need to know that.

11 REV. BERGFALK: Well, and we've
12 provided that information, and I think much of
13 it right from the start. There's a small ESL
14 program. Most of those people take public
15 transit, and it's a church program.

16 We have included in this the
17 Bulgarian language classes on Saturday, which
18 are not a part of the three groups. We've
19 also included the Washington Girls Chorus.

20 What we have not included is the
21 Buy Right church uses which when they overlap
22 program activities like a Bible study, the

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1 Agapi Bible study, that type of thing --

2 MEMBER WALKER: Let me interrupt
3 you because this is --

4 REV. BERGFALK: Sure.

5 MEMBER WALKER: -- a little
6 difficult to track with this verbal
7 presentation. As I mentioned before, this
8 evening is the first time that I have heard of
9 most of these programs, and it would be most
10 helpful if I could understand what programs
11 exist, which of them are church programs,
12 which of them are not church programs, how
13 many people there are associated with each
14 program, and any projections you have in terms
15 whether people are driving or taking mass
16 transit.

17 I mean, we have to -- and I
18 understand your point about your methodology
19 and taking a snapshot, but really it is -- I
20 mean, I'm a little troubled here because it's
21 a bit disingenuous to take, you know, one hour
22 of the day and provide statistics about two

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1 programs when we have, you know, ten that are
2 operating here.

3 And so it is going to be important
4 for the Board to understand the bigger
5 picture, to understand all of the information
6 about all of the programs that are operating
7 in the space, whether they're church programs
8 or not.

9 REV. BERGFALK: Right. Board
10 Member Walker, we actually have prepared that
11 chart. If it wasn't included in our BZA
12 prehearing submission, we'll make sure that
13 it's forwarded to you.

14 BZA CHAIR MILLER: Let's try to
15 focus exactly on what we're looking for
16 because I totally agree with Ms. Walker, and
17 I think that probably all of the Board members
18 are coming from the same point.

19 I would suggest that whether it be
20 a current chart and a projected chart if the
21 special exception reliefs are granted, but
22 that it has to be broken down, I think, as to

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1 number of people and then as to vehicle trips
2 related to that number of people and by
3 program maybe so that we can see which
4 programs are generating the most traffic as
5 well.

6 Then we have real numbers to work
7 with, and even though you're only seeking
8 special exception relief for certain programs,
9 in order for us to understand the impact it's
10 cumulative with those other groups, and so we
11 need that information, and also with respect
12 to our consideration of any conditions we need
13 that information.

14 MEMBER JEFFRIES: Please do not at
15 all assume that based on my statement to you
16 that I am making a statement about how I'm
17 going to move on this. I'm just telling you
18 what I need, you know, and I think what this
19 entire Board needs.

20 I mean, you're talking about
21 shuffling people in different groups. You
22 know, I mean, it's one thing to write this all

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1 out, you know, and have difficulty for this
2 Board to understand it, but just imagine
3 putting it to use. I mean, you know,
4 understanding who comes and who goes and
5 enforcing. So I'm just -- you have to find a
6 way that gives more clarity to how this
7 building is going to operate.

8 The people coming and going,
9 vehicular traffic, there needs to be a way
10 that's clear so I can get from that to
11 actually how this building is going to work
12 because there are a lot of different uses. I
13 mean, people are saying office building, and
14 I'm not going to go as far as to say office
15 building, but you know, there is a question
16 about intensity of use here, you know,
17 vehicular and pedestrian and so forth.

18 REV. BERGFALK: I understand, and
19 I think that everybody associated with these
20 programs actually would welcome the
21 opportunity to put that out in a very clear
22 documented way, and I am sure that that will

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1 answer all of your questions.

2 BZA CHAIR MILLER: I think also a
3 clear schedule of, you know, somewhat like the
4 chart we have, but you know, as the Applicant,
5 you know, that you put your okay on it, that
6 this is specifically -- yes, this is the
7 schedule. This is what the schedule is going
8 to be, not just that we're relying on the
9 neighbors saying what the schedule is going to
10 be, but maybe you disagree with.

11 And also I think the schedule is
12 important as well because, for instance,
13 there's been a request that the programs only
14 go till 7:30, and you want them to go to nine.
15 Well, if we see in the schedule that there are
16 only ten students coming between 7:30 and
17 nine, that would affect us differently than if
18 we saw 40 students coming between 7:30 and
19 nine or whatever.

20 So we really need to -- what we're
21 saying, we want the facts so that we can make
22 the right decision.

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1 MEMBER JEFFRIES: Yeah. I mean,
2 it shows here, for example, on Monday 90
3 teachers are going to -- you know.

4 REV. BERGFALK: I'm sorry. It's
5 not a real number.

6 MEMBER JEFFRIES: I've got it, but
7 you have to refute.

8 REV. BERGFALK: Sure, and we'll be
9 happy to do it, yes. We understand.

10 BZA CHAIR MILLER: It's getting
11 late. So I don't think I -- I want to throw
12 this out. It's just to be addressed if
13 possible. I don't think you have to address
14 it right now.

