GOVERNMENT

OF

THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC HEARING

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TUESDAY

FEBRUARY 8, 2005

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The Public Hearing convened in Room 220 South, 441 4th Street, N.W., Washington, D.C. 2001, pursuant to notice at 9:30 a.m., Geoffrey H. Griffis, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

GEOFFREY H. GRIFFIS	Chairperson
RUTHANNE G. MILLER	Vice Chairperson
CURTIS L. ETHERLY, JR.	Board Member
JOHN A. MANN II	NCPC

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY	Acting Secretary
BEVERLEY BAILEY	Zoning Specialist
JOHN NYARKU	Zoning Specialist

OFFICE OF PLANNING STAFF PRESENT:

STEVE COCHRAN	Office of Planning
ARTHUR JACKSON	Office of Planning
DAVID McGETTIGAN	Office of Planning
JOHN MOORE	Office of Planning

This transcript contains the complete minutes of the hearing held on Tuesday, February 8, 2005.

D.C. OFFICE OF THE ATTORNEY GENERAL:

SHERRY GLAZER, ESQ.

C-O-N-T-E-N-T-S

AGENDA ITEM		PAGE
TO CONSIDER THE FOLLOWING:		
17283 ANC-6B	Application of Julia Jones and Jason Pugh	9
	WITNESSES:	
	JULIA JONES	11
17280 ANC-8C	Application of Newcomb Day Care Center	32
	WITNESSES:	
	HARRY SPIKES	35
	MARY CUTHBERT	78
	SANDRA SEEGARS	88
17281	Application of Power Fuel and Transport LLC.	99
	JEFFREY WAY.	109
	TED BECK	120
	ABSALON JORDAN	181
	REV. ANTHONY J. MOTLEY	202
	CHARLES ANDERSON	204
	SANDRA SEEGARS	206
	BILL SUTER	209
	PERRY QUEEN	210
	REV. BOOKER T. HINES	214
	DUANE HARLEY	216
	TOI HODGINS.	217
	LULU EGEZABHER	218
	DONALD HINES	218
	JOHN RAY	225
	JERRY DEVER	229
	PETER AMEFILIN	232
17232	Application of RLA Revitalization	

ANC-1ACorporation 274

NORMAN M. GLASGOW, JR., ESQ. . . . 275
Holland & Knight, LLP
2099 Pennsylvania Avenue, N.W.
Suite 100
Washington, D.C. 20006

WITNESSES:

DREW GREENWALD 277
LOUIS SLADE. 280
STEVEN E. SHER 285

17282 Application of DAG Real Estate
ANC-5AHolding Company LLC 359

JOHN RAY, ESQ. 359
Manatt, Phelps and Phillips
700 12th Street, N.W.
Washington, D.C. 20005

WITNESSES:

JEFFREY WAY. 366
JOSEPH BOWSER 380
RAYMOND POLES. 388
ARTHUR J. JONES 394
RAYMOND BLAKE. 404
MARGARET THOMPSON 413

P R O C E E D I N G S

9:56 A.M.

CHAIRPERSON GRIFFIS: Good morning, ladies and gentlemen. Let me call to order the 8th of February 2005 morning public hearing of the Board of Zoning Adjustment of the District of Columbia. My name is Geoff Griffis, Chairperson. Joining me today is Ms. Miller, Vice Chair; and also our esteemed colleague, Mr. Etherly. Representing the National Capital Planning Commission is Mr. Mann.

And let me say a couple of very important things in our opening remarks. First of all, today's hearing agenda is available for you. It is located on the wall where you entered into the hearing room. You can pick that up and see where you are in our chronology and all the productive work we will do this morning.

Also, it should be known by everyone here that we are creating a record and we create a record in two fashions. The most important, of course, is the court reporter, who is sitting on the floor to my right. We are also being broadcast live on the Office of Zoning's website. So attendant to both of those, there are several specific things that we ask of you. First of all, we ask that everyone turn off any cell

phones or beepers at this time so that we don't disrupt the transmission and people giving testimony.

Secondly, when coming forward to speak to the Board, you will need to have filled out two witness cards. Witness cards are available at the table where you entered into and also the table in front of us where you will provide testimony. Those two cards, prior to coming forward, should go to the reporter who sits on the floor to my right as I have said.

When coming forward to speak to the Board, you will need to initially just state your name and your address for the record and then you can move ahead and give your testimony. That, of course, is important to do so that we can give you credit for all the important facts you will testify to today.

The order of procedure for special exceptions and variances is as follows: first, we hear from the Applicant and the presentation of their case. Second, we will hear from any government agencies reporting on the application. Third, we will hear from the Advisory Neighborhood Commission. Fourth, we will hear from persons or parties in support of the application. Fifth, we will hear from persons or parties in opposition to an application.

And sixth, finally, we hear from the Applicant again for any closing remarks that they may have.

Cross examination of witnesses is permitted by the Applicant and parties in the case. The ANC within which the property is located is automatically a party in the case and therefore, will of course, be allowed to cross examine any witnesses.

The record will be closed at the conclusion of the hearing on the case, except for any material that this Board specifically requests and we will be very specific on what material is to be submitted into the record and when it is to be submitted into the Office of Zoning.

It's important to understand what that means when we close the record. Clearly today, we're creating and establishing a record that the Board will deliberate on. The importance of that is the Board cannot consider anything else that's outside of the record. So in fact, we ask you today not engage Board Members in conversation so that we don't appear to be getting information outside of the record. So anything you want us to know and base our decisions on must be brought forward today in the public, in the open and put on the record.

The Sunshine Act, of course, requires us

to proceed in a public hearing forum, that is in the open and before the public. This Board may, however, enter into executive sessions both during or after a hearing on a case and that would be for the purposes of reviewing a record and/or deliberating on a case. That would be in accordance with the Sunshine Act. It would also be in accordance with our rules, regulations and procedures.

I would ask now anyone that is here for any of the cases this morning, if you are planning to address the Board and provide testimony, I would ask you to please stand and give your attention to Ms. Bailey with the Office of Zoning. She is going to swear you in.

MS. BAILEY: Good morning. Please raise your right hand. Do you solemnly swear or affirm that the testimony you will be giving today will be the truth, the whole truth and nothing but the truth? Thank you.

(The witnesses were sworn.)

CHAIRPERSON GRIFFIS: Good. Thank you all very much and thank you, Ms. Bailey, and a very good morning to you, Ms. Bailey.

On my very far right who has just sworn you in is with the Office of Zoning. On my closer

right is Mr. Moy, also with the Office of Zoning. The Office of Attorney General is also on the dais with us and will be present for all the cases as we proceed.

Ms. Bailey, let me ask you, is there any preliminary matters for the Board's consideration? Preliminary matters are those which relate to whether a case will or should be heard today. Requests for postponements, withdrawals or whether proper and adequate notice of an application has been provided are elements of preliminary matters.

Ms. Bailey?

MS. BAILEY: Mr. Chairman and to everyone, good morning. There are, but they are case specific, Mr. Chairman, so staff is recommending that the ones that we have be taken up with the case is called.

CHAIRPERSON GRIFFIS: Excellent. Thank you. Is there anyone present that has a preliminary matter for the Board's attention at this time? If you do, you can come forward and have a seat at the table as an indication of any preliminary matter.

Not seeing anyone indicating that they have a preliminary matter, why don't we move ahead and call the first case of the morning.

MS. BAILEY: Application No. 17283 of Julia Jones and Jason Pugh, pursuant to 11 DCMR 3104.1

for a special exception to allow a rear addition to an existing flat that's a row dwelling. The property is located under Section 223, not meeting the lot occupancy requirements. That's Section 403. The property is located in the CAP/R-4 District at premises 429 1st Street, S.E., Square 694, Lot 831.

CHAIRPERSON GRIFFIS: Excellent. Good morning. Let me also, as you're getting ready and having a seat at the table, you will clearly have to address the Board with a microphone on. And it's not the fact that we can't hear you, but rather you're obviously not getting on the transcript if you're not speaking into the microphone.

With that, a very good morning to you. If you wouldn't mind stating your name and address for the record?

MS. JONES: My name is Julia Jones. I'm at 429 1st Street, S.E.

CHAIRPERSON GRIFFIS: Excellent, thank you. And let me ask a Mr. Cormack present today? Mr. and Mrs. Cormack? 416 New Jersey Avenue, Southeast.

Why don't we pick this up? Are you aware of a request for party status in this case?

MS. JONES: No, I am not.

CHAIRPERSON GRIFFIS: Okay. It's Exhibit

25 in our record. Board Members we can look at it. Actually, it doesn't meet the first test of being granted party status, but in answer to one of the questions, of course, of whether there are any relevant matters that demonstrate how a person would likely be affected, they have indicated that they have no objection to the above-numbered Application 17283 and they do not plan to appear. So I think we can take this in as written testimony as part of the record and deny party status of the Cormack family or residents. And I'll take any other comments or objections to that.

VICE CHAIR MILLER: No objection. I concur with that.

CHAIRPERSON GRIFFIS: Excellent, so we'll take it as the consensus of the Board and move ahead and turn it over to you to present the case.

MS. JONES: Thank you. Good morning. My name is Julia Jones. I live at 429 1st Street, owner of the property at issue here. We are seeking a special exception which effectively is a special exception solely pertaining to approximately 2 feet to the rear addition we propose to add on to our property. We are exceeding our allowed 60 percent build by right by 9 percent and that equates to about

2 feet.

This is a rear addition. It is out the basement and first floor of our home. We have been given consent by all of our neighbors, written and oral. We have been given consent by our Neighborhood Council and the Historic Preservation Board as well. It is effectively a very minor addition, approximately 10 feet by 16 feet, 16 feet wide, 10 feet out the back. The purpose of the addition is to add extra space to our home to meet the needs of our growing family.

I would like to address any questions you may or may not have.

CHAIRPERSON GRIFFIS: Indeed, excellent. Thank you very much. And of course, 223 is very specific and obviously it was written for situations like this that occur.

Firstly, has there been any indication or any evidence to you that this would somehow adversely affect the use, enjoyment, privacy, light and air of the adjacent properties?

MS. JONES: No sir. It has been discussed with both the neighbors on both adjoining to our property and they both have reviewed the plans, the architectural plans and have both consented by written

record.

CHAIRPERSON GRIFFIS: And the materials that are being proposed on the rear?

MS. JONES: The building materials, it will be brick exterior to match the current form of the house.

CHAIRPERSON GRIFFIS: So it's your opinion in the statement that actually retains the character, the architectural character of the surrounding neighborhood?

MS. JONES: Absolutely, yes.

CHAIRPERSON GRIFFIS: Okay. Just a quick, I guess somewhat technical question. The addition at some points in the larger scale looks like it's in parallel with the existing, but the direct question is it sits on the property line, is that correct?

MS. JONES: Correct. I mean I think it's slightly off the actual property line, but it's within our property boundaries.

CHAIRPERSON GRIFFIS: And when you look at the original house and you look at the original wall of it, it looks like it's setting in, but is that because the property line runs down the middle of that wall?

MS. JONES: No, I don't believe it runs

down the middle of that wall.

CHAIRPERSON GRIFFIS: Then it's set back like 6 inches from the property line?

MS. JONES: I believe so. Our architect designed it so that it was wholly within our property boundaries.

CHAIRPERSON GRIFFIS: You wouldn't happen to have any documentation that shows your property and a property line?

MS. JONES: Not on me. I believe it's within the paperwork submitted.

CHAIRPERSON GRIFFIS: You believe what?

MS. JONES: I thought it was within the paperwork submitted with our application.

CHAIRPERSON GRIFFIS: I mean as required, Exhibit 3 is your plat. As it's shown on the plat, the new brick addition does go from property line to property line.

MS. JONES: That may be the case. I mean I think it's -- I know the addition is to encompass as much of our property as we can. Our house is 16 feet wide. I know the addition will be 16 feet wide, so I presume that is probably property line to property line, but there is a fence on each side that separates the house currently.

CHAIRPERSON GRIFFIS: Well, there it is. I mean if we don't have anything else, I would -- I'm assuming that obviously this is a row dwelling and the row dwelling would have a party wall. The party wall property line would be in the center of it and the addition would then come off the center of that, the existing enclosing walls.

Okay. Let's move ahead then. Are there any other questions from the Board?

Ms. Miller?

VICE CHAIR MILLER: Good morning.

MS. JONES: Good morning. Do you have a copy of the Office of Planning's report?

MS. JONES: Not with me, no, I do not.

VICE CHAIR MILLER: They make a recommendation that the open deck area either be eliminated or visually screened.

MS. JONES: Okay.

VICE CHAIR MILLER: And I was wondering if you've had a chance to consider that, if that was brought to your attention before today or not?

MS. JONES: It has not been brought to our attention before today.

VICE CHAIR MILLER: Office of Planning will have a chance to explain it, but in essence, it

goes to the privacy of your neighbors and I was wondering is that something that was discussed? I assume it wasn't then between you and your neighbors?

MS. JONES: Our neighbors and I we did discuss the deck and they did not view it as a privacy infringement. They were not concerned.

VICE CHAIR MILLER: Thank you.

CHAIRPERSON GRIFFIS: Do you have your plants?

MS. JONES: No, I do not.

CHAIRPERSON GRIFFIS: Okay.

MS. JONES: We submitted a copy with our application.

CHAIRPERSON GRIFFIS: Exactly. What I want to do is walk through a couple of things just so you know, there are no surprises here. So we want to make sure you're looking at exactly what we're looking at. And it's a little disconcerting that you haven't seen the Office of Planning's report, but they make the clear statement if you open it up to your AO3 which is the rear elevation sheet, and of course, Office of Planning will bring this up, but I want you to focus on that because we're about to go for the presentation of their report. The comment comes from what's called the roof deck in the Office of

Planning's report, but it services the top floor?

MS. JONES: Correct.

CHAIRPERSON GRIFFIS: So it's just on the sides, basically on the property line sides of making some visual barrier so perhaps that's a higher, more solid enclosure and it may be five, six feet. Okay?

MS. JONES: That's fine. I mean we're flexible. And that --

CHAIRPERSON GRIFFIS: Well, don't say that on the record.

(Laughter.)

That just gets us all in trouble. Okay, if we're ready then if there aren't any other Board questions, why don't we move on specifically to the Office of Planning which brings us some excellent points. And actually, it's well worth getting a copy, if you don't have it, before you leave today, to have it. It's a good record and let's move ahead to the Office of Planning.

Good morning, Mr. Jackson.

MR. JACKSON: Good morning, Mr. Chairman, Members of the Board. My name is Arthur Jackson. I work with D.C. Office of Planning and I will make a brief summary of the report with regard to this application. Basically, we're standing on the record,

but I will highlight a couple of issues. The Applicant on the site visit, I spoke to Mr. Pugh instead of the person or the co-owner who is here today. And Mr. Pugh and I discussed during the site visit my initial concern about the possibility that this being a problem where the level of the deck would be equal to the second floor windows on both sides and how that might need to be screened.

In a telephone conversation again with Mr. Pugh, I indicated that those -- I repeated that concern that I indicated I recommended a screening in my report and I mailed a copy of the report to Mr. Pugh and Ms. Jones, but I'm not sure if it had arrived by this time. I think I mailed it toward the end of last week, but you know how the mail is.

But essentially, our only concern was that the -- it is on the same level as those windows and the windows are very close, as you see in the rear elevations. The windows are fairly well distributed along the rear sides of all these townhouses. And as such, we though that some sort of visual screening would be appropriate because of the ability to just basically look in the rear bedroom of your neighbor.

So that's where our recommended came from and essentially I repeated the recommendation that we

made that the Office of Planning recommends approval of the special exception to increase the allowable occupancy to 70 percent and reduce the required side yard setbacks in accordance with the submitted plans. I digress a bit just to explain that we noted on site that the rear wall of the dwelling currently stops. There's an addition to the north that extends out but the addition to the north, also sitting back from the property line. There is a fence that runs up from what will probably be the party wall, past to the rear yard which forms the fence around the rear yard. As such, this addition would also set back from the property, from that fence to the south, so there will be a space between the two additions in the rear of the building.

In talking to Mr. Pugh, just as conjecture, I asked whether or not the addition had been set back just to make sure that they didn't cross the property line. He said that's possible, but he didn't have any real facts of that event.

In looking at the plans and looking on site, it did appear that the building would have a side yard to the north and south. So we added the provision to reduce the required side yard setbacks just to cover that in case that issue was raised and

through a submission of plans.

So we support the Applicant's application. We think their addition in line with the Office of Historic Preservation would be a graceful addition to the neighborhood and the materials that they used and the design are excellent. And I also ask the Historic Preservation Office whether there was any concern about putting up a visual screen such as lattice or slats and they didn't express any concern and thought that whatever was proposed could be worked out with their staff.

So again, we support the proposal. We support the 70 percent increase the lot occupancy to 70 percent, reducing the side yard setbacks, but we do think that some screening should be provided for that second floor deck.

With that that concludes our comments and we're available to answer any questions.

CHAIRPERSON GRIFFIS: Excellent, thank you very much, Mr. Jackson. I think that's well said and an excellent report as we have come to expect.

Let's clarify this issue in terms of the rear. There's an existing masonry wall on the adjacent property and what you're saying is if they ran their addition just along the property line, there

may well as visually you could see, create a gap and it may be a matter of inches.

MR. JACKSON: Yes.

CHAIRPERSON GRIFFIS: And so the point is is that if you did that it certainly would be compliant, but it would tend to create a difficult problem because that will obviously fill up with water or debris or anything else and it wouldn't be able to be cleaned. So what you're saying is there should be some sort of construction that either attaches the addition to that wall or some sort of cap on it that would enclose that?

MR. JACKSON: No. My comments were primarily about the third floor, only about the third floor deck. As far as the space between the additions, we really didn't answer that question, address that issue. I guess primarily because it was so narrow now that it's not a maintainable space.

CHAIRPERSON GRIFFIS: Right.

MR. JACKSON: There are no windows in that area so it really doesn't need maintenance. But what happened was when this was closed, because of two rear yards, is the only -- the fence may remain, but other than that, there wouldn't be anything in that space.

CHAIRPERSON GRIFFIS: Right.

MR. JACKSON: I think if there were windows on the walls --

CHAIRPERSON GRIFFIS: Then it would be a bigger issue.