15 There was a concern raised by both
16 the ANC, I think, and the neighbors as to why
17 CommuniKids is considered a child development
18 center as opposed to a school or some other
19 category, and if you could address that in a
20 submission, in your post hearing submission,
21 that would be good.

22 I might be jumping ahead. I have

1 a feeling that you're in your rebuttal. Have
2 you finished your rebuttal? Okay.

3 On the screening, you know, again,
4 it's like after ten o'clock. So I don't know
5 if you have to address it now, but you know,
6 you talked about the five percent in the
7 landscaping of the parking lot that's
8 reflected in the plan, that requirement, that
9 you meet that.

10 We saw pictures of a fence and
11 we're not sure about the screening, whether
12 you've addressed that as well. So could you
13 just address that perhaps in a post hearing
14 submission?

15 Did you finish your rebuttal?

16 Okay. Now, I don't think that we
17 gave the other parties a chance to cross on
18 the rebuttal. Is there any cross?

19 And what I said before was the
20 cross at this point from the parties is just
21 limited to the rebuttal, even though the Board
22 can go further.

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1 Do you have any further questions
2 for the Applicant?

3 PARTICIPANT: (Speaking from an
4 unmiked location.)

5 BZA CHAIR MILLER: Okay. Well, I
6 think we've had a very -- what? Do you have
7 a question? You have to come to the mic or
8 you won't be reflected in the record.

9 MR. HIRSH: Only a procedure
10 question is that after their submission, which
11 is responding to us, do we get a chance to see
12 that as well?

13 BZA CHAIR MILLER: You only get a
14 chance to cross on what the witness said in
15 rebuttal. That's it. You don't get a chance
16 to testify anymore.

17 What? You will get a chance to do
18 a post hearing submission. is that what you
19 mean?

20 MR. HIRSH: After we see what
21 their submission is on the answers to these
22 questions?

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1 BZA CHAIR MILLER: Oh. Is that
2 why you're requesting that we have a schedule
3 wherein they file first and you file second?

4 MR. HIRSH: Well, we would like to
5 be able to respond to that since they're
6 getting the chance to respond to us. In a
7 sense we don't get to cross on that.

8 BZA CHAIR MILLER: I don't see how
9 they're responding to you, but I understand
10 they are going to be submitting a lot of
11 detailed information that we're asking them
12 about their program and the vehicle trips, et
13 cetera. You want to wait for that before you
14 file something?

15 MR. HIRSH: That's correct.

16 BZA CHAIR MILLER: Okay, okay. I
17 think that's reasonable.

18 MR. HIRSH: thank you.

19 BZA CHAIR MILLER: Let's talk
20 about then we already said -- certainly have
21 made some requests on the Applicant proposed
22 hearing submissions.

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1 Were there any other -- would they
2 ask -- the neighbors asked about filing for
3 post findings and conclusions of law; is that
4 correct, your proposed order?

5 (Pause in proceedings.)

6 BZA CHAIR MILLER: I think we're
7 going to aim for a July 29th decision if
8 that's going to be enough time for the parties
9 to get in documents, and the documents that we
10 were talking about were certainly the
11 Applicant to provide the information that we
12 requested with respect to the number of people
13 and vehicles.

14 Let me ask you. Do you think you
15 want to do that as part of a -- they asked for
16 proposed findings and conclusions of law,
17 which I think is useful. We can schedule it
18 though that the Applicant provide the
19 information that we've requested first, and
20 then everybody could file proposed findings
21 and conclusions of law after that.

22 Does that sound reasonable?

1 MR. DePUY: That would be fine.

2 BZA CHAIR MILLER: Okay.

3 MS. PERRY: Ms. Miller, if I may,
4 I think what the neighbors were asking is that
5 after they file their chart, they would like
6 an opportunity to respond to it, not just in
7 the findings of fact, but in a submission
8 before we get to findings of fact because it's
9 going to be another he said, she said.

10 MEMBER JEFFRIES: Look. That was
11 my understanding, and I probably said that.

12 BZA CHAIR MILLER: I didn't
13 understand the question. Okay. I think Ms.
14 Perry is saying that they're going to file
15 some chart and vehicle projections, and the
16 ANC and the neighbors want a chance to say
17 they agree with it or they don't agree with
18 it, and if not why. Is it something like
19 that?

20 MS. PERRY: Well, we're not going
21 to have an opportunity to see it or do cross
22 examination on it. So we would like to

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1 respond to it.

2 BZA CHAIR MILLER: I was just
3 wondering whether we can do this if we have
4 those two sets of filings and proposed
5 findings and conclusion of law, whether that
6 can all be done in time for a July 29th
7 decision or whether that's pushing it.