MR. JACKSON: Then you'd have to get in there to do something.

CHAIRPERSON GRIFFIS: Okay.

MR. JACKSON: No grass is going to grow in there, so I really had no suggestion about how to -- or what to do with the space.

On my visit I did note that the space, there was no debris in the space and at this point nothing had -- there wasn't anything in it like trash that had blown into the space around the existing fence. And so it appears that the neighbors have maintained it fairly well. So I wouldn't think that that would be a problem in the long term. And I think if it did turn out to be an issue, there is a space there between the neighbors that's narrow enough that they could take steps to either wall it off, put a fence across that, a fence that would just keep debris out and address it that way.

CHAIRPERSON GRIFFIS: Okay, thank you.

Mr. Mann?

MEMBER MANN: The situation just seems

likely unusual to me, but what's unclear to me, I mean it seems like the zoning solution is available to us, but is this really a building code issue?

CHAIRPERSON GRIFFIS: I think we're stepping into a little bit -- not building code, but just proper maintenance.

Are you understanding my comments in terms of the adjacent masonry wall and where your addition would come and you may be creating a small gap there that just is going to be problematic for your and your neighbor?

MS. JONES: Right. I understand. I see what you're getting at. Yes.

CHAIRPERSON GRIFFIS: I think we'll take that obviously as a direction you can look at, I mean in terms of construction. I think what you wouldn't want to have happen is that a two-inch gap that isn't sealed and you have water running down there, you'll find that both walls will start to deteriorate if any water is settling in in that side.

MS. JONES: If I may provide some explanation. I think the reason why this situation exists is because the north facing property that we're talking about currently has an addition that is slightly set back from their property line, so there

already is kind of a potential to have a gap. And so I do see what you're saying.

CHAIRPERSON GRIFFIS: It's easily remedied if you just put up your addition or some kind of cap flashing that can on it or some kind of flashing that would close that off.

MS. JONES: Right.

CHAIRPERSON GRIFFIS: So you know of it. We'll let you take that on. Otherwise, I guess you can invent this great scoping pole to clean out that.

MEMBER MANN: But what about on the southern side? Are we potentially creating the same situation by allowing the six-inch setback?

MS. JONES: The southern side currently has no addition, that their yard is open.

CHAIRPERSON GRIFFIS: I don't think so because if it ran to the property line. See, what the problem in this situation is that the adjacent neighbor set it back an inch or so, not right to the property line as I'm reading it from the diagram. So if they set it to the property line, say the neighbors adjacent came and put an addition on they could attach to that wall.

Makes sense?

MEMBER MANN: It does make sense, except I

guess I don't understand whether or not it is actually running to the property line. If you look at the site diagram, it appears that it goes to the property line, but if you look at the first floor, it does not.

CHAIRPERSON GRIFFIS: Except, let me see your thing. What sheet are you looking at?

MEMBER MANN: T-0-1 shows the site diagram.

CHAIRPERSON GRIFFIS: Right.

MEMBER MANN: On the northern end, southern side goes to the edge of the existing building footprint.

CHAIRPERSON GRIFFIS: It's kind of an interesting thing, the T-0-2 and A-0-1 are not similar.

MEMBER MANN: Right.

CHAIRPERSON GRIFFIS: And that's the problem. This is what I think it is. What I'm doing is drawing the property line on A-0-1 which would read like that. The property line runs there. If there was an addition on the adjacent, it would run like that.

MEMBER MANN: Okay, I'm willing to accept that interpretation. I just want to make sure that we don't create the same sort of situation in the future

on the southern side.

CHAIRPERSON GRIFFIS: Agreed. Okay, any other questions of the Board of the Office of Planning?

Does the Applicant have any cross examination of the Office of Planning? Do you have any questions of them, Mr. Jackson?

MS. JONES: No, I don't think so. My only request is, if possible, to get a ruling from the bench today.

CHAIRPERSON GRIFFIS: Save that for conclusions.

MS. JONES: Okay.

CHAIRPERSON GRIFFIS: Are you understanding of the comments of the Office of Planning in terms of the screening on the upper most deck, the adjacent --

MS. JONES: Yes sir.

CHAIRPERSON GRIFFIS: Okay, then let's move ahead for any other additional government reports. Exhibit No. 23 is from the Architect of the Capitol, is that correct? Indicates property would not create adverse impacts in the Capitol complex in its master plan.

Are you in receipt of that?

MS. JONES: No, I don't have that either.

CHAIRPERSON GRIFFIS: You're going to need to check the file before you leave. There's an awful lot of documentation on this.

The site is located in Capitol Hill historic district. Is that correct?

MS. JONES: That is correct.

CHAIRPERSON GRIFFIS: And you received conceptual approval from HPRB?

MS. JONES: Yes, our architect did, yes.

CHAIRPERSON GRIFFIS: Good. Is a representative from 6-BA and C6-B here today? Not noting any representative, Exhibit 23, of course, is the ANC's letter in support of the application. Is there any questions or comments from the Board on that?

Does it meet our requirements to grant it great weight, Ms. Miller, in your assessment?

VICE CHAIR MILLER: Mr. Chairman, great weight really means that we address the issues and concerns of the ANC and this ANC doesn't have any concerns that they've put forward for us to address.

Technically, they almost meet it, if they did have concerns. They don't say what a quorum is, which we would need to know even though they said they

had a quorum and they had nine people there, so we can assume that they really did. But a quorum is more than nine.

And also, I just, in general, we like to know how they give notice, but they did say that they properly noticed the meeting. In any event, we do take note that they support this application.

CHAIRPERSON GRIFFIS: Excellent. Thank you very much. I don't have any other attendant government reports, unless Board Members or the Applicant is aware of any others, we can move ahead and ask for any persons present today for Application 17283 in support of the application to come forward now at this time provide testimony.

Any persons in opposition to Application 17283 at this time can come forward and give testimony.

Not noting anyone storming the table, I don't believe anyone is here to provide further testimony on this.

Mr. Jackson, let me ask you just briefly, in terms of the screening, is my assumption correct in your comments that this should be a solid enclosure on the sides perhaps at a minimum of five feet high?

MR. JACKSON: We were thinking that they

could be something as porous as lattice or it could be louvers and five feet high would be a good height for such a structure, an enclosure. And we expect that any proposal that they came up with would be reviewed and approved by HPRB by the Historic Preservation staff.

CHAIRPERSON GRIFFIS: Okay.

MR. JACKSON: The staff is delegated the responsibility of final design.

CHAIRPERSON GRIFFIS: Indeed. So actually what we're looking at for our purposes is perhaps a -- I don't know how we'd say it, semi-solid enclosure of a minimal of five feet that was acceptable to HPRB.

MR. JACKSON: That would be acceptable to the Office of Planning.

CHAIRPERSON GRIFFIS: Okay. Very well. Let's turn it over to the Applicant to comment on that specific aspect and anything other in their closing remarks?

MS. JONES: We're amenable to that proposal. It's fine. I have really no other proposing remarks other than I thank you for your time and consideration.

CHAIRPERSON GRIFFIS: Thank you very much.

MS. JONES: I'm sorry, what? Oh yes, and

I'd like a decision from the bench today.

CHAIRPERSON GRIFFIS: Very well, if there are not any further clarification requirements from the Board, I suggest that we move ahead with this under a motion. I would move approval of Application 17283 for the special exception of Section 223 which would allow for the addition at premises 429 First Street, Southeast and I have the condition that a minimal of five foot, more solid enclosure that meets the approval of HPRB be added to the structure and I'd ask for a second.

MEMBER ETHERLY: Seconded, Mr. Chair.

CHAIRPERSON GRIFFIS: Thank you very much, Mr. Etherly.

I think it meets the entire criterion as we've walked through. Certainly, there's great reliance on the Office of Planning's analysis in looking at those requirements from 2001.3 in terms of the enlargement of nonconforming structures and also specifically the 223. There's been no evidence in the case that has been brought forth for the Board's deliberation that shows how it might adversely impact light and air, use or enjoyment of the adjacent properties and I think it's appropriate for approval with condition.

I'll open it up to any other comments from the Board at this time, if they have any. Not noting any other comments from the Board, we have a motion before us and it's been seconded.

Oh, Mr. Mann, did you have comments? I'm sorry.

MEMBER MANN: It's not a comment so much about the project as I just wanted to note that these are some of these easiest plans to read that have been submitted in a long time.

CHAIRPERSON GRIFFIS: Yes, very. Excellent. I appreciate that outside of the discrepancy from the site plan to the floor plans, but I absolutely agree with that. And it makes it easy to get through these things.

So that being said we have a motion before us and it's been seconded. I ask all those in favor signify by saying aye.

(Ayes.)

Opposed?

(No response.)

Ms. Bailey, when you have a moment we can record the vote.

MS. BAILEY: The vote is recorded as 4-0-1 to approve the application with the condition as

stipulated the Board. Mr. Griffis made the motion. Mr. Etherly seconded. Mr. Mann and Ms. Miller voted in support and Ms. Mitten is not present today and therefore not voting.

And we're doing a summary order, Mr. Chairman?

CHAIRPERSON GRIFFIS: I believe unless any Board Member has an objection that we would waive our rules and regulations and issue a summary order on this.

MS. BAILEY: Thank you, sir.

CHAIRPERSON GRIFFIS: Thank you very much, Ms. Bailey.

Thank you very much, I appreciate your patience in being down here today and good luck getting that done.

MS. JONES: Thank you.

CHAIRPERSON GRIFFIS: Let's move ahead to the next case.

MS. BAILEY: Application No. 17280 of Newcomb Day Care Center, pursuant to 11 DCMR 3104.1, for a special exception to expand an existing child development center to allow 70 children, and 14 staff, under section 205. The property is located in the R-5-A District at premises 541 Newcomb Street, S.E.,

Square 5985, Lot 818.

Mr. Chairman, there is some -- well, the affidavit -- do you have the affidavit now? Okay. We're just receiving the affidavit, Mr. Chairman. I'm assuming that the property was properly posted.

CHAIRPERSON GRIFFIS: Thank you for that note.

A very good morning to you all. Why don't we do it this way. Why don't I have you just introduce yourselves for the record?

Let me also note that if you have three microphones on at one time we're probably going to get feedback, so you may have to maintain turning on and turning off and I will delicately remind you, if you start talking without the microphone on. But with that --

MS. CANNON: I'm Andrea Cannon, owner of Newcomb Day Care.

CHAIRPERSON GRIFFIS: Excellent.

MR. SPIKES: Harry Spikes, representing Newcomb Day Care.

CHAIRPERSON GRIFFIS: Thank you.

MS. McLOYD: Patricia McLoyd, I'm the Director of Newcomb Day Care.

CHAIRPERSON GRIFFIS: Okay. Right, Ms.

Bailey had brought up, of course, a very important aspect in the application that's the posting and then, of course, we require an affidavit of posting submitted at a certain time before the hearing comes to date. And we are not in receipt of your affidavit which is untimely and also the question was whether there were photographs of the posting.

Do you have those?

MR. SPIKES: Yes, we do.

CHAIRPERSON GRIFFIS: So you'll be able to submit those into the record?

MR. SPIKES: Yes.

CHAIRPERSON GRIFFIS: Can you just state on the record whether this was timely posted or not as you are not timely in terms of submitting your affidavit?

MS. CANNON: Yes, Mr. Chairman, it was posted.

CHAIRPERSON GRIFFIS: When?

MS. CANNON: It was on the 18th of January.

CHAIRPERSON GRIFFIS: Ms. Bailey, is that timely as I don't have a calendar and I hate counting backwards, but we have to be official on this.

That's 10 days prior. No, it isn't. I

can't do that math.

MS. BAILEY: That's 15 days, that's sufficient.

CHAIRPERSON GRIFFIS: Excellent. Okay. So we have this. I'm going to hand this back to Ms. Bailey, this is the original copy, it's been notarized and it's been submitted in. Is there any objection to waiving our regulations in this technicality in terms of the timely submission of the affidavit as it has been testified to as being timely posted? Not noting any objection that we take it from the Board, why don't we move ahead and turn it over to you for the presentation of your case.

MR. SPIKES: As we noted we are requesting an increase of children at Newcomb Day Care and the Office of Planning has submitted a report and so has the ANC. We are not in receipt of the report from the ANC, but we did have a meeting and there was a quorum present and it was indicated at the end of the meeting that there were no objections to what we were requesting and in fact the ANC favored our request.

So what we would like to do is to answer any questions you may have relative to the Office of Planning's submission. I think the submission is very accurate. It clearly states all the facts and issues

that I think you had a concern with.

CHAIRPERSON GRIFFIS: Okay. I think that's fine and actually the Board will go well beyond the Office of Planning's report, perhaps, and our questions will come directly in terms of the requirements for the regulations. The Office of Planning, of course, gives their analysis to us for our consideration and it's an important one.

Let me start from the very background, of coursed. You have -- you're operating under previous approval from the Board that of 1992 and also of 1997, if I'm not mistaken on the years. There were conditions on each of those. First, well, the most current 1997 has expired, is that correct?

MR. SPIKES: Correct.

CHAIRPERSON GRIFFIS: And now you're here before us. One of the conditions of the prior was to provide two parking spaces. Two parking spaces would be maintained. Were those maintained for the fives years of the 1997 order?

MR. SPIKES: Yes, they were. They were. The problem that we have now as far as the parking spaces are concerned, that we put on an addition and that eliminated one of the parking spaces.

CHAIRPERSON GRIFFIS: Is there any sort of

documentation or a site plan or anything that showed where the parking spaces were and how they have now been removed?

MR. SPIKES: Well, to the best of my understanding, the documents that we submitted with our application shows that, but it doesn't necessarily pinpoint the parking spaces with specificity. It just shows the area in which the addition was construction and that area took at least one of the parking spaces.

But it's a factual determination in that we had approximately 35 feet in the back of the building and when we constructed the new addition that took up about 22 feet in width and 16 feet in length.

CHAIRPERSON GRIFFIS: Was there any sort of question when the new addition was being built that you were actually going to come into noncompliance with a previous condition of parking?

MR. SPIKES: No. There were no questions to my understanding or knowledge raised.

CHAIRPERSON GRIFFIS: Do you know why that might be?

MR. SPIKES: Because of the on-street parking and the fact that most, as stated in the reports and in our submission, that the majority of the children who attend the day care center are

residents of the immediate community and they are in walking distance. So we never had a traffic problem. In fact, if I may --

CHAIRPERSON GRIFFIS: -- that you don't, in fact, need the parking because there's enough on-street parking, but what I was just trying to address very quickly, understand is here you had a requirement to provide two parking spaces. You went ahead and constructed something that removed those two parking spaces. Was there any sort of deliberative decision making or was there any sort of approval in your understanding that allowed you to do the addition that removed the condition of the previous order of which you were operating under?

MR. SPIKES: Well, I can only say that we submitted our application to the building permit office and it was approved there. There was no intent on our part to eliminate the parking spaces we required, but to the best of my understanding we did everything that we thought that was required of us to construct the addition.

CHAIRPERSON GRIFFIS: Let me just go back to that one comment. You just said there was no intent to eliminate the parking that was required.

MR. SPIKES: In other words, we did not --

when we put up the addition, we went through the process of acquiring a permit.

CHAIRPERSON GRIFFIS: I understand.

MR. SPIKES: And we were with the impression that once that permit was issued then all requirements relative to parking and anything else had been satisfied. So therefore, it might have been an oversight on our part, but there was no intent to eliminate the parking. And plus, we could squeeze two cars in the back. It's just that there would be some modification to do so.

So we mostly likely have enough space in the back now for two cars or maybe three.

CHAIRPERSON GRIFFIS: Okay, but we don't have anything today that shows us how you might accomplish that?

MR. SPIKES: No. We feel that that had been completely satisfied because of the map of the area clearly shows that there is space in the back available for parking.

CHAIRPERSON GRIFFIS: Which map of the area are you talking about?

MR. SPIKES: When we refer to the area in which -- well, let me go to the planning.

(Pause.)

I guess it doesn't clearly show here on page 7, but it shows an alley --

CHAIRPERSON GRIFFIS: I'm sorry?

MR. SPIKES: Page 7 of the --

CHAIRPERSON GRIFFIS: This is all so official here, but page 7 of what?

MR. SPIKES: Of the planning report.

CHAIRPERSON GRIFFIS: Of the Office of Planning report?

MR. SPIKES: Office of Planning report.

CHAIRPERSON GRIFFIS: Excellent. Page 7 and they show -- it's actually copies of the existing floor plan of which you have submitted and also the surveyor's plat which shows the alley.

MR. SPIKES: Right.

CHAIRPERSON GRIFFIS: The third thing I'll need and I'll open it up to the Board Members. Maybe they don't need it, but I don't know where your building sets on that site. And now you testified to the fact well, sure, you could easily fit three spaces back there.

MR. SPIKES: Not easily. You could --

CHAIRPERSON GRIFFIS: You could cram three cars back there.

MR. SPIKES: You could if there was some

modification, yes.

CHAIRPERSON GRIFFIS: Okay. How far back is it? There's a photograph of a wooden picket fence. What's the dimension back from the alley of that fence?

MR. SPIKES: Let's see. I would say about 16 feet, 16 by 22.

CHAIRPERSON GRIFFIS: Okay. Good. I think we'll get back perhaps to that. Let me just get some clarification in terms of as we start and look at this.

You're looking to expand this, the child development center to allow 70 children and 14 staff, correct?

MR. SPIKES: Correct.

CHAIRPERSON GRIFFIS: And 70 children is an enrollment number?

MR. SPIKES: Yes, it would be.

CHAIRPERSON GRIFFIS: And how many are on site at one time?

MR. SPIKES: Well, you ask me to speculate.

CHAIRPERSON GRIFFIS: No. I'm asking you to tell me exactly.

MR. SPIKES: If we increase it to 70 kids,

how many would be on site at one time?

CHAIRPERSON GRIFFIS: Right.

MR. SPIKES: Well, at some point 70, but if you count in absentees you will say maybe --

CHAIRPERSON GRIFFIS: That's fine. And that's a good point. I mean there will be flexibility, but what we get to and because oftentimes in child development centers we see an enrollment number that may be totally different than an on-site number. And so what I understand you saying is that it's the same number. If there's an enrollment at 70, you're anticipating with out sicknesses and absences, that there are 70 on site at one time. Is that correct?

MR. SPIKES: That's correct. There is a great need in the area for day care.

CHAIRPERSON GRIFFIS: Understood. And would you just state again the ages of the children that will be served in that 70?

MR. SPIKES: Six weeks to five years.

CHAIRPERSON GRIFFIS: And my understanding of the submissions it that the age groups are being broken out by four levels in obviously different rooms, is that correct?

MR. SPIKES: Correct.

CHAIRPERSON GRIFFIS: And so you anticipate roughly 35 on each floor?

MR. SPIKES: Yes.

CHAIRPERSON GRIFFIS: Do you know roughly what the square footage is on each of the floor levels?

MR. SPIKES: Yes, 1,440.

CHAIRPERSON GRIFFIS: Four-hundred and forty square feet?

MR. SPIKES: No, 1,440.

CHAIRPERSON GRIFFIS: Oh, I'm sorry, I didn't hear you, 1,4440.

MR. SPIKES: On each floor.

CHAIRPERSON GRIFFIS: Do you know in terms of the licensing requirements how much space allocation, square foot allocation per child is required?

MR. SPIKES: Thirty-five feet for each infant and 45 feet for each toddler.

CHAIRPERSON GRIFFIS: Excellent. And those numbers, as calculated with a 70 enrollment match what is being provided?

MR. SPIKES: Correct.

CHAIRPERSON GRIFFIS: Very well. Are you aware of Exhibit 27. It's a handwritten letter into

the record that's objecting to this application? Are you in receipt of that?

MR. SPIKES: No, no, I'm not.

CHAIRPERSON GRIFFIS: It was submitted on January 26th on this case.

Let's get you a copy. Do we have an additional copy? Here, Ms. Bailey, you can take this one if you want.

Mr. Etherly is just going to run down a few of the issues that are stated in this letter for your address. A copy is coming around to you.

Mr. Etherly?

MEMBER ETHERLY: Thank you very much, Mr. Chair. As the copy is being brought to you, it appears the letter is offered by a Ms. Crystal Hill endeavoring to locate our mailing notice, just to determine whether or not she's a resident that might be in the immediate vicinity of the day care center, but the letter indicates that she is a nearby resident, primarily raising concerns regarding garbage removal and disposal based on trash that's generated by the subject property.

It appears to be, I believe, a reference also some parking impacts, but primarily it seems to be concerns regarding garbage, trash removal, the

amount of trash that's generated by the property; noise that may arise from play area and activities of the children that are on-site.

Once again, I suggest take a moment, if you'd like just to kind of look through it and if you would have any comments or concerns, I think that would be helpful and informative as we take a look at our relevant test, of course.

CHAIRPERSON GRIFFIS: One note you might want to look at and Mr. Etherly was probably going to get to this is the photographs that are attached. Can you look at those?

MR. SPIKES: Yes.

CHAIRPERSON GRIFFIS: Is that your property?

MR. SPIKES: No, no, I'm sorry. No, no, this is a totally different situation.

That's a residence that is being built. That's not ours.

CHAIRPERSON GRIFFIS: In the adjacent area?

MR. SPIKES: No, no, that's a residence somewhere else.

CHAIRPERSON GRIFFIS: Are you familiar with it?

MR. SPIKES: Yes. It's a house I'm building and what happened, I guess it just got mixed up in these documents.

CHAIRPERSON GRIFFIS: How would it get mixed up? She wrote the letter and attached it.

MR. SPIKES: She couldn't have. This is not ours. She couldn't have done that.

CHAIRPERSON GRIFFIS: It didn't make sense to the Board either.

Okay, it may not be photographs evidencing the site specific, but it goes to a point that I believe the letter is trying to make which is perhaps -- well, is not perhaps, is well outside of the jurisdiction of this Board. So we won't bring it up for address.

But let's go to because Mr. Etherly I think very well and succinctly summarized the issues. How is your trash picked up and how is it stored on site?

MR. SPIKES: I'd like to address that because I think it has some merit. And I'm not speaking against us, there are a lot of houses in the back. There's a narrow alley that goes out towards Martin Luther King Avenue -- Malcolm X Boulevard, but there's another one, there's another alley between our

premise and the rowhouses facing Malcolm X Boulevard. And there's no way that we can prevent those residents from coming down that alley accumulating their garbage in the opening of that particular alley.

So what we have done is kind of fenced in our garbage cans and specifically given our staff members instructions to place everything within the can with a top on the can and to make sure that when the private garbage collectors come, that they remove all that.

We also have given our people instructions to periodically clean the area of which our garbage is placed. I believe that this person is primarily speaking of garbage in the alley, generally, rather than speaking of garbage reading our establishment specifically.

CHAIRPERSON GRIFFIS: Well, let's get into this. How often does your hauler pick up trash?

MR. SPIKES: Twice a week and sometimes three times a week.

CHAIRPERSON GRIFFIS: So when you call, you can call for an additional pickup and they'll come by.

MR. SPIKES: And also too, if he doesn't pick it up we will come by with a truck and have

someone take the garbage. We make special effort to make sure that the garbage does not accumulate in there.

CHAIRPERSON GRIFFIS: What do you guys do with it?

MR. SPIKES: We take it out to the dump.

CHAIRPERSON GRIFFIS: Okay. I'm putting it all on the record here. So in fact, you get an accumulation at some point that a commercial can't deal with, that you actually physically yourselves take it to the dump.

MR. SPIKES: Right.

CHAIRPERSON GRIFFIS: And this wooden enclosure, is that documented anywhere here, photograph or drawing?

MR. SPIKES: It's not photographed here, but part of the reason for the wooden enclosure was to make sure that no garbage was going into the yard and to keep the area that we are responsible for clean.

CHAIRPERSON GRIFFIS: Okay. Questions? Ms. Miller?

VICE CHAIR MILLER: Good morning. I have a few questions on this topic and then I want to regress a little bit to a previous topic. But did you say that in addition to the pick up twice a week that

some of your staff periodically cleans the area?

MR. SPIKES: They go back into the area to make sure that it's clean. They go back into the area to make sure that all the garbage is put in the can and the top is on the can.

VICE CHAIR MILLER: They do that every day?

MR. SPIKES: Every day, sometimes twice a day because you have kids who -- they need changing and we need to dispose of the diapers and we need to maintain the sanitary premise.

VICE CHAIR MILLER: The letter also raised a bit issue about rats. Can you address that? She specifically said that she witnessed rats on the playground, on the fixtures and everything out there.

MR. SPIKES: In the back yard, you mean?

VICE CHAIR MILLER: Wherever the playground is?

MR. SPIKES: No one has ever --

VICE CHAIR MILLER: Where is the playground?

MR. SPIKES: The playground is in the front.

VICE CHAIR MILLER: Okay.

MR. SPIKES: And we did have some area for

the playground in the back until we erected the additional. But no, there has never been anyone stated in any way that there were rats in front of the building.

We live in a city where rats are a problem. I see them sometimes down at the Department of Justice. I don't know what they're trying to do down there, but they're running around with rats. And the alley is a little different. In the alleys in D.C. you have rats and we have done everything we could to eliminate the rats. The problem is that when you put out poison, the rats die and cause a stink. I think it's a problem that the District will have to address because we've done the best we could dealing with rats.

VICE CHAIR MILLER: So you have had some problems?

MR. SPIKES: Not out front. In the alley in the back. And all over the place, in the streets. There are rats back there.

VICE CHAIR MILLER: And in response, you've called the District authorities, is that it?

MR. SPIKES: As a matter of fact, yes. We have met the District authority back there and discussed it with them because we were concerned about

the rats. But as I stated to you before, you have an alley there with multiple row houses and everyone puts their garbage in the alley, further down from the day care, so I think a rat doesn't have sense of territorial rights, he just travels anywhere he wants to, so we can't keep the rat from coming to Newcomb, near our premises.

VICE CHAIR MILLER: How often are the residents' garbage picked up?

MR. SPIKES: I think twice a week. Once a week. I thought it was twice.

VICE CHAIR MILLER: Okay. When you were responding to the question about square footage related to infants and toddlers, I believe, you gave certain figures and I'm wondering is a -- your day care center is going to be also open to 5-year-olds, right? Are they considered toddlers or are they children with a different standard?

MR. SPIKES: She can address that.

MS. McLOYD: We're licensed from 6 weeks old to 6 year olds is what our license is approved for.

VICE CHAIR MILLER: Okay.

MS. McLOYD: Our oldest child is 4. And we have some children this year will turn 5, say in

June or July. Those children will be going off to kindergarten. So basically the children in the center are up to age 4 and every once in a while you have one or two children that turn 5 before they go off to school.

VICE CHAIR MILLER: Okay, so the oldest child you would have there would be 5?

MS. McLOYD: Yes.

VICE CHAIR MILLER: My question is when you're calculating square footage for the different types of ages, I think we were given the figures for infants and toddlers. Five years old, is that considered a toddler under D.C. law or is that a child?

MS. McLOYD: No, that's a pre-schooler.

VICE CHAIR MILLER: That's a pre-schooler, so is there a different amount of square footage that's supposed to be allocated to that child?

MR. SPIKES: Thirty-five for infants and 45 --

MS. CANNON: Excuse me, it's 45 square feet for infants. It's 35 square feet for the older ones.

VICE CHAIR MILLER: Toddlers and pre-schoolers are the same?

MS. CANNON: Excuse me?

VICE CHAIR MILLER: Are toddlers and pre-schoolers treated the same?

MS. CANNON: They're separated.

VICE CHAIR MILLER: No, for square footage purposes.

MS. McLOYD: There are different categories of children being --

MS. CANNON: It requires more space for infants.

VICE CHAIR MILLER: For space which was 45.

MS. CANNON: Forty-five square feet.

VICE CHAIR MILLER: For infants.

MS. CANNON: Thirty-five for the older children.

VICE CHAIR MILLER: My question is older children, are toddlers and pre-schoolers grouped together?

MS. CANNON: Toddlers is --

MS. McLOYD: It's up to two is toddlers. Once they turn two they are pre-schoolers.

VICE CHAIR MILLER: So toddlers are in the same category as infants, is that what you're saying now?

MS. CANNON: Yes.

VICE CHAIR MILLER: Infant to two is --

MS. CANNON: Yes, but we still call them toddlers.

VICE CHAIR MILLER: Okay, so infant to two is 45 feet and above that is the 35?

MS. CANNON: No, no.

MS. McLOYD: That's correct.

VICE CHAIR MILLER: Okay, I have one other very basic question. If my information is correct, it seems like the last order that was granted for the operation of the day care center was BZA Order 1642 for a five-year period commencing on August 21, 1997 and expiring on August 21, 2002. Is that correct?

MR. SPIKES: Yes.

VICE CHAIR MILLER: And that you didn't apply for another application until this one which was -- the application date was October 29, 2004?

MR. SPIKES: To the best of my understanding, that's correct.

VICE CHAIR MILLER: So that would appear that you would have been operating without permission perhaps illegally during that gap between August 21, 2002 and October 29, 2004?

MR. SPIKES: Well, no. We have a

Certificate of Occupancy for each period which we operated. If your question is whether we came before the Board, I think that would be no, we did not come before the Board.

VICE CHAIR MILLER: Do you have an explanation for operating for those two years without permission from the Board?

MR. SPIKES: I do not. The only thing I can say is that we followed the direction that was given to us when we went for our C of O and usually when you go for your C of O and you go to the Permit Office, they give you --

CHAIRPERSON GRIFFIS: But when did you pull your C of O? Do you have one after 1997?

MR. SPIKES: Oh yes, we do.

CHAIRPERSON GRIFFIS: And the date on it is?

MR. SPIKES: We don't have that with us today.

CHAIRPERSON GRIFFIS: Was it before the BZA order expired?

MR. SPIKES: I'm not sure. I came on board with Newcomb after that period of time and I'm not --

CHAIRPERSON GRIFFIS: When did you come on

board?

MR. SPIKES: I came on board in 2002.

CHAIRPERSON GRIFFIS: Did they have a C of O then?

MR. SPIKES: Yes, they did.

CHAIRPERSON GRIFFIS: So it was within the five-year period of the BZA.

MR. SPIKES: Yes.

CHAIRPERSON GRIFFIS: What Ms. Miller is getting at very directly is your C of O should have been revoked. You cannot have a C of O without an existing order and approval from the Board. It's not like because you had a C of O were you were able to keep going. You just needed to pull an application whenever it was. So she was just directly asking was is there a recordation at the facility that has that on a schedule that you knew or you didn't know or if this was approved for another five years what reliance do we have that you will be aware of when it will expire and the requirements of the order and its expiration?

MR. SPIKES: Well, I'm going to make sure of that, that we maintain compliance with all your regulations. I think the problem was that that prior to now Newcomb was operating primarily and relying on

-- not necessarily advice, but the representation of the District of Columbia and I think the District -- not that the District was misrepresenting Newcomb, but the District may have omitted explaining the importance of coming to the Board, stating that we need to come to the Board.

CHAIRPERSON GRIFFIS: Let's get over this quickly and move on to the actual application. You're mistaken if you're looking for a reliance on the government to tell you your responsibilities.

MR. SPIKES: I understand that clearly and that is why I said to you that this will not be a reoccurrence. But the reliance was misplaced. No doubt about that.

CHAIRPERSON GRIFFIS: Okay, and I think it's clear and believe me, I know it's confusing, all of these requirements and everybody has got to touch and approve these things, but the bottom line is is that if this is approved and it has a time, you now are stating that you know, you'll be putting it on the schedule and there will be some sort of big bell that rings in four and a half years and you will know it's about to expire and put a new application in.

MR. SPIKES: Correct.

CHAIRPERSON GRIFFIS: Let's move ahead

then and let's get down to the other specifics of this. The days of operation for the facility is Monday through Friday, is that correct?

MR. SPIKES: Correct.

CHAIRPERSON GRIFFIS: It's at 7 a.m. to 6 p.m.?

MR. SPIKES: Correct.

CHAIRPERSON GRIFFIS: So nothing else happens on the site after those hours involving the children?

MR. SPIKES: No, there is nothing.

CHAIRPERSON GRIFFIS: Okay, and the seasons, are there seasonal schedules? Is it year round, 12 months?

MR. SPIKES: Year round.

CHAIRPERSON GRIFFIS: Is there any difference in the summer schedule or summer programming?

MR. SPIKES: Of course, in the winter you have indoor programs.

CHAIRPERSON GRIFFIS: I mean just about times.

MR. SPIKES: No.

CHAIRPERSON GRIFFIS: In summer times they go until 8 o'clock?

MR. SPIKES: No, the time is consistent.

CHAIRPERSON GRIFFIS: Times are consistent --

MR. SPIKES: Year round.

CHAIRPERSON GRIFFIS: Consistent all the way through year round. Okay. Any other issues?

Mr. Mann?

MEMBER MANN: Yes, I had a question concerning I think there's some place in the application that indicated that you shuttle the children back and forth to a nearby playground, is that correct?

MR. SPIKES: Yes, we have a transportation bus and our park is about 500 feet from the center.

CHAIRPERSON GRIFFIS: It's around the corner.

MR. SPIKES: It's around the corner.

MEMBER MANN: I guess I was curious about a couple of things. Since it's so close, why do you shuttle them back and forth in an automobile and if so will that increase with the increase in children?

MR. SPIKES: We do that for safety purposes. We don't want to have the kids necessarily crossing the street and plus we don't have to transport all the kids at one time.

And all the kids don't go to the park at the same time because they are separated through categories and age differences.

MEMBER MANN: So you're utilizing the alley to shuttle the children back and forth or does the van come around to the front to do that?

MR. SPIKES: They could come out front, but if we need to use the alley, the alley is available.

MEMBER MANN: If I could go back just for one moment, there's something that I'm just uncertain about although I'm not certain of its relevance. When did you complete construction on the addition?

MR. SPIKES: I think it was around June or July of 2003.

MEMBER MANN: So sometime in the summer of 2003?

MR. SPIKES: Right.

MEMBER MANN: I see. Thank you very much.

VICE CHAIR MILLER: I just have a couple of follow up questions on that line. When do you use the playground on your property and when do you take the children to the park? I mean under what circumstances?

MR. SPIKES: Well, I think Ms. McLoyd

could talk about that.

MS. McLOYD: We, like today would be a day, if the weather is below 40 degrees, we don't take them out, but if it's above 40, we take them out every morning. They have playtime.

VICE CHAIR MILLER: My question to not when do they go to play outside, but when do you take them to the park that you have to transport them to versus using the play equipment on your property?

MS. McLOYD: We usually take them to the park on Thursdays and Fridays.

VICE CHAIR MILLER: You take all ages to the park?

MS. McLOYD: No. We take two year olds to four year olds.

VICE CHAIR MILLER: And why do you go just on Thursdays and Fridays?

MS. McLOYD: Fridays is Fun Day. And Monday through Wednesdays, they go out front. And we feel two days a week they need to be able to run around, play in the park.

VICE CHAIR MILLER: Okay.

MR. SPIKES: We have an academic curriculum too, so that takes up a lot of time as well for the kids.

VICE CHAIR MILLER: What are the safety concerns that you have about going to the park by foot as opposed to going in the van?

MR. SPIKES: It's traffic, primarily. I think it's inner city traffic per se. The kids are jewels, so we want to protect our jewels.

MEMBER MANN: How many blocks away is the park?

MR. SPIKES: It's around the corner.

VICE CHAIR MILLER: Around the corner. Okay, thank you.

MEMBER ETHERLY: Mr. Chair, just as a follow up on the traffic question because I think it probably would be helpful to get a sense of the vicinity in which the center operates.

In terms of some of the adjacent streets, you are to an extent bounded by two major streets, correct?

MR. SPIKES: Correct.

MEMBER ETHERLY: One being Martin Luther King Avenue and the other being Malcolm X.

MR. SPIKES: Correct.

MEMBER ETHERLY: And it would be your experience that the level of traffic on both of those streets would suggest, as you indicated clearly, some

precautions with regard to the transit of children from the center to the park.

MR. SPIKES: That's correct.

MEMBER ETHERLY: Okay. With regard to coming back to one of the components of the special exception test is 205.3 which speaks to traffic concerns and we talked a little bit about parking.