8 MS. PERRY: Just speaking for the
9 ANC, because I know you're under a crunch to
10 make your decisions, but our ANC normally
11 doesn't even meet in July and August. We can
12 schedule a special meeting, but you know, it's
13 hard to get everybody together if we need an
14 ANC decision.

15 I'm not saying we do or don't
16 because I don't know.

17 BZA CHAIR MILLER: Okay. We have
18 like six weeks till then, and my question is
19 do you all have enough time to do that within
20 six weeks, and I do believe that if you feel
21 you need a meeting of the ANC, you could do
22 it.

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1 It's not required in order to
2 respond to the pleadings.

3 MS. PERRY: That was my question.

4 BZA CHAIR MILLER: On our part.

5 MS. PERRY: You know, we don't
6 know what we're going to see. so I guess I'm
7 just leaving it open. Normally our ANC does
8 like to, you know, do this stuff, but we were
9 appointed and delegated. So I guess we could,
10 but you know, since we --

11 MEMBER JEFFRIES: Applicant is
12 going to have to obviously, you know, get
13 something completed in time so that you could
14 respond.

15 MS. PERRY: Yes.

16 MR. DePUY: Madam Chair, we can
17 respond within ten days or in ten days.

18 BZA CHAIR MILLER: Perfect.
19 That's what I was thinking. If you could do
20 ten days, then let's see. Mr. Moy, do you
21 have a calendar? What date that would bring
22 us to or --

1 MR. MOY: Yes, I do. Well, first
2 of all, I just wanted to add the public
3 transcript would probably be available during
4 that first week in July, July 2nd or July 3rd
5 definitely. So I don't know whether or not
6 the Applicant is going to be depending on that
7 or not.

8 BZA CHAIR MILLER: Not for the
9 information for the first filing because the
10 first filing is being generated by them fresh.

11 MR. MOY: Okay. Well, if they can
12 complete a response within ten days, I'm
13 looking at Friday, June the 27th.

14 BZA CHAIR MILLER: Could the other
15 parties respond to that within two weeks?
16 What day would that be?

17 MR. MOY: That would be July the
18 11th, Friday.

19 MR. HIRSH: We believe we can do
20 that, yes.

21 BZA CHAIR MILLER: Okay, and then
22 that would bring us to what date would they

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1 need to file their proposed findings and
2 conclusions of law for the Board to consider
3 prior to the deliberation?

4 I don't want to cut this one, you
5 know, real close because I think we're going
6 to need time to digest that. You know, I
7 don't want it the Friday before. I think it
8 should be --

9 MR. MOY: Well, if the parties
10 wish two weeks, that bring us to Friday, July
11 the 25th. Well, that's pretty tight for the
12 Board. I would propose Wednesday, July 23rd.

13 BZA CHAIR MILLER: How much time
14 does that give them?

15 MEMBER JEFFRIES: We're not going
16 back over the whole file. I mean, we're just
17 looking --

18 BZA CHAIR MILLER: Maybe Thursday
19 when our packages would go out. What day is
20 that?

21 MR. MOY: That would be July 24th.

22 BZA CHAIR MILLER: Okay. Now,

1 okay. Can the parties do that?

2 MR. DePUY: Yes, Madam Chair.

3 MS. PERRY: That will be findings
4 of fact, and the transcript will be ready on
5 the 22nd or third of July? We'll have access
6 to it?

7 MR. MOY: That's correct.

8 MS. PERRY: Okay.

9 MR. MOY: That's an approximate
10 time, but that's ample time.

11 MR. HIRSH: Yes, thank you.

12 MR. DePUY: Are these deadlines
13 3:00 p.m.?

14 MR. MOY: Yes, they always are,
15 typically.

16 BZA CHAIR MILLER: Okay. Okay.
17 Are there questions or do you want us to
18 review the dates?

19 It's June 27th for the first
20 filing from the Applicant?

21 MR. MOY: That's correct.

22 BZA CHAIR MILLER: And then July

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1 11th for the filing from the other parties in
2 response.

3 MR. MOY: Correct.

4 BZA CHAIR MILLER: And then July
5 24th; is that right?

6 MR. MOY: That's right.

7 BZA CHAIR MILLER: For proposed
8 findings and conclusions of law?

9 Okay. And July 29th for the
10 Board's deliberation. Okay. Any questions?

11 Gee, it's only 10:21.

12 MR. DePUY: Thank you.

13 BZA CHAIR MILLER: I have to say
14 that in all my years here, I think that this
15 is the record for how late we stayed here. I
16 don't know about you, Ms. Perry.

17 MS. PERRY: I can tell you it's
18 not the record for me. We've been here past
19 midnight before.

20 BZA CHAIR MILLER: Okay. Well,
21 there you go.

22 All right. Well, thank you very

1 much. Have a good night.

2 (Whereupon, at 10:23 p.m., the
3 public hearing was concluded.)