What I wanted to explore a little bit as a little further information, just briefly because I think I'm otherwise fairly comfortable with where we are, but with respect to how your pick up and drop off is handled, as you indicated in response to a couple of earlier questions from the Chair, your operation is from 7 a.m. to 6 p.m. Let me focus for just a moment and this might be directed to you, Ms. Cannon, whomever feels most comfortable answering. How is your let's say your drop offs handled in the morning?

It's indicated in the Office of Planning report that the vast majority of your children, your young charges, your jewels, are brought to the center on foot. Is that correct?

MR. SPIKES: Correct.

MEMBER ETHERLY: I think there was an indication in the Office of Planning report that you have perhaps maybe eight children presently who are

dropped off by vehicle?

MR. SPIKES: That's correct.

MEMBER ETHERLY: Okay, those vehicles, how do they approach the center? They simply idle in front, drop the child off? There's a staff member who's out front to meet that vehicle?

MR. SPIKES: Usually, but in the morning there is usually a lot of empty spaces, so they have places to move into a parking space and the child is allowed to get of the vehicle on the sidewalk side. And if the car is coming from Martin Luther King Avenue, the same thing is available on the other side of the street as far as availability of space for the child to get out of the vehicle.

And what we did was, I want to submit these photographs into evidence, we took pictures of the street and what the photographs show as to the availability of on-street parking is consistent throughout the weekdays. So you could reply on these photographs as being --

MEMBER ETHERLY: And as those were offered, can you speak to what time of day those photographs would reflect? Do you recall if they were taken in the morning or taken in the afternoon or evening?

MR. SPIKES: These photographs were taken in the morning around noon time.

MEMBER ETHERLY: Okay.

MR. SPIKES: But the vehicle spaces are usually available --

MEMBER ETHERLY: Throughout the day.

MR. SPIKES: Throughout the day and early morning.

MEMBER ETHERLY: Okay, and I believe the Office of Planning report supports that, that there is an abundance of parking inventory on street.

Do you know if that's restricted parking, i.e. --

MR. SPIKES: Unrestricted.

MEMBER ETHERLY: Unrestricted parking. Okay. Let me move a little bit to the play area piece. We've had a little bit of conversation regarding the play area and additionally the use of the park off of Malcolm X.

With regard to the play area at the rear, that's the part that I'm somewhat concerned about because clearly as you testified, you are in the midst of a residential area and I think of course with the ANC report there's support there, but what I want to get a sense of is how frequently do you use that rear

play area space? As you indicated, in response to one of Ms. Miller's earlier questions, you used both of those spaces in combination. Some of the students, some of the children are taken to the park, some of the students, it would probably be more appropriate for them to remain on site and perhaps make use of the backyard area.

Do you have a firm schedule for how frequently and when you use that rear play space?

MR. SPIKES: We don't use it frequently. Very infrequently. Yes, that's it.

MEMBER ETHERLY: And I'm not suggesting that to hamstring you in any way. I think the Board is very sensitive, of course, to the need for young people to have that opportunity to let off a little bit of steam, whether they're 2 or whether they're 30. That being said, if you feel there is a need to make sure of that space I think it would be helpful to just map out a little bit of a plan for how you would like to utilize that space so there's a firmer understanding from the Board's standpoint of what your schedule is.

Once again, I think it's entirely appropriate as part of a day care center operational program to have that outside time, but given the fact

of your location in the residential area, I think it would be helpful perhaps to schedule that so we have a firm sense of when that's going to happen.

I haven't seen anything in the record to indicate a concern about noise, but under 205 that is something that we have to take into consideration. And 70 kids, you know, especially if they're all on site at one time, although we know that won't happen every day, can have an impact if given the opportunity.

With respect to also the rear area, one of the pieces of evidence, I believe Exhibit 5 which shows the rear of the property and it's this picture here and I'm interested in the bottom picture, that picture reflects the rear area, correct?

MR. SPIKES: Correct.

MEMBER ETHERLY: Could you give me an indication of how tall that wood fence is at the rear of the property?

MR. SPIKES: About eight feet.

MEMBER ETHERLY: It's about eight feet. So in terms of a regular size adult and of course, clearly from the standpoint of your young people, it's at least head level if not a little taller?

MR. SPIKES: Yes.

MEMBER ETHERLY: Okay, and that encompasses the full year of the play area?

MR. SPIKES: Yes, it does.

MEMBER ETHERLY: Okay. Mr. Chair, I think that covers it for all of my questions. Thank you very much. I appreciate your responses.

MR. SPIKES: Thank you.

CHAIRPERSON GRIFFIS: Thank you, Mr. Etherly.

Following up on Mr. Etherly, in your submission, your written case presentation, you indicated at present staff at the center except a few walk are within walking distance of the facility? How many are not at the current time?

MR. SPIKES: About eight.

CHAIRPERSON GRIFFIS: Eight currently have to get to the facility some other way.

MR. SPIKES: Either by bus -- mostly by bus.

CHAIRPERSON GRIFFIS: Okay, by public transportation. And has there been any evidence that's come to your attention that that's created an adverse condition in terms of parking or traffic?

MR. SPIKES: No.

CHAIRPERSON GRIFFIS: Okay, and the other

aspect, you indicate directly reading, it says visitors to the center will be accommodated with existing available parking spaces provided by the center. How many parking spaces are you providing?

MR. SPIKES: To be frank, I think we can only safely provide one with some modification.

CHAIRPERSON GRIFFIS: One space, at the rear as you indicated before. Okay.

Good. Now you starting off your case you stated there was an excellent Office of Planning's report which we also agree and you said you wanted to rely on that essentially with your other submissions. They bring up one point. I'll let them get to their report, but in terms of the screening and the landscaping, evergreen landscaping at the front of the area, are you aware of that and what's your anticipation in dealing with that situation?

MR. SPIKES: We maintain the best we can, the area in front of the center. And we plant grass and do everything possible that we can. But you have to understand that that area is a public area and it's subject to individuals walking down the sidewalk, walking on the grass.

CHAIRPERSON GRIFFIS: So your understanding of what Office of Planning is proposing

is off your property and in the tree box area?

MR. SPIKES: Yes, but also in addition to that we maintain the yard the best we can, but when kids play in the yard, quite naturally that would disturb whatever greenery you have there.

CHAIRPERSON GRIFFIS: Possibly. I understand. I don't agree. That's not the way I read it in terms of the tree box area, but with that, if there's no other questions immediately for the Board, why don't we go to the Office of Planning's report and have them present it.

A very good morning to you.

MR. MOORE: Good morning, Mr. Chair, and Members of the Board. I'm John Moore, Office of Planning and I'm sitting in for Karen Thomas who can't be here today.

We, at the Office of Planning generally stand in support of the application and on the record. For clarification purposes I have to ask the Applicant is the play area you use the play area on the west side of Malcolm X at King and Fairlawn?

MR. SPIKES: Yes.

MR. MOORE: Mr. Chair, Malcolm X Avenue is at least 90 feet in width, it may be 110. I can't imagine with that being a busy road itself and King

Avenue being very busy, small children walking across that intersection.

CHAIRPERSON GRIFFIS: Right. I think that's an excellent point and in fact, in your own report or what you're representing you had the area photographed and it's pretty clear that there's not even a cross walk or a striped area at the corner. You have to walk down a full other block to get to a place and it doesn't -- I can't tell from this, but I don't see a signal on that intersection or a stop sign.

MR. SPIKES: What you would have to if you walked the kids there, walk down Newcomb Street, walk across Newcomb Street, walk to Martin Luther King, then walk across Malcolm X.

CHAIRPERSON GRIFFIS: Right.

MR. SPIKES: In order to be in the cross walk and have the protection of the light.

CHAIRPERSON GRIFFIS: Right.

MR. SPIKES: Traffic light.

CHAIRPERSON GRIFFIS: So there is a signal at that intersection. Okay.

MR. MOORE: With that clarification, I'd like to remind the Applicant that the public space in front of private property is the owner's

responsibility, so the Office of Planning's report will reflect that some greenery in that space should have come from some dialogue between the Applicant and Karen. But it is your responsibility to maintain that space. You said you were going to put greenery out there.

MR. SPIKES: We will, but I'm just simply saying notwithstanding our greatest effort, that effort can be diminished substantially by individuals walking on the grass, but we will do everything we can to make sure that our area is beautiful at all times.

MR. MOORE: And that will be the first step in accepting overall beautification that we would appreciate.

MR. SPIKES: Thank you.

MR. MOORE: Third clarification, Mr. Chair. Ward 8 is the most transit-dependent population in the city and therefore public transportation is the basic means or walking. I know for a fact that most people of the people who go to that center probably live in the Triangle area and will walk to the center. Very few cars will be visible.

With that being said, we stand in support of the application and would entertain any questions.

CHAIRPERSON GRIFFIS: Excellent. Thank you very much.

Does the Board have any questions of the Office of Planning?

MEMBER ETHERLY: Very quickly, Mr. Chairman. I know, of course, Mr. Moore is standing in for another OP staff member who perhaps is more familiar with the application, but it is indicated on I believe it's page 6 of the report with respect to 205.8 that there is another center or another -- I should say child development center within 1,000 feet of the subject application here.

Do you have any comments? OP, of course, notes that the cumulative effect of these two facilities would not be such that it would raise a question regarding your support of this application, but could you speak a little bit --

MR. MOORE: That would generally be my response also on behalf of Ms. Thomas. Again, given the transit dependent population and age profile in Ward 8, the youngest ward in the city, there is enough in this case, there are enough students there for both centers.

As a matter of fact, the other one is on the other side of King Avenue.

MEMBER ETHERLY: Okay.

MR. MOORE: And they all seem to do pretty well.

MEMBER ETHERLY: Thank you. Thank you, Mr. Chair.

CHAIRPERSON GRIFFIS: Excellent, thank you. Does the Applicant have any cross examination of Office of Planning?

MR. SPIKES: No questions.

CHAIRPERSON GRIFFIS: No questions? Ms. Miller, questions?

VICE CHAIR MILLER: Mr. Moore, I have some confusion whether or not the Applicant has been acting, whether they have a valid Certificate of Occupancy or not. The Certificate of Occupancies that are in the record are at Exhibit 9. I don't know if you got a chance to look at them, but whether you can verify that, in fact, they have a valid C of O.

MR. MOORE: I don't like surprises, but that was sort of surprising to me. The question of if the C of O that they're operating under now is valid, I have to talk to Karen about that. It would be an issue.

VICE CHAIR MILLER: I'm just not sure what C of O are they operating under, do we have that in

the record?

MR. MOORE: That is a concern of mine of what's int he record.

VICE CHAIR MILLER: Okay. So maybe that's something we can get in the record.

Thank you. I'll ask you again, but I think that your response was and I'm addressing this to the Applicant that you believed you were operating in accordance with your C of O, but you didn't have it with you.

MR. SPIKES: We don't have the C of O with us today.

VICE CHAIR MILLER: Right, okay. Let me ask you this. We have in our record Exhibit 9. Do you have that?

MR. SPIKES: No, but explain to me what it is.

VICE CHAIR MILLER: Okay, there are two Certificates of Occupancy on this one page and --

CHAIRPERSON GRIFFIS: A copy of which is coming to you now.

VICE CHAIR MILLER: That makes it easier, okay.

CHAIRPERSON GRIFFIS: Sure does.

MR. SPIKES: Yes, we have this.

VICE CHAIR MILLER: Okay, the bottom one seems to -- it references the BZA order and seems to go along with that one, supposedly. But the one on top which is dated 10/25/00 has no expiration date and I'm wondering is that the Certificate of Occupancy that you're operating under or is there another one?

MR. SPIKES: This is it.

VICE CHAIR MILLER: This is it. Okay.

CHAIRPERSON GRIFFIS: So you're operating under the top one which has no expiration date, was issued on 10/25 2000 which is a day care for 15 infants to two years old and three staff. Is that how you're operating currently? Fifteen infants with three staff?

MR. SPIKES: Correct.

CHAIRPERSON GRIFFIS: You only have 15?

MR. SPIKES: No, no. You can address that better than I can.

MS. McLOYD: Currently, we have 15 infants. We have 9 staff. We have six two-year-olds. We have 10 three or four-year-olds.

CHAIRPERSON GRIFFIS: So you're actually under the description of the one below that which is 29 kids, 6 staff?

MR. SPIKES: What happened is -- I'm

sorry.

MS. CANNON: There is another C of O after this one here which says expired, there has to be.

MR. SPIKES: And what transpired here, I think, if you look at this closely --

CHAIRPERSON GRIFFIS: Okay, we're not going to take your time on this. What we're going to do is keep the record open and you can submit the current C of O.

MR. SPIKES: Okay.

CHAIRPERSON GRIFFIS: And we'll get this all cleaned up. I think we're going to have a couple of other things that we'll have submitted into the record, but let's move ahead and if there's nothing further for the Office of Planning, we do have the DDOT report, Department of Transportation which is Exhibit 30 and 31. They were indicating that -- I don't know what they were indicating. Did we get a new submission on this?

Did you see the DDOT reports? Department of Transportation reports?

MR. SPIKES: I don't think we have.

CHAIRPERSON GRIFFIS: No. There may be duplicates. Okay. If approved by the Board, this is the last paragraph that DDOT recommends the time

period not exceed five years allowing the community to observe the operation of the center and impact on the parking supply with an increase in enrollment level. Accordingly, DDOT has no objection to the application. Of course, they're asking for a condition of five-year term on this.

Excellent. Let's move on to the ANC. I don't have any other -- of course, you'll note Exhibit 26 which is Department of Health. And ANC-8C, is ANC-8 represented today? Very good. How are you?

Would you like to present your report at this time?

MS. CUTHBERT: Good morning, Mr. Chair and Members of the Board, John Moore and the other Members. I'm Mary Cuthbert. I'm the chair for Advisory Neighborhood Commission 8C. I'll read my statement and then I'll make comments.

According to the DCMR 3115 and 3115.1, Advisory Neighborhood Commission held a community meeting on January 26, 2005. Notification to the Applicant was by phone. The Commissioners present were R. Calvin Lockwich, Dororthy Ferrell, Barbara Hodge and Mary Cuthbert which constituted a quorum. Ms. Cannon, the Applicant child development center at Newcomb Street, S.E. requested an increase in the

amount of children at her facility. Commissioner Cuthbert visited the child development center in December. Presently there are 31 children and 6 employees. The location of the center is a benefit to the residents in the area. Most people can walk to the facility which alleviates parking and traffic problems. Ms. Cuthbert made a few interior repair recommendations. The quality of service that is given to the children is superb by the workers. I was there for two hours to observe. I went to the facility and observed for two hours.

A motion was made by Commissioner Lochwich to support the request of having additional children at the center and seconded by Commissioner Hodge with a vote. The vote was unanimous.

I want to say when I visited the center in December, I got a call from them that they anticipated increasing the number of children and I am very much so. I know most of you don't know me. I'm a real stickler when it comes to children and the quality of service and the location of the facility that our children are in.

I went there with another Commissioner. In fact, she's here today, Commissioner Seegars. We stayed there for about two hours. The workers were

extremely caring for the children, but there were some repairs that I felt that was needed. I'm not an inspector. I don't know what they call for, but there were some things that I felt that was needed.

I brought that to the attention of the Applicant and I will be checking on it because they made it very clear that they will be making that repair.

But I want to say that they have a little child thing in the front of their facility, in the front, not the back. It seemed like there was some confusion with the play area. There's one in the front of the building.

CHAIRPERSON GRIFFIS: Right.

MS. CUTHBERT: Now the park that they're taking the kids to is called Shepherd part on the other side of Malcolm X which that street is impossible for even you to cross. So I can understand them taking them.

My other concern was the space that they're going to add these children. I'm very concerned about the space. I don't know what the criteria is, but I was very concerned about when you add children, is it going to be -- are they going to be just so tight and clustered in there that the

children really don't feel free, you know? When you have little children, they're moving all the time so they have to have space to move around. That was a big concern of mind. There were some other repairs that I'm asking them to please do on their own.

And Ms. Cannon gave me her word that she will be doing it and I have a certain time in mind, I didn't tell her that I will be going by to check and if I can't take off from my day job, I will ask Commissioner Seegars who went with me originally and we discussed it to go and check for me because I like two people because I look at things one way. Another person looking at it another way. None of us are really qualified to inspect the place. Let me come to a conclusion.

CHAIRPERSON GRIFFIS: Excellent. Thank you very much. It's a very thorough report and we certainly appreciate and understand the dedication you put into your role and also the dedication to the children in this neighborhood.

Let me quickly ask you in terms of your concern for the space for the children when you were there currently. Did you find that there was ample space and could you picture, I know you're not an expert or able to analyze the facility, but could you

picture an increase in children in the current facility?

MS. CUTHBERT: I can picture the increase especially, what they call them, toddlers, the little under two-year-olds. There's space for more of those little ones. They had enough cribs and they were changing the children. They fed them well and the way of getting potty trained, they had the little potties and everything and they were working on that.

I can see an increase for that.

Upstairs where there were the school age, not school age, three to two or two to four, whatever, the little ones who can walk well, they can use some more, but they have to get more help which I know they will be getting.

CHAIRPERSON GRIFFIS: Right.

MS. CUTHBERT: But they were very well trained children. I was very pleased at the care that the staff and if it was me I would ask for an increase for the staff pay.

(Laughter.)

I mean the attention that they were giving these little ones, you know, who can barely walk and they follow behind them and calling them. You know, you got one on this leg and they're walking, they're

going to the bathroom. When children cling to you, they care about you.

CHAIRPERSON GRIFFIS: Right.

MS. CUTHBERT: So I was very pleased.

CHAIRPERSON GRIFFIS: Excellent observation. Thank you.

Are there any questions from the Board? Let me ask you to turn that microphone off on the corner there.

MEMBER ETHERLY: Yes, Mr. Chair, just very briefly.

Ms. Cuthbert, thank you very much for your personal time and attention and also that of Ms. Seegars with regard to your site visit.

You heard a little bit of the conversation that I had with the Applicant regarding just concerns, not that we've gotten any indication of any concerns about noise and just the impact on adjacent residential properties with regard to the operation of the center. Can you speak to based on the opportunity that you had to do a site visit, would you suspect that there would be any concerns about noise or just impacts of an increased number of children at the property with respect to any of the adjacent homes or adjacent apartment buildings?

MS. CUTHBERT: Let me say this on that 500 block of Newcomb. As you walk from Martin Luther King, on the right hand side, across from this facility there is a couple of vacant houses. We do have. And as you walk next to this facility it's rental units. And as I can recall those rented units, the tenants are not the best of tenants, let me say that. The owner, you would have to probably beat the owner to get what you want him to do.

So as far as noise coming from the child care facility, you might have the little ones laughing and whatever, but not the type of noise that whoever is explaining. But you have -- when you come to southeast, you have to look at the individual building, although you're going to look at the facilities on each side, but you have to make a decision on that.

MEMBER ETHERLY: So it would be your sense that the day care center would be the least of your concern?

MS. CUTHBERT: That is correct. That's what the neighbors told me. I talked with several of the home owners. I talked with several of the home owners. It's not the day care, it's the other building.

MEMBER ETHERLY: I appreciate that. Let me also follow up, very briefly, and I appreciate that having some familiarity with that particular part of our fair city, as always, my colleagues know I don't hesitate to do a chance of boosterism for my alma mater, Ballou Senior High School, so there is some familiarity with that area on this part.

Let me also ask you, perhaps you heard some of the comment that we have regarding trash and concerns around refuse in the alley. Do you have any observations or additional testimony that you might want to provide regarding that? We had gotten a letter in evidence which suggested some concern about the center's generation of trash and refuse. I think we've dealt with those concerns fairly well, but any additional comment that you might want to provide with respect to the alley, at the rear of the property?

MS. CUTHBERT: I'm concerned about your letter because I did walk, put notification in the doors. I personally have done that. And she did not attend the meeting, whoever she is. I think I know who it is, but I'm not sure. The alleys are not in the best of keep, but as far as trash in the alley, I have to say there's a possibility there's trash because when you come down Malcolm X, you have -- the

ways the buildings are situated, you got Newcomb. You got Malcolm X. It's a possibility there's some trash in the alley.

MEMBER ETHERLY: But it would be your testimony or your sense that there's nothing that the center is doing that is contributing in any higher or greater way to trash in the alley?

MS. CUTHBERT: Between the both of us, I don't think so.

MEMBER ETHERLY: Thank you. I appreciate that.

Thank you, Mr. Chair.

CHAIRPERSON GRIFFIS: Good. Thank you, Mr. Etherly.

Ms. Miller?

VICE CHAIR MILLER: Good morning. I want to thank you for taking time out from work and for doing your site visits. It's really helpful to have your observations and I think Mr. Etherly asked most of the questions that I would ask, but I just want to make one point with respect to your report which is excellent, but in there you say that you notified the Applicant by phone.

MS. CUTHBERT: Yes.

VICE CHAIR MILLER: And it just appeared

to me that I was reviewing the criteria we have to give great weight, you meet the certain requirements in 3115.1 and one was whether proper notice of the meeting was given by the ANC. And we usually interpret that to mean also to the public and I just heard you say that you put notices in people's doors, around there and that's really what I wanted to just explore from you, who got noticed and then in the future, in your report if you could make sure that you identify that you also notified the public because that's really important.

MS. CUTHBERT: I know that I must when it's a zoning, notify within a 200-feet radius of whatever property is being zoned and I did knock on doors and talk with people who live -- homeowners, now, because they're the ones who have a stake in that community. How did they feel about this facility? About the addition of more kids, because sometimes they're up there every day. They're retired and they observe more than what I do on one visit or two visits.

VICE CHAIR MILLER: Right.

MS. CUTHBERT: And they had no problems. They had a problem with the apartment building next door that we had to work on. But they were able to

come out. We had a few neighbors, so I'm concerned.

CHAIRPERSON GRIFFIS: Good.

MS. CUTHBERT: About Ms. Hill.

CHAIRPERSON GRIFFIS: Thank you. And I think Ms. Miller's comments is just that all that effort, it's best to put it in your letter and put it in the record and then we know it and it's official and it's in that. It's a valuable piece of information and gosh, I wish we had the time to take on the apartment building this morning.

MS. CUTHBERT: No, we're handling that.

CHAIRPERSON GRIFFIS: Not seeing any jurisdiction to bring that up, let's move ahead, if there's nothing further from the Board, does the Applicant have any cross examination of the ANC member?

MR. SPIKES: No.

CHAIRPERSON GRIFFIS: Very well. Thank you very much. And again, thank you both for taking the time to be down here and actually taking the time to look at this application which is valuable information that's been put into the record for us.

That is all of the government reporting agencies and the ANC that I have. Let me ask if anyone is present, either in support or in opposition

to the application to come forward now to provide testimony.

Ms. Seegars would like to address the Board. Excellent.

MS. SEEGARS: I too came out of Ballou High School in 1968.

CHAIRPERSON GRIFFIS: If you wouldn't mind, just state your name and address.

MS. SEEGARS: I'm Sandra Seegars, Chairperson of ANC-8E. Yes, I went with Ms. Cuthbert to look at the place and from what I could see in the backyard, there was trash in the alley. I would say it's not coming from the day care because of the way the gate and the yard is. It may be trash blown down the alley or thrown by other people. It's not like diapers and bottles and baby food, cans, whatever.

My mother used to take care of children in the home and I used to assist her and I'm for anyone who has the care for a child. I'm for anyone who would do that, to take time to deal with toddlers and infants. I watched too, when I helped my mother. I can see they have the type of caring for the children. The ladies who were there and like Ms. Cuthbert said they were hanging on to them and everything was in order. And Ms. Cuthbert had a concern about some of

the repairs, which I can agree with that, minor repairs.

But I think the day care should be open. Whenever we have someone open a day care in Ward 8, we need it and I hope they can get it opened and get the zoning for the addition. Very good. As a matter of fact, I used to date someone who lived in that building. It looks better now than it did when he was there.

(Laughter.)

So the building is pretty well kept.

CHAIRPERSON GRIFFIS: Excellent. And I think that meets the requirements of 205.17. Any personal contact with the building and does it look better? That's actually not serious.

But we appreciate that and good comments and obviously it shows there's a direct knowledge and that's exactly what your role in the ANC and representing the community is.

Ms. Miller?

VICE CHAIR MILLER: I just wanted to ask you, if you didn't mind, saying what repairs you thought they needed?

(Pause.)

Would you say that in general the facility

was in good condition and these are just very minor repairs that aren't worth bringing to our attention?

MS. SEEGARS: It's basically cosmetic. It's not like they need a tub and toilet. It's something like a little carpet here or there, new carpet, maybe a coat of paint here and there. That's what I can say. That's all I can say.

VICE CHAIR MILLER: Okay.

CHAIRPERSON GRIFFIS: Excellent. I think it's pretty clear that they don't rise to the zoning issues and obviously would be beyond our jurisdiction, although we're very concerned about it, but there would be the applicable building code which would have a review of that and enforcement of it, not to mention I think it would be stronger to have the ANC members who testified today to enforce it. And that has been given to us as evidence.

Let's move ahead. Any other persons present today to give testimony and evidence in Application 17280, either in support or in opposition?

Not noting any other individuals that are present today, why don't we turn it over to the Applicant for any closing remarks they might have.

MR. SPIKES: In closing, we would like to make sure that these exhibits get into the record,

however you might want to mark them. They're photographs.

CHAIRPERSON GRIFFIS: Excellent. Right, of the affidavit posting. Perfect.

Did you provide Ms. Bailey with copies of that?

MR. SPIKES: I can now.

CHAIRPERSON GRIFFIS: Why don't you do your closing and then we'll get to that.

MR. SPIKES: The closing is I appreciate being here, I appreciate your concern. I appreciate the questions you asked. I think those questions are good to make us better child care providers and I appreciate this whole process because it makes me feel comfortable that things are done correctly and eyes are watching and vigilance is the best policy for assurance of quality. So thank you very much.

CHAIRPERSON GRIFFIS: Good, thank you very much. And I think those are excellent remarks.

What I'd like to do, Board Members, is set this for decision making on our first public meeting in March which is the first of March, Tuesday. That's, of course, when we have our public meetings for any applications that we've heard and the Board deliberates on.

I'd like to keep the record open for several things. And that is, first of all, if you could just provide a scaled, a simple drawing of the site plan that shows the building and where you're proposing to put a parking space. On that same drawing you could indicate where the trash area is and where your enclosure is and you could be as simple as just a written note on the drawing of what that enclosure is. So for instance, as you said, it's a wooden enclosure, if it's a couple of lines that show a wooden enclosure, five feet high. That way when it has to be here, you testified to it and that would make it very clear. And then on that drawing also I think it would be appropriate for any proposed landscaping that you are going to provide, in response to the condition that the Office of Planning is recommending to be attached to this order.

Likewise, the Certificate of Occupancy, you were going to put in. The record will stay open for that.

I will keep the record open, if you want to respond to any proposed conditions or provide proposed conditions. At this point, I would set a level of understanding and I think the Board is looking an approval of five years, the number of staff

and teachers would be as advertised would be 14. Children's ages would also be as advertised which is six weeks to five years. There would be no more than 70 children on site at one time and enrollment would be up to 70 children. Operation, would also be as indicated.

I think that the center would provide trash removal, a minimum of two per week. It would also be a proposed condition that we'll deliberate on. And that's -- I think those are pretty much the big highlights. So my point is, if you take that as a benchmark, you can either comment on that you're not proposing that and the reasons why it wouldn't be appropriate or vice versa.

Ms. Miller?

VICE CHAIR MILLER: You may have just said this, but I just also want to explain that when we're considering conditions, it would be helpful to us if there's a rationale for the condition. For instance, if we're considering 70 children, then the rationale that you could provide is to why the space is big enough to accommodate 70 children, just as an example. So that we're not just picking -- it's not an arbitrary thing that we're doing.

MEMBER MANN: Mr. Chairman, one other

thing I would request subject to your concurrence is some clarification on the level at which they're operating right now. The application has several different numbers ranging from 29 children to 44 children, that they're currently operating with. And I'd appreciate some clarification on what true number is and how it breaks down currently versus the proposal.

CHAIRPERSON GRIFFIS: Excellent. I think that's very clear what Mr. Mann is asking, just succinctly say how many students are currently enrolled and how many students or children are on site at one time.

You can just put that in the record, but go ahead.

MS. McLOYD: Currently, we have enrolled 31 children at the site, 541 Newcomb Street. We have 31.

CHAIRPERSON GRIFFIS: Okay. Mr. Mann, follow up?

You pulled the number of 44 and I remember seeing that also. Where was that from?

MEMBER MANN: Forty-four is a number that I've seen in the District Department of Transportation report, but I don't know if it's referenced anywhere

else. One of the Applicant's submissions indicated that there were 39 --

CHAIRPERSON GRIFFIS: I thought it was 31.

MS. McLOYD: We're licensed for 39. We currently have enrolled 31.

MS. CANNON: I don't want to speculate. You said 42?

MEMBER MANN: The DDOT report indicates that there's a current level of 44 children.

MS. CANNON: That may be the C of O that we don't have in our file that they're going from. It may be somewhere else.

CHAIRPERSON GRIFFIS: Let's go right to Mr. Mann's original question because obviously that's our whole point. We've got so many different numbers. Where is DDOT getting this number. So give us current operating conditions and address any other numbers that we may have.

Anything else, Board Members? Very well, we'll step through the schedule of when those need to be submitted, what we're doing, and then I'll ask you if there's any questions I can answer to clarify the muddleness that we've provided.

Ms. Bailey?

MS. BAILEY: Mr. Chairman, February 21st

-- that's a holiday. February 22nd -- the 21st, if I'm not mistaken, is a holiday. So the 22nd of February.

CHAIRPERSON GRIFFIS: Excellent. Any difficulties in meeting that date for submission of that documentation?

MR. SPIKES: None whatsoever.

CHAIRPERSON GRIFFIS: Any clarification I can provide in terms of what the record is open for?

MR. SPIKES: I think you've been very clear.

CHAIRPERSON GRIFFIS: Good. I'm not always, so it wouldn't be surprising if you said that otherwise. Very well, and that's a case we'll look for those submissions. In February, we'll set this for the morning session and you, of course, are welcome to be here. You're not required. There wouldn't be any other additional information that the Board would hear, any other testimony. It will be the time when the Board deliberates and makes its decision.

So if there's nothing else I can answer, thank you very much. Appreciate you coming down and spending all this time with us and let's -- we're just going to take a very brief break, five minutes and

then we'll get to the last case in the morning and we'll get through that very quickly.

Thank you.

MR. SPIKES: Thank you.

(Off the record.)

CHAIRPERSON GRIFFIS: Very well, let's resume and move on to the next case.

MS. BAILEY: That is Application No. 17281, of Power Fuel and Transport LLC, pursuant to 11 DCMR 3104.1, for a special exception to re-establish a gasoline service station under subsections 743.1 and 2302.1. The property is located in the C-3-A District at premises 4675 South Capitol Street, Southwest, Square 6274, Lots 1 and 4.

Mr. Chairman, there seems to be some confusion with the address of the property, so perhaps that needs to be clarified at some point.

CHAIRPERSON GRIFFIS: Excellent, thank you. Very well. Let me ask, are there people that have shown up that have not been previously sworn in? You just raised your hand. Excellent. If you wouldn't mind, if you could stand and give your attention to Ms. Bailey and she's going to swear you in.

MS. BAILEY: Please raise your right hand.

Do you solemnly swear or affirm that the testimony you will be giving today will be the truth, the whole truth and nothing but the truth?

(The witnesses were sworn.)

MS. BAILEY: Thank you.

CHAIRPERSON GRIFFIS: Excellent. And is there Mr. Rashid and associates?

Sir, if you wouldn't mind coming forward and having a seat at the table in front of us and the representative and the Applicant, they're present, correct? If they wouldn't mind coming forward and having a seat.

Yes, you can put your witness cards to the reporter.

(Pause.)

Are you submitting into the record? Anything submitted into the record will go to Ms. Bailey at the far right. She'll put an exhibit number on it and then it will be distributed. You'll need to give her enough copies to be distributed.

(Pause.)

Okay, gentlemen, pull up extra chairs if you need. I imagine I'm going to free up the table for all of you, but have a seat now.

MR. YUEN: I'm Koo Yuen. I'm the one at

issue in this application. We, the Applicant, we just wonder what Mr. Rashid --

CHAIRPERSON GRIFFIS: Indeed, and that's going to become evidence in a matter of moments. Have a seat and make yourself comfortable. You can be right at the table, please.

MR. YUEN: Thank you.

CHAIRPERSON GRIFFIS: Mr. Rashid has requested party status in this case. Are you aware of that?

MR. YUEN: No, we have not been served with notice.

CHAIRPERSON GRIFFIS: Excellent. What we're going to do is have you introduce yourself, your name and address for the record.

MR. YUEN: My name is Koo Yuen. I'm the co-manager of Power Fuel and Transport LLC.

CHAIRPERSON GRIFFIS: And your address.

MR. YUEN: Address is 4650 South Capitol Street, S.W. Mailing address is P.O. Box 9492, Washington, D.C. 20016.

CHAIRPERSON GRIFFIS: Excellent. Mr. Rashid, would you mind introducing yourself for the record?

MR. RASHID: My name is Fred Rashid. I'm

the owner.

CHAIRPERSON GRIFFIS: And your address?

MR. RASHID: 321 Indian Head Highway, Oxen Hill, Maryland.

CHAIRPERSON GRIFFIS: Is that your residence or is that your business address?

MR. RASHID: Business address.

CHAIRPERSON GRIFFIS: That's your business. And with you, you're represented today?

MR. DEVER: My name is Jerry Dever. I'm a consultant for Mr. Rashid. I reside at 121 Blackfoot Drive in Arnold, Maryland.

CHAIRPERSON GRIFFIS: Okay. Two things, could you turn off your microphones, not yours, I'm talking to you.

You get to keep yours on.

MR. DEVER: Thank you, sir.

CHAIRPERSON GRIFFIS: You indicated you're a consultant?

MR. DEVER: Yes sir.

CHAIRPERSON GRIFFIS: Are you representing him today?

MR. DEVER: Yes, sir. I'm speaking on his behalf.

CHAIRPERSON GRIFFIS: Okay. Let's go

through this. Board Members, do we have initial questions, first of all?

Let me take it up, one of the critical aspects of an application for party status, clearly, there's two ways to be involved in an application. Of course, these are public hearings. Any one, any person, no matter who they are are able to come and give testimony into any case that's before us. Of course, I will direct whether it's germane to the case presentation and a person is allowed three minutes in every application and they provide testimony.

If you are a party, of which Mr. Rashid has indicated that he is interested in becoming, a party is a full participant in the case before us. That means that they are asked to present any sort of filings, additional information that we might ask the Applicant. They are also able to conduct cross examination. There's a time period in our hearing, as you recall, in my opening, where you will do a full presentation of a case. It's a much higher threshold, it's a much higher responsibility involved in being a party.

One of the critical aspects of establishing party status, of course, are laid out in our regulations and for me it is how you would be

significantly, distinctly or uniquely affected as opposed to that of the general public.

Can you indicate to me in your written submission, it was not clear, how you would be uniquely or significantly distinctly impacted or affected if this was to be approved?

MR. DEVER: Mr. Rashid, he has the existing Crown station which is within probably a 1,000 to 1,500 feet of the proposed Applicant's site.

CHAIRPERSON GRIFFIS: And why is that of import to us?

MR. DEVER: We feel there's already congestion along South Capitol, but we also feel as though the Applicant has circumvented the BZA Board insomuch as he has already constructed certain improvements on the site without BZA Board approval and --

CHAIRPERSON GRIFFIS: Isn't that impacting the entire city and our entire process?

MR. DEVER: That's exactly right.

CHAIRPERSON GRIFFIS: So that wouldn't necessarily rise to the level of you being distinctly or significantly uniquely impacted by whether they're appropriately going about or not, but I understand your concern and we share that concern.

You bring up initially though being in close proximity. Am I to understand that you're saying that with the -- if this was approved, Mr. Rashid would be distinctly impacted because there would be a rise in traffic difficulties that may impact his business?

MR. DEVER: I don't believe so.

CHAIRPERSON GRIFFIS: How is he impacted?

MR. DEVER: Well, I mean we don't feel there's an additional need for -- for an additional gasoline service station in that particular market.

CHAIRPERSON GRIFFIS: Why? What do you mean there's no need. You mean it will negatively impact him if there's more gasoline offered in the area and he will be uniquely impacted that way?

MR. DEVER: He will be uniquely and I think there will be some other testimony to the effect that other gasoline users within the market will be adversely impacted also.

CHAIRPERSON GRIFFIS: That's what I'm trying to get to. What's the adverse impact? Not being an oil man myself, help me understand this.

MR. DEVER: Adding an additional competitor to the marketplace --

CHAIRPERSON GRIFFIS: So there is a

business aspect.

MR. DEVER: No question. No question. But we just ask that he have to meet the same witness test that any other Applicant would have to meet.

CHAIRPERSON GRIFFIS: Agreed. And there is no contention there.

MR. DEVER: He seems to feel as though he can just get these things approved with a rubber stamp --

CHAIRPERSON GRIFFIS: Okay, without getting too far into testimony, let's keep it -- I still don't see even at that and very serious level, and it's a huge concern for this Board in every application, even child development centers.

MR. DEVER: Yes sir.

CHAIRPERSON GRIFFIS: I don't see how Mr. Rashid rises to the level of being able to be granted party status yet. I need something that there is a unique and distinct aspect to how it would impact him.

MR. YUEN: May I have the indulgence of the Board for a minute? May I ask a question at this moment?

CHAIRPERSON GRIFFIS: No, but I'm going to give you a full opportunity to respond, but I need to clarify exactly what we're talking about first.

MR. YUEN: Thank you very much, Mr. Chairman.

CHAIRPERSON GRIFFIS: Certainly.

MR. DEVER: Maybe that was our misunderstanding. We really just wanted the opportunity to speak before the Board, address our concerns.

CHAIRPERSON GRIFFIS: Okay, so you want to provide testimony, not necessarily a full-blown case with cross examination.

MR. DEVER: That's exactly right.

CHAIRPERSON GRIFFIS: Absolutely perfect, there's no problem with that. We will obviously call you fifth in our chronology for persons in opposition to the application and we'll afford you some time at that point.

MR. DEVER: Very good.

CHAIRPERSON GRIFFIS: Thank you very much.

MR. DEVER: Thank you.

CHAIRPERSON GRIFFIS: In that case you can make yourselves more comfortable in seats that you can pick yourselves.

To that, let's go to the Applicant. There's no need to respond, of course, because the application for party status has been withdrawn,

unless you feel that there's a need to address the Board on that issue.

MR. YUEN: Just to clear the record at this moment, contrary to what the Applicant tried to establish here, we do have a valid building permit that was issued --

CHAIRPERSON GRIFFIS: Okay, and we'll get to that because I think it's an important point --

MR. YUEN: And also, the party of interest, their location is not within the jurisdiction of District of Columbia, it's in P.G. County or Maryland, so therefore --

CHAIRPERSON GRIFFIS: You find that precludes us from granting a party status?

MR. YUEN: We believe that this is a District of Columbia matter at this moment, Mr. Chairman. We are serving the interest and the welfare of the citizens of the District of Columbia.

CHAIRPERSON GRIFFIS: You're close to the border, aren't you?

MR. YUEN: No question about that, Mr. Chairman.

CHAIRPERSON GRIFFIS: It's a moot issue because of party application.

MR. YUEN: Thank you very much. I just

wanted to let my position be known.

CHAIRPERSON GRIFFIS: Good. I'm going to turn it over to you for the beginning of the presentation of the case, but I need two things answered first. What is the exact address of this site?

MR. YUEN: The exact address in our opinion is 4675 South Capitol Street, Southwest, which conjoined with another address on the site in the square, number is 6274.

VICE CHAIR MILLER: I'm sorry, 6274?

MR. YUEN: Square 6274.

VICE CHAIR MILLER: Oh, Square 6274. Thank you.

CHAIRPERSON GRIFFIS: And you say in your opinion, what's your opinion based on?

MR. YUEN: My opinion is based on that the record shows that the premise was used for service station and that's a lot that --

CHAIRPERSON GRIFFIS: But specifically, where do you get that address you said?

MR. YUEN: That address is based on our Certificate of Occupancy.

CHAIRPERSON GRIFFIS: Tax records?

MR. YUEN: Absolutely tax records.

CHAIRPERSON GRIFFIS: So we'll move ahead. Also, I want to get this cleared up and you can present it, if you have, but the Office of Planning's report indicated that they were unable to render a recommendation because they needed a plan that showed dimensions of the parking spaces, lighting, signage, traffic movement, circulation, landscaping. Are you prepared to present that today?

MR. YUEN: Yes, I will reserve my statement. I'd like to yield this to our architect, Jeffrey Way.

CHAIRPERSON GRIFFIS: That's fine. You're prepared to go through all of this today?

MR. YUEN: Yes, absolutely.

CHAIRPERSON GRIFFIS: Excellent, let's begin.

MR. WAY: Good morning, for the record, Jeffrey Way, principal architect of A Plus Architecture located at 2137 Espey Court, Suite 4, Crofton, Maryland 21114. Telephone number being 301/261-3121.

Good morning, Mr. Chairman, Members of the Board, the public, in general. In 2004, I believe in spring of 2004, I was hired by my client, Power Fuels and Transport to prepare plans for the installation of

new tanks and new pumps for a gas station at 4675 South Capitol Street. My client provided me with a Certificate of Occupancy, dated 1976 which I submitted as part of my application materials, Certificate of Occupancy No. B100638, dated December 7, 1976 for a gas station at 4675 South Capitol Street, Southwest.

I was also provided with another Certificate of Occupancy, vis-a-vis, I guess the change of ownership to Power Fuels and Transfer, Mr. Koo Yuen and that was dated 9/29 2003. So I had two pieces of background documentation prior to that appeared to have been valid prior to my having been hired to put together plans showing new tanks and new pumps at this location.

I prepared plans showing new tanks and pumps at this location, submitted the plans to DCRA at the Building Permit Center at 941 North Capitol. Having gone through that process of application and having the plans reviewed at every known level at that time we were issued a building permit, Building Permit Number B463152 for 4675 South Capitol Street, the address being consistent with the 1976 C of O and the 2003 chain of ownership C of O and this permit was issued to Power Fuels and Transport, LLC.

The scope of the work was new pumps and

tanks at gas station per plans. And the zoning was C-3-A. We were issued a building permit and to the best of my knowledge, after I turned the plans and permit over to the client, work was commenced.

That concludes my initial testimony. Thank you very much.

CHAIRPERSON GRIFFIS: Thank you.

MR. WAY: May I add sort of a --

CHAIRPERSON GRIFFIS: It's your case.

MR. WAY: In response to -- Mr. Chairman, in response to your mentioning that the Office of Planning was unable to issue a report or referral, whatever, at this time, I did receive a communique from Mr. John Moore, a very fine gentleman. We had a great meeting. His communique came to me by way of fax on January 26, 2005. There were about seven or eight bullet points that he highlighted. Subsequent to my receipt of this, I did miss a couple of phone calls, I apologize for that, a logistical problem, but I did prepare a site plan which I felt addressed all of the relevant points and I transmitted that personally to the Office of Planning last Thursday or Friday. So that I trust did reach him. I left it with the receptionist on the third floor of 801 North Capitol.

CHAIRPERSON GRIFFIS: And we care a little bit about OP, but more about us. Do we have that site plan?

Did you submit it into the record?

MR. WAY: It was actually requested after our application materials were submitted.

CHAIRPERSON GRIFFIS: So it's not in the record at this point. Do you have copies of it?

MR. WAY: I don't think I have a copy with me today, unless -- I presume that Mr. Moore might have that. I perhaps made a bad presumption.

The bullet points that Mr. Moore mentioned, "Dear Mr. Way, I received your site and landscaping plan at approximately 2 p.m. which I requested Friday, January 21, 2005. The requested materials were to demonstrate the following: (1) the dimensions and location of the 12 parking spaces; (2) the location and type of lighting; (3) the location and type of signage; (4) traffic movement plan for the property; (5) the type of trees, shrubs and other planting to be on the site; (6) any screening materials that may be used; (7) the location of the dumpster and any other relevant information regarding the proposed gasoline service station."

Now back to today, the plan that I issued

and left at the office at 801 North Capitol, Third Floor, which visually Mr. Moore just provided to the Chairman, I presume, depicted parking spaces, 12 of which are -- and the dimensions are noted thereon. A note was added to the plan to indicate that the location of the lighting was to be the underside of the proposed overhead canopy. Number three, I did not make a notation of signage. There's already signed pylon out front. It was not under my task order from my client to put a price sign on that existing pylon, but I presume that could be a separate task order.

I did not provide a traffic movement plan for the property. There is an existing code conforming driveway and curb cut which I presume, if it's adequate for present use, ideally it's adequate for the proposed use of the gas station.

In terms of landscaping, there was a number of areas on the site which are already green space and so I did not show any additional or any intensification of green space on my plan.

On my plan, however, I did show a dumpster behind the building and have indicated a site type fence and gate assembly should be erected around it. And so I do feel that although it may not have come within the time frame, it was sort of back and forth,

just sort of making sure we had it just right. I do feel that it has been provided. Thank you.

CHAIRPERSON GRIFFIS: Good. Are you aware of what is being proposed as the traffic flow? I mean one would assume -- let me just start our discussion here, that the automobiles are coming off of South Capitol Street and entering the site. Is that correct? Are they then directed to exit the same way or are they continuing through the site and on this site plan that's been submitted continuing down an asphalt drive and if so, then where does that asphalt drive go to and how does it exit back out?

MR. WAY: Okay, there are a couple of -- there are two distinct means of ingress and egress, vehicular ingress and egress to the site. Again, there's an existing conforming paved apron and driveway which exceeds the 20 foot or the 22 foot minimum requirement for two-way traffic. I think it's around 25 feet. That is adequate for ingress and egress as a two-way driveway. So we believe --

CHAIRPERSON GRIFFIS: That's the one off of South Capitol?

MR. WAY: That is correct, sir.

CHAIRPERSON GRIFFIS: Okay.

MR. WAY: And then the property sort of

has what we would call maybe a dog leg which protrudes, if you're looking at the site plan, as we've oriented it, it protrudes and goes behind with what is now known to be the bank property and then terminates at sort of a projection, if you will, of I believe Southern Avenue. So that also presents another opportunity for ingress or egress. And that alignment actually brings the vehicular traffic to the control for the traffic light intersection of Southern Avenue and South Capitol Street.

CHAIRPERSON GRIFFIS: Getting to that intersection, is that -- it looks like it's a proposed street, but it isn't a street yet?

MR. WAY: It is a street. Like many streets in Washington, D.C. if they're in sort of areas or corridors where it's sort of a forgotten section of the city, it's not as improved as it needs to be in other areas. My own experience anectdotally tells -- I can share with you. I did a project on Michigan Avenue many years ago and as much traffic as there is on Michigan Avenue, there was actually no curb, no gutter, the asphalt just rolled right into grass.

CHAIRPERSON GRIFFIS: Right, right.

MR. WAY: And you had not even a public

sidewalk. So it's along that level of improvement.

MEMBER ETHERLY: Is it technically a continuation of Southern Avenue?

MR. WAY: It absolutely is.

MEMBER ETHERLY: Okay.

MR. WAY: It's just not kept up very well.

CHAIRPERSON GRIFFIS: Right.

MR. WAY: By the city, I might add.

CHAIRPERSON GRIFFIS: Indeed, so at this point, there is no proposed landscaping on the property?

MR. WAY: Other than the existing green space areas which are raised and curbed.

CHAIRPERSON GRIFFIS: Okay. And the green space is some of which are off the property, but would be maintained and some of which are on. When you say the green space, what's being proposed for those, just grass?

MR. WAY: In my mind just in terms of discussion, the green spaces can be augmented with conifers or deciduous trees or shrubs of any type.

CHAIRPERSON GRIFFIS: Excellent.

MR. WAY: Just to add to the beautification.

CHAIRPERSON GRIFFIS: We're going to cut

to the chase because discussions are nice, but what we need is definitiveness and obviously under 706.5 we'd love to see it, but the Board is given full jurisdiction of design to review. So obviously it's better for us to understand what you're proposing, what you think you can do.

MR. WAY: Let me answer, Mr. Chairman, by saying that it was our thought initially that what we were coming in here to do was to satisfy an administrative procedure. We were advised by the Zoning Administrator whose position is now filled in DCRA by Mr. Bellow that we should go to BZA for the administrative reasons and etcetera, etcetera.

My thought initially is that the plans that serve as an exhibit for our presentation should be relegated to simply the building permit set of plans which is why we've submitted 20 sets of that along with our application.

CHAIRPERSON GRIFFIS: What you're saying is what the Board should look at is just the permits?

MR. WAY: Well, just by virtue of Mr. Moore and his excellent consultation, letting us know as to whether you should show this or that, that's the only reason we've even created an additional document.

CHAIRPERSON GRIFFIS: I see.

MR. WAY: We thought this was basically an administrative procedure, yes.

CHAIRPERSON GRIFFIS: Well, let me clarify because this is more than an administrative procedure. And secondly, going straight to the regulations, the regulations stipulate requirements for us to grant relief for you to have this expansion. And as I said, one of them is the Board may impose requirements pertaining to design, appearance, screening or lighting or any other requirements it deems necessary to protect the adjacent and nearby properties.

There is additional pieces that go through the entire regulations of 706 which we're going to walk down. But quite directly, so we don't waste a lot of time we'll just ask you for a definitiveness of what you're proposing, we'll address that and whether we find it sufficient or not and we'll require either additional documentation or we'll require additional aspects to be added to this application in order to make it successful or quite frankly it would be denied.

Let's open it up to any of the other quick questions at this point, otherwise, we'll get you -- why don't we let you proceed for your full case presentation.

MR. WAY: We believe that the reestablishment and again, please pardon me if there are any terminology or any semantics that don't jive in with what actually --

CHAIRPERSON GRIFFIS: We're not big on formalities, just regulations.

MR. WAY: Well, the Chairman took issue with my term "administrative proceeding" so that's why I want to throw that out there.

Be that as it may, we fine, we believe that the reestablishment of this gasoline station is provided for in the zoning code in DCMR 11. I have had for my purposes the background documentation that I needed to proceed on the basis that I'm just designing new tanks and new pumps at the site of an existing gasoline station or previous or former or whatever is the right term.

We believe that the property met the burden of proof. It's not within 25 feet of a residence. It's separated by a street, publicly-owned land surrounds the property on a side or two. We don't believe that it adds to the impact of traffic. So we really feel that it was relatively straight forward insofar as the technical matters were concerned.

Excellent. Anything else?

MR. YUEN: Yes, I'd like to --

CHAIRPERSON GRIFFIS: Turn on your microphone.

MR. YUEN: Thank you, Chairman.

CHAIRPERSON GRIFFIS: Sure.

MR. YUEN: I'd like to yield my time at this moment to Mr. Ted Beck who is my construction manager and he has a lot of input in this matter because of his knowledge of the entire project from the beginning to the end.

MR. BECK: The application, I met with Mr. Bellows during the initial questions and as was said earlier, the permits on this project are still active. I just want to let you know up front. The basis of the reestablishing existing use, I think was because the use under 7431, special exception for a 3-C District, a gas station established in a C-3 before 1985 was not required, unless it was enlarged. The building has not been enlarged. The six fueling points have been put into the plans and new underground tanks have been installed for this project.

7431 reflects back to 3104 zoning, under 3104 and provisions under 706 in Chapter 23 which we

meet all, everything falls back to based on what the zoning regulations say, back to 706 which meet these standards and you shall proceed to C2, C3. They all reflect back to 706. The station as the C of Os demonstrate is that the station was established prior to 1985 so the conformity rights for the station in that district through zoning did conform and do to today.

As a matter of fact, the lot, the plats for 6274 for that go back to 1958 which falls back to the C1 establishment. On the 1958 map that 6274 was conformed as a gas station for the use in this district.

CHAIRPERSON GRIFFIS: So you're saying, if I understand you correctly under 743.1, that you're neither establishing or enlarging an existing gas station that would be established or enlarged after 20th December 1985.

MR. BECK: 1985, that's correct.

CHAIRPERSON GRIFFIS: So there's an existing C of O for a gas station continuance?

MR. BECK: Yes.

CHAIRPERSON GRIFFIS: It's always been a gas station. It's never been anything else.

MR. BECK: The lots -- the building has

been used for other things, but the lots have never been used for anything, the two lots, 1 and 4, which were subdivided or partial still owned under 6274 by the same owners.

CHAIRPERSON GRIFFIS: Was it a functioning gas station for the past 10 years? Past three years?

MR. BECK: No. No.

CHAIRPERSON GRIFFIS: So it wasn't.

MR. BECK: It wasn't a functioning gas station, but it was a conforming site for the use of a gas station.

CHAIRPERSON GRIFFIS: We understand that. So the reason why perhaps you've been referred by the Zoning Administrator is the fact that that establishment lapsed, I can only assume, but why would he send you here? He's a knowledgeable person of the regulation.

MR. BECK: Right.

CHAIRPERSON GRIFFIS: So even if you look at 843.1 and then you're referred back to 706 of which that section refers to and it goes to establishment or enlargement after May 1958, but even those dates, the most current dates are what's most critical. When was the last time it operated as a gas station, what was the year?

MR. BECK: I think the way it was understood, it was the late 1990s when it was last.

CHAIRPERSON GRIFFIS: Are you making the case that you shouldn't be here?

MR. BECK: Yes.

CHAIRPERSON GRIFFIS: That's all right. It's worth pursuing.

MR. BECK: If I can say, Mr. Chairman, if the lots for the zoning requirement, based on all their investigations, based on the 1958 map which refers back to a gasoline establishment after May 12, 1958 shall be permitted in a C-1 District as a special exception if approved by the Board. But prior to -- on the '58 map, I think the permit was issued based on the fact that this site was a conforming site. It was never a nonconforming so it wouldn't -- its discontinuous as would not apply.

CHAIRPERSON GRIFFIS: Why?

MR. BECK: For three years, because it was never nonconforming. It was always been conforming in that District to have that C-3-A, to have that gas station here on that 6274 parcel.

CHAIRPERSON GRIFFIS: You're saying it's always been a matter of right use on that site?

MR. BECK: Yes.

CHAIRPERSON GRIFFIS: Do you have a C of O that's been submitted into the record?

MR. BECK: Yes sir.

CHAIRPERSON GRIFFIS: Let's get that in front of us, shall we?

And what's the last one? This one was issued on 2003, correct?

MR. WAY: It was the prior one. The prior C of O, Mr. Chairman, was 1976.

CHAIRPERSON GRIFFIS: They're all in front of me here.

MR. BECK: Then there was none on record for anything prior to that other than the zoning map establishing that 6274, 1958 actually is written on the zoning map a gasoline service station for that district.

Under 2005.1 for discontinuation, it says that -- you have that? Okay.

VICE CHAIR MILLER: I might have missed your point about why it was a conforming use.

MR. BECK: It was always conforming use for C-3-A in that district from 1958 forward and it would only fall as a nonconforming and fall under the discontinuation if it became a nonconforming property which means that after 1958, if it was not approved in

the C-3-A district the way it was -- I was to understand it, that it would not be able to be re-established unless it came before the BZA. But in a C-3-A, under the guidelines for zoning, and C-1, C-2 and C-3, they're all permitted, based on certain criterias. A C-3-A, being before 1985, if it was established in a C-3-A, but it refers back to 706 which sort of gives it a criteria to meet these, not within 25 feet, not within certain impacts to the community or based on what's read in 706.

If it's required that it come before the Board, these criterias would be met. We're trying to establish that this property has always been conforming since 1958. It's always been an approved lot to establish a gas station, the property has always been since 1958.

The Shell station across the street in 1958 was not approved. The Exxon up the street was not approved in 1958. This lot has always had a gas station on this parcel.

VICE CHAIR MILLER: Was this lot subject to a BZA order ever?

MR. BECK: No.

VICE CHAIR MILLER: Could you also bring to our attention which regulation it falls under as

being conforming in the district that it's in.

CHAIRPERSON GRIFFIS: 743.1 goes to uses in the C-3 and a gas station/service station established after 20 December 1985, a repair garage in C-3 or mechanical would be subject to a special exception under the provisions of 706. 706 goes to the fact that would it actually -- goes all the back to 1958, the point being you're saying is that this has always been as your description, this has always a lot conforming based on the District's --

MR. BECK: Regulations.

CHAIRPERSON GRIFFIS: Regulations.

MR. WAY: And what their records show.

CHAIRPERSON GRIFFIS: But their records of a Certificate of Occupancy.

MR. BECK: For '58, there's nothing.

CHAIRPERSON GRIFFIS: Right. We know that.

MR. WAY: It's also substantiated by its presence on the Bates survey map that shows it as a gas station back in the mid-20th century.

MR. BECK: In '58 --

MR. WAY: It's enjoyed a history of being a gas station.

MR. BECK: The May 1958 map that the

Zoning Department uses to issue based on criteria.

CHAIRPERSON GRIFFIS: We've got a long history.

MR. BECK: Yes.

CHAIRPERSON GRIFFIS: But the current history then goes to 2005.1 and although there may be a Certificate of Occupancy . Once the nonconforming use of the structure land, except for government action impedes access to the premises for a period of more than three years, shall be construed as a prima facie evidence of no intention to resume active operation as a nonconforming use, meaning it lapses.

MR. BECK: If it became a nonconforming use. If after 1958 --

CHAIRPERSON GRIFFIS: It would be a nonconforming use if you had to have a special exception for it.

MR. BECK: That's what I'm saying. If it was established in 1958, it wasn't required to have a special exception.

CHAIRPERSON GRIFFIS: Yes, but now it is.

MR. BECK: Only if it's established after 1958.

CHAIRPERSON GRIFFIS: Right, and if it

hasn't been used in the past three years, it has discontinued its existing nonconforming use.

MR. BECK: Well, in 1976, it was conforming.

CHAIRPERSON GRIFFIS: But in the past three years, it hasn't been in operation.

MR. BECK: But the discontinuation refers to nonconforming.

CHAIRPERSON GRIFFIS: It is nonconforming.

MR. BECK: In 1976, it wasn't nonconforming.

CHAIRPERSON GRIFFIS: Yes, but now, it's nonconforming.

MR. BECK: Because of --

CHAIRPERSON GRIFFIS: Because of our regulations.

MR. YUEN: Mr. Chairman, may I address this, just shortly?

CHAIRPERSON GRIFFIS: Sure.

MR. YUEN: The way we read the nonconforming would be something like a grandfather which like an R-4 used to be a gas station there before zoning, however, that use is continuous until somebody either stops using it or it burns down or whatever the case may be. And therefore forever will

be gone.

But our case here before the Board is that we maintain that the use has been established and we're not enlarging it. We're not doing any changes other than --

CHAIRPERSON GRIFFIS: What does it mean to be established?

MR. YUEN: I beg your pardon?

CHAIRPERSON GRIFFIS: What does it mean? You said the use has been established.

MR. YUEN: We have been asked by the Zoning Administrator to come to this because of --

CHAIRPERSON GRIFFIS: I know, but you say that the use has been established. What do you mean by it's been established. It's been in operation or --

MR. YUEN: It's been established continuously from the record which is 1958, 1976 and before 1985 and --

CHAIRPERSON GRIFFIS: How was the business established then?

MR. BECK: Established in being that the property has always been a conforming use, without falling outside of regulatory after 1958 and any amendment therefore.

CHAIRPERSON GRIFFIS: This is what I see. I see the fact that there may have been before zoning regulations this was allowable use.

MR. BECK: Right.

CHAIRPERSON GRIFFIS: But then again everything was because we didn't have any regulations that precluded defined uses.

Clearly it went through any other iterations, in fact, as you're saying it went from a different zone. It was rezoned. There was a map amendment. All those pieces of which there would be, have been changes to our regulations would have grandfathered any existing condition. That existing condition does carry through all the way up to the date that that operation stops, meaning it no longer is in operation. You can't go in there and buy gas. That day starts a clock. That clock ran and if three years pass, that existing now nonconforming use is discontinued. It is no longer an existing nonconforming use. It's a nonconforming use under special exception.

MR. BECK: I guess the Zoning, the way we interpreted it and based on the way it was written because it doesn't specifically give that type of guideline other than the phrase of discontinuation

because of nonconforming. Nonconforming, we were told that if it was grandfathered in, it was grandfathered, but it could have been nonconforming, but grandfathered.

CHAIRPERSON GRIFFIS: That's true. Your grandfathering aspects lapsed.

MR. BECK: I know, but nonconforming being the station was sold to us as a conforming site.

MEMBER ETHERLY: It's not the site. It's the use.

MR. BECK: I meant the use. We bought as a conforming use. They pulled their stuff out. We had the option to put ours in. So you're saying that because they pulled the tank -- I think we had this discussion with Mr. Moore, if you pull the tanks out, you lose your right after three years? It becomes a nonconforming. That's not the way Zoning sees it or they would restricted this.

CHAIRPERSON GRIFFIS: That's all we're looking at is Zoning.

MR. BECK: I know, but do you understand what I'm saying?

CHAIRPERSON GRIFFIS: I do. I totally understand, but my problem is --

MR. BECK: I'm trying to get the

definition of a physical, nonconforming, nonconforming being that the site and the property is nonconforming. Nonconforming being any use of the land or structure, land or combination, lawfully existing at the time that the title or any amendment to this became effective.

CHAIRPERSON GRIFFIS: So you purchased this site. The last people, in order to probably deal with other laws and regulations pulled the tanks out. There was a permit to pull those tanks out. Is that correct?

MR. BECK: Yes.

CHAIRPERSON GRIFFIS: Was there continuous work for the past three or four years on the site?

MR. BECK: We needed to get money together, the customer had to get finances together in order to reestablish the use, to put the fuel facility back into place. And being that the property was always zoned for a gas station under C-3-A --

CHAIRPERSON GRIFFIS: I understand your argument.

MR. BECK: The conforming, I think that's just --

CHAIRPERSON GRIFFIS: I'm trying to figure this out for your benefit because I'm happy to break

for lunch.

MR. BECK: Right, right.

CHAIRPERSON GRIFFIS: But nonetheless, I don't see it yet. I'm reading very specifically 2005.1 and there's nothing else that's been provided that seems to be sufficient to move beyond that.

Mr. Etherly?

MEMBER ETHERLY: Just to be very clear, if I could. What was on the site for the three years while it was down?

MR. YUEN: We used the building to be a bank and the existing lot we kind of reserved that for the gas station. But let me clarify a little bit more on this nonconforming use of definition. Use lawfully in existing at the time of adaptation or amendment of this title that would thereafter request approval from the Board of Zoning Adjustment shall not be deemed as a nonconforming use.

CHAIRPERSON GRIFFIS: What are you reading?

MR. YUEN: I'm reading nonconforming use of the District of Columbia Code.

VICE CHAIR MILLER: What cite?

CHAIRPERSON GRIFFIS: Which regulations? Have a seat. We've got them all in front of us. What

are you reading?

MR. YUEN: 3104.

MR. BECK: It's not 3104. It's under definitions.

CHAIRPERSON GRIFFIS: 199.

MR. BECK: Yes, under definitions for nonconforming use. And nonconforming use shall be considered not conforming deemed and not conforming use shall be considered a conforming use subject to the provisions of 3104.2 and 3104.3. And then it refers to 3104.2 and 342 for clerical provisions.

CHAIRPERSON GRIFFIS: Okay. Ms. Miller, do you have definitive or do you have questions?

VICE CHAIR MILLER: No, I don't have definitive, but I would really like it if we could get the dates down so we know what we're talking about.

CHAIRPERSON GRIFFIS: This is the situation. We don't have any more time to spend on this. You've actually been referred to, this is not a self-certification your coming in and then you're telling us we don't think -- you've been referred by the Zoning Administrator here, so we have two options. Either you withdraw this application, actually appeal the Zoning Administrator's case in which you'll be bringing an appeal before us and we'll decide it which

is exactly where Ms. Miller is going is present your case of why you can't be here which is putting it into the form of an appeal, or we move forward with the application that we have today or you don't open a gas station. I mean I guess that's the third one.

MR. BECK: We've already got it built.

CHAIRPERSON GRIFFIS: Good, it's good to get options of the table. So now we're down to two options. So I put it to you again, do you want to bring an appeal of the Zoning Administrator's decision or do you want to present the application?

MR. WAY: Mr. Chairman, thank you very much. With all due respect, you made a statement earlier that your position or basically you saw this as a nonconforming use. Now Mr. Beck has now read into the record out of a District of Columbia document, DCMR 11 that the nonconforming use definition, with all due respect, we'd like to know the Board's position on whether it accepts and acknowledges DCMR 11's definition of nonconforming use because that serves as the predicate, if you will, the basis for what we're going to do at this point, at this juncture.

Unless we missed, it no disrespect intended, but we haven't heard that the Board's

statement regarding --

MS. GLAZER: Mr. Chair, I'm sorry to interject --

CHAIRPERSON GRIFFIS: Actually, I'm going to clarify that very quickly and then we'll hear from the Office of Attorney General.

Let me be totally direct here. We've given a lot more latitude than we should have in terms of answering questions about whether you should be here or not here. That's not our decision, nor does it have to be even our jurisdiction at today's point. Our Board, we can easily step in and say you shouldn't be here. We don't have to. The point is that the Zoning Administrator sent you here. That's enough for us. We need to ask no more.

But we've given enough time to really investigate this because there was some critical aspects to it.

I'm going to reread and I'll answer directly your question after I hear from the Office of Attorney General.

MR. WAY: Thank you.

MS. GLAZER: Mr. Chair, I'm sorry to interrupt before, but I thought it was important to point out that this application apparently was self-

certified. If you go to Exhibit 4, self-certified for special exception relief under Section 743.1.

MR. BECK: We were advised to do that from Zoning.

MR. WAY: We were instructed by the Zoning Administrator of DCRA to proceed on this level and on this basis and on this path.

(Pause.)

CHAIRPERSON GRIFFIS: Okay, let's go directly to your question. In looking at the definition of nonconforming use in 199 which refers you to 3104.2. 3104.2, I don't think there's any new information here in reading it. I think 3104.2 goes to an extension. It's the extension of the use, right? And in fact, then you go to the other regulations that actually talk about enlargements and this one does also talk about enlargement, an extension. What we still have to go back to is whether it was continuous. That's really what we're trying to find out. Is there a continuous use which didn't lapse.

What I've heard today is that there was always a provision and/or an existence of a gas station on this site. There was a period of which there was not a gas station in operation and that's

its current history.

I don't think I see anything definitively and I can hear from the rest of the Board that goes to any of the regulations that say once it was there, it can always be there. I think it's very specific as to what starts and what stops it.

So here's what I'm laying out again, as this is a self-certified now, my understanding. You presented that case that you should be here. Your option now is to continue and present the application for it, your application for relief. Or you can rest on this case, that you shouldn't be here and we'll tell you more documentation that we might need and then we'll set this for decision.

So it's up to you. Do you want to rest on this?

MR. BECK: I think you stated earlier in the previous ones that all the decisions made are based on public record for any information that's aroused by the meeting today, everything is based off of information that the D.C. government has.

CHAIRPERSON GRIFFIS: No, no, no. Let me be absolutely clear. That is absolutely not correct.

MR. BECK: Okay.

CHAIRPERSON GRIFFIS: Our decision will be

based on the record that's created before us today. It is a public record.

Now we could conceivably look at anything else in the universe that's on public record, but if you think we're relying on something that's out there, you will be mistaken because I can tell you we all have full-time jobs. We do this as volunteer basis.

MR. BECK: Right.

CHAIRPERSON GRIFFIS: We're not going and investigating our own stuff.

MR. BECK: Well, that's why we're here.

CHAIRPERSON GRIFFIS: So anything you want us to know, you make sure you point to it or put it into the record now. Okay, go ahead.

MR. BECK: We're not enlarging based on 3104.2 or extending, so we still are under the pretext that we shouldn't be here.

CHAIRPERSON GRIFFIS: Are you an extension of a gas station use? Are you extending the use?

MR. BECK: Were under the pretext that we have a C of O for an established use, conforming use.

MR. WAY: Mr. Chairman, by extending do you mean with regard to time or do you mean geometrically? Could you clarify what you mean by extending?

CHAIRPERSON GRIFFIS: What I mean is reading 3104.2 which is any extension or enlargement.

MR. WAY: We're not doing any physical enlargement.

MR. YUEN: Or extension --

CHAIRPERSON GRIFFIS: But you're extending the use.

MR. WAY: Well again, as long as we narrow the definition of extending to whether you mean geometrically or whether you mean on the calendar, there's a big difference. I contend that we applied for and the plans that we prepared be picked underground work, tanks and pumps. The only vertical projection is the pump itself and the canopy which is an accessory as a permitted use.

CHAIRPERSON GRIFFIS: Good and believe me we hear everything you've said already. So we don't need to say it again.

So again, what do we want to do today? Do you want to rest on this and we'll go through the rest of all the submissions into this record because we have to, it's our requirement and then we'll set this for decision making and what we're being asked to decide is whether you actually are required for relief or not or do you want to continue and actually present

a full-blown case.

MR. YUEN: Mr. Chair, I can only go back to the record of 1976 occupancy permit which requires six pumps --

CHAIRPERSON GRIFFIS: I understand.

MR. YUEN: And now we're doing six pumps. We're not enlarging or extending the use of the operation.

CHAIRPERSON GRIFFIS: Believe me, I fully understand, heard it.

MR. YUEN: Thank you very much.

CHAIRPERSON GRIFFIS: Well, what are you doing then? What are we doing?

MR. YUEN: What is our option again so we can clearly --

CHAIRPERSON GRIFFIS: The option is you rest right now and what you put before the Board is it is our decision whether you should be here or not or you continue and actually present a case for the relief, the special exception.

MR. YUEN: Can you indulge us a minute?

CHAIRPERSON GRIFFIS: Take two minutes. It's an important decision.

(Pause.)

MR. YUEN: Mr. Chair, we're ready for a

response and --

CHAIRPERSON GRIFFIS: I'm ready.

MR. YUEN: We're ready for a response and I yield the response to our architect, Mr. Jeffrey Way.

MR. WAY: Unfortunately, Mr. Chairman --

CHAIRPERSON GRIFFIS: Man, they put the heat on you, don't they?

MR. WAY: Yeah, I need to raise my rates. My response comes with just a little tad of a question. What is the outcome if it's determined that we really shouldn't be here today?

CHAIRPERSON GRIFFIS: What's the outcome?

MR. WAY: Yes.

MR. BECK: We shouldn't be here.

CHAIRPERSON GRIFFIS: I understand what you're saying. The Board has the discretion -- I'm going to say two things on this. The Board has jurisdiction, discretion to review an application, especially self-certified, but even with the Zoning Administrator and say there's additional relief required here or there's not the relief that's actually been requested.

Now I can tell you honestly on the record that my attorney, the Board's attorney, the Office of

Attorney General is saying that we actually are going into territory we shouldn't being an advisory board, that you're asking for us to review your case when it's actually you self-certified it. You basically looked at your site plans and your documents and said we need this relief. That's what self-certification is. Actually, you signed it, didn't you?

MR. WAY: Probably.

CHAIRPERSON GRIFFIS: I would not say probably. And your seal is on it. So in one sense, you know, listening to our attorney, we shouldn't waste our time with this.

So again, it's -- I'm a fair guy and want to do things straight forwardly and if we shouldn't be hearing an application, let's figure that out. But that's where I want to go because we actually have an afternoon session that's starting in 10 minutes and I'm going to need something to eat, otherwise I get cranky with everybody.

So that being said, where are we?

MR. YUEN: Mr. Chairman, we appreciate the Board's time and indulging in our presentation and it is our preference in the interest of time and everybody's welfare and whatever, the situation that have brought to light of our situation and do our

research. We'd like to rest at this moment.

So our decision is to rest.

CHAIRPERSON GRIFFIS: They're not withdrawing the application. They're making -- they've self-certified for a special exception and they've brought a case that they, in fact, are not required to have the special exception. I'll tell you what's going to move forward then. We will walk through the special exception case. We're going to hear from Office of Planning. We're going to hear from persons in opposition and in support. And also the ANC and then we'll go to conclusions. This should go pretty rapidly, obviously, but that's what we're going to pursue.

Worse case, we decide that you should be here and you haven't presented a case. Okay. Boy, is this going to be so confusing to everyone, here and watching.

MR. WAY: We believe we have presented a case. We believe that we stand on the regs and that's our case. We believe that we have no fancy footwork, no manipulations of the law or the text as it reads. We believe we're actually standing on the regulations. We applied for a building permit. We were issued a building permit. We feel that we were issued a

building permit correctly and we stand on the regs.

So we believe our case, in fact, has been made.

CHAIRPERSON GRIFFIS: That doesn't --

MEMBER ETHERLY: The concern here, Mr. Chair, if you're wrong, if you're wrong on that, then you're gambling that you're going to have another shot to bite the apple so to speak.

MR. WAY: The owner is willing to stand in that position. The truth is very easy. It's the other stuff that's complicated. The truth is very easy.

MR. YUEN: I believe, Mr. Chair, you gave us an option of either rest or withdraw the -- I mean your statement is simply -- said that we shouldn't be here. I mean --

CHAIRPERSON GRIFFIS: No, my statement never said that. My statement said -- I gave you an option. You could present a case almost in the embodiment of an appeal, present a case that you are required no relief or you present a case that addresses the relief that's required.

MR. YUEN: Maybe we totally -- I'm sorry, we may have totally misplaced the context of your remark when you directed us to consider the rest the

case otherwise. So we need to discuss this one more time, since we did not really know where we were going.

CHAIRPERSON GRIFFIS: Why don't you take two minutes.

Is the ANC here today? Indeed. Come on forward.

If you wouldn't mind, I just need you -- if you could pull up a chair? Actually, come on this side. Excellent, thank you very much.

It's Mr. Jordan?

MR. JORDAN: Yes.

CHAIRPERSON GRIFFIS: Good, if you wouldn't mind turning your microphone on, just give me your name and address for the record?

MR. JORDAN: My name is Absalon Jordan. I live at 4635 4th Street, Southeast, Apartment 2, Washington, D.C. Zip Code is 20032.

CHAIRPERSON GRIFFIS: And you wanted to address the Board?

MR. JORDAN: Yes. The question is do we have an opportunity to cross examine them in terms of what they stated up to this point? And I don't know where they're proceeding, but if they've finished what they were going to do, then we have some questions to

pose to them.

CHAIRPERSON GRIFFIS: Excellent. I didn't skip over that. I was waiting for the same answer to that question.

What are we doing? Don't go too far. They're going to give us that now and then we can go to cross.

(Pause.)

MR. YUEN: Mr. Chair, I have a question. Do the proponents on this matter get a chance to speak also? If we rest, they will not be able to speak?

CHAIRPERSON GRIFFIS: No, we have a special exception before us. So we're following that entire procedure. It's just how much you want to present.

MR. YUEN: So therefore, the proponents will be able to --

CHAIRPERSON GRIFFIS: Everybody.

MR. YUEN: Everybody opposed and not opposed.

CHAIRPERSON GRIFFIS: In fact, you're about to get cross examined on your testimony in your written submissions. And to be absolutely fair, this is what I would suggest you do, is put together a special exception case. You have it prepared in

written form. If there's anything else you want to highlight on it, put it in there. As a preliminary matter you've raised an issue of jurisdiction, whether this Board has jurisdiction to require you to seek relief.

We can address that either today or we can address that, I think, with time constraints we'd address that in our decision making on this. And then we'll move through and we'll get to this very quickly. We have the Agency reports. We have the ANC, then we'll go to persons to testify and then we'll go to conclusions.

MR. YUEN: One more question, proceeding to we continue to present our case, it is my understanding that the Board Members that are here today, will you rule on the -- whether we should be here or not, as our entire case, including our presentation?

CHAIRPERSON GRIFFIS: Yes. I'm prepared to take that up as an item in our decision making.

MR. YUEN: Okay, very well.

CHAIRPERSON GRIFFIS: We'll address it. I don't guarantee we're addressing it today.

MR. YUEN: Very well, Mr. Griffis, then I would like the choice -- I don't want to forfeit any

right that is being offered to our company at this moment. So I appreciate your wisdom behind this matter.

Thank you very much. We shall continue.

CHAIRPERSON GRIFFIS: Good, let's get to it then.

I think it's probably optimal in your presentation is to walk through 706 then and take each of the issues directly. I'll give some direction in terms of the time that I've taken of everybody here, but 706.3 indicates that the station would not be located within 25 foot of a residential district unless separated by a street or alley and that is the case of the documentation that's been submitted. Is that true?

Who is going to be answering these questions?

MR. BECK: Yes, that's true.

CHAIRPERSON GRIFFIS: Okay. So it is separated by an alley, is that correct?

MR. BECK: Street, there's no alley.

CHAIRPERSON GRIFFIS: It's not within 25 feet of a residential district?

MR. BECK: It's not within 25 feet of any residential district.

CHAIRPERSON GRIFFIS: Okay. And 706.4 indicates that the operation or the use shall not create a dangerous or objectional traffic condition. Is there factual evidence that you're providing that indicates that it would not create dangerous or objectional traffic conditions?

MR. BECK: I think that the layout pretty much is self-recognized you enter in one and you exit at the light and it relieves a lot of the traffic at South Capitol from crossing the street to the Shell station to -- all the gas stations are on the northbound side.

CHAIRPERSON GRIFFIS: It's right near a big intersection.

MR. BECK: Yes, it's at Southern and South Capitol and all the service stations are on the northbound side. So anybody from the south would have to go --

CHAIRPERSON GRIFFIS: Hold on, Mr. Etherly has a question.

MEMBER ETHERLY: Well, let's just continue with that because I think this is a piece that bears a little bit of exploration. It is your -- let's deal with what would be, I believe, eastbound traffic coming down South Capitol from the District of

Columbia, so heading into the direction of Eastover, you will use that as an landmark. It would be your intent that vehicles traveling eastbound on South Capitol Street would enter the subject property by or via that first curb cut, that first driveway, correct?

MR. BECK: The second curb cut.

MEMBER ETHERLY: Which would be at Southern and South Capitol?

MR. BECK: You're coming towards the District?

MEMBER ETHERLY: If I'm leaving the District --

MR. BECK: Oh, leaving the District, yes, it's the first one.

MEMBER ETHERLY: It would be the first curb cut.

MR. BECK: First curb cut --

MEMBER ETHERLY: And you would allow motorists to also, if they so chose, exit that same curb cut as well?

MR. BECK: Yes.

MEMBER ETHERLY: Okay, so I can enter and exit out of that same curb cut.

MR. BECK: Yes.

MEMBER ETHERLY: Additionally, I would

also be able to enter or exit off of that little roadway we talked about, Southern Avenue.

MR. BECK: Southern Avenue.

MEMBER ETHERLY: At the light controlled intersection. Come through the rear behind what is I believe currently the Bank of America branch.

MR. BECK: Yes sir.

MEMBER ETHERLY: Okay. Are you anticipating any signage, small or otherwise, to direct the flow of traffic?

MR. BECK: Yes.

MEMBER ETHERLY: So motorists can make the determination as to what's most appropriate?

MR. BECK: In or out, yes.

MEMBER ETHERLY: Okay. It is also -- it would also be your sense then that if I'm a motorist traveling on South Capitol Street heading westward, i.e., I'm coming from the direction of Eastover, heading back towards the District, you would also be able to make a left turn from what is the left most lane heading west to come into that curb cut.

MR. BECK: Yes.

MEMBER ETHERLY: Let's say I decide, I've already come through the light at Southern Avenue and South Capitol, and all of a sudden I decide gosh, I

need to stop and get a stick of gum or I need to stop and fill up, motorists can make a left turn there?

MR. BECK: Right, make a left there, yes.

MEMBER ETHERLY: Now, of course, I understand there's no light. Once you pass that light, there's nothing there, it's just you're going to have to wait, traffic is going to back up behind you, but you are saying you are okay with that?

MR. BECK: Yes.

MEMBER ETHERLY: If motorists make that left turn?

MR. BECK: Yes. I mean we wouldn't have any objection to it, because the same criteria applies except for those two entrances to the station across the street. So coming southbound, they would have the same --

MEMBER ETHERLY: Now, from the standpoint of once again we're talking about 706.4, dangerous or objectional traffic conditions, would you have any concerns regarding the fact that as you mentioned there is another establishment across the street from the subject property. Is there any concern or do you think there would be any objectional traffic condition created by the fact that you now have conceivably motorists who could be turning either way?

MR. BECK: No, because our standpoint is that it's going to relieve that everybody trying to make a left coming towards Maryland to be able to relieve the crossing and the backing of the traffic in the afternoon. Most of your southbound traffic is backed up all the way up. This is going to relieve the left hand turn which is no left hand turn lane between the Exxon, what is that side street -- there's a light prior to the entrance to that.

MEMBER ETHERLY: Part of what I'm getting at is have you thought about simply making the -- actually, you can't do it, but my concern would probably be a left turn coming off of South Capitol as you're heading back towards the District because there seems to be a very short distance in terms of vehicle lengths, a short distance between the South Capitol/Southern Avenue intersection.

MR. BECK: And the light --

MEMBER ETHERLY: And where it would be a left turn into your establishment. I would just as soon wonder whether or not it's just appropriate to have, if traffic is coming what would be westbound, just have them at Southern Avenue --

MR. BECK: Right.

MEMBER ETHERLY: And prevent any entrances

there. That's all I have.

MR. BECK: Yes, we wouldn't expect any more than there is now, other than the fact that it may relieve a little bit from across the street or any of the other. It is the lowest priced --

MEMBER ETHERLY: But it would be your testimony that you would not anticipate that creating an objectional condition.

MR. BECK: No.

MEMBER ETHERLY: Okay, thank you. Thank you, Mr. Chair.

CHAIRPERSON GRIFFIS: Excellent. Any other questions from the Board at this time?

Good, is there anything else in terms of 706, special exception or even 2302 from the Applicant's perspective and presentation?

MR. BECK: No.

CHAIRPERSON GRIFFIS: I'll note my reading of 2302, I didn't walk through all of it, it's fairly redundant in the aspects that are covered in 706 and it even goes more to the adjacency of the residential district and I think we're there.

MR. BECK: Right.

CHAIRPERSON GRIFFIS: Very well, is there anything else then for the case presentation?

MR. BECK: No, that should be it.

CHAIRPERSON GRIFFIS: Excellent, thank you very much. Let's move ahead then to any cross examination of the ANC. As Mr. Jordan has indicated he has cross questions.

Let's move right to it, Mr. Jordan, if you wouldn't mind. Of course, your cross examination will go directly to the testimony you've either heard or is in the record at this point. Make your questions very succinct and direct to the person you want to answer. Answers should be very succinct and direct back, directly answering the question.

Mr. Jordan, all yours.

MR. JORDAN: Thank you very much, Mr. Chairman. The first question is the Certificate of Occupancy is a part of the record, 62730 lists the sole proprietor of the property as Mr. Yuen. Is that correct?

CHAIRPERSON GRIFFIS: Turn your microphone on.

MR. YUEN: Yes, I am the one who made the application back in September of 2003.

CHAIRPERSON GRIFFIS: He's talking about the Certificate of Occupancy.

MR. YUEN: Yes, that's correct.

MR. JORDAN: But I said it lists him as the sole proprietor of the property?

MR. YUEN: Yes, I took the permit out with the intention that I will occupy the premises.

MR. JORDAN: But there's no reference to the Power Fuel and Transport, they don't have a Certificate of Occupancy, so I'm trying to find out for that site, so what is your relationship with Power Fuel and Transport?

CHAIRPERSON GRIFFIS: Okay, let me ask Mr. Jordan, why is that pertinent to the Board's consideration?

MR. JORDAN: Because he has a Certificate of Occupancy, but not the company. And I'm just saying if he's going to operate it, then he should have been making the application, not the company.

CHAIRPERSON GRIFFIS: You mean the zoning application?

MR. JORDAN: Yes sir.

MR. YUEN: Do you want me to respond, Mr. Chairman?

CHAIRPERSON GRIFFIS: No. Okay, go ahead.

MR. YUEN: Okay, Power Fuel and Transport, LLC, I'm a co-manager of that company. They are the supplier of motor fuel to many stations in the

District of Columbia. And the company consists of minority stockholders including the operator.

CHAIRPERSON GRIFFIS: So directly, you have proper authorization to bring an application before this Board?

MR. YUEN: Absolutely, I -- in fact, I retained Mr. Jeff Way.

CHAIRPERSON GRIFFIS: Mr. Jordan?

MR. JORDAN: Okay, you list the address for this site at 4675 South Capitol Street, Southwest. Will any of the operations for this gas station concur at 4675?

MR. YUEN: Absolutely.

MR. JORDAN: Mr. Chairman, can I refer to the plat that he has submitted as a part of his application?

CHAIRPERSON GRIFFIS: Sure, let's look at the plat.

MR. JORDAN: Mr. Yuen, I would like for you to look at your plat and look at Lot 4 and the address that's associated with that. Is that where the operations will concur, the address at 4675 is on the plat is Lot 4. Is that where the operations for the gas station will occur?

MR. YUEN: The gas station stands by

itself, okay, which is part of --

CHAIRPERSON GRIFFIS: Let's just go directly to it. Are you looking at the plat that he put in front of you?

MR. YUEN: Yes.

CHAIRPERSON GRIFFIS: Okay. The Board has the same question. If you look at Lot 4, Number 4675, is that the gas station?

MR. YUEN: We consider 4675 as considered all the way up to --

CHAIRPERSON GRIFFIS: Yes, but the direct question is --

MR. YUEN: Yes.

CHAIRPERSON GRIFFIS: Your plat is showing 4675.

MR. YUEN: 4675.

CHAIRPERSON GRIFFIS: Is that the gas station?

MR. YUEN: That is a former gas station building that is a bank now.

CHAIRPERSON GRIFFIS: But that's not your -- that's not what we're talking about today, right?

MR. YUEN: Also, we are talking about 4675 also comprised of lot area which goes behind 4675.

CHAIRPERSON GRIFFIS: On your plat that

you submitted, the plat is actually listing as 4665. Is that correct?

MR. YUEN: No, the 4665 is the building itself on South Capitol Street. We considered Lot 1 and 4 as part of 4675 and that's how the station was established from the past.

MR. JORDAN: Do you currently have a lease for the address 4675 South Capitol Street, Southwest?

MR. YUEN: Yes.

MR. JORDAN: And who is that property leased to?

MR. YUEN: The property, if you look at the property --

CHAIRPERSON GRIFFIS: Why do we need to know that, Mr. Jordan?

MR. JORDAN: The reason I'm raising the question is because the Bank of America has the address 4675 exclusively and in all of his submissions he uses the address 4675.

CHAIRPERSON GRIFFIS: Right.

MR. JORDAN: And the next question is will any of the operations for the gas station occur at 4675?

CHAIRPERSON GRIFFIS: There's two aspects to this. One, he can say whatever he wants, if it's

4675 and we grant an order for 4675, that's not the address, well, then they've got to bring another application with the correct address or something correct it. But it goes to a more critical aspect. Let's just look at the site plan you submitted.

Show us where your gas station is and what the building and the convenience store and all those aspects that are in there. Let's just be clear. The number 4665, on this site plan, that's part of your gas station operation, isn't it?

MR. YUEN: That's only accessory. We maintain that the gas station is an accessory lot that is part of 4675 location because of the rear lot of 4675 is part of the gas station lot. You see the part that goes behind 4675, I mean that is how we approached this permit process and based on historic records in 1958, 1975, that was the lot, it was one lot which is comprised of the entire square. We have gas station in that entire square, historically shown. And I was given --

CHAIRPERSON GRIFFIS: So you think it's one single lot?

MR. YUEN: No, I was given occupancy permit to include Lot 1 and 4 for 4675 and our permit for the construction specifically says we can build on

Lot 1.

So the address is really --

CHAIRPERSON GRIFFIS: This is all very confusing, Mr. Jordan.

MR. JORDAN: Yes, it is.

CHAIRPERSON GRIFFIS: Do you own Lot 4?

MR. YUEN: Yes. We own all the lot all the way to --

CHAIRPERSON GRIFFIS: There it is. Mr. Jordan, they're going to have to get this cleared up. This isn't going to be the proper forum for us to decipher all of that. Even if we got to the full understanding, I'm not sure there's a decision or any jurisdiction we would actually have in regards to that.

Next question.

MR. JORDAN: Well, the C of O that was listed for 1967 as B100638 as part of your submission, if you'll look at that C of O, it has Square --

CHAIRPERSON GRIFFIS: But Mr. Jordan, you get my point, right? I see where they're proposing the operation. I see their site plan. I think you have a legitimate concern. I'm just not sure we can do anything.

MR. JORDAN: Let me just ask one other

question, Mr. Chair.

CHAIRPERSON GRIFFIS: Sure.

MR. JORDAN: The question was raised about them having an extension or a continuation of a gas station at a particular site.

CHAIRPERSON GRIFFIS: Right.

MR. JORDAN: The site that they listed was Lot 6274.

CHAIRPERSON GRIFFIS: 6274.

MR. JORDAN: But on the Certificate of Occupancy for the gas station for 1976, the square is 6275. My question is how can they prove that the gas station that they're talking about operating was on the -- is the same gas station that they have the Certificate of Occupancy for from 1976? Their whole case is predicated upon having a gas station at this operation in 1976.

CHAIRPERSON GRIFFIS: Excellent. It's an excellent point. The record is going to stay open for you guys to respond to that in written form. That's all. We're going to leave it at that because it goes to the point of whether you should be here or not here. It doesn't go to the special exception case.

So the record stays open for that. Of course, you'll put it into the record on the date that

we're going to require. You're also going to serve it on the ANC as they are a party in this case.

Mr. Jordan, next question.

MR. JORDAN: Yes, the next question has to do with traffic flow.

CHAIRPERSON GRIFFIS: Good.

MR. JORDAN: What evidence have you gathered in terms of surveys or studies to indicate that the traffic flow at that site will not be objectionable?

Let me just stress this point. Have you shown that you have date or what have you on an hourly basis to show that you will not create objectionable or dangerous traffic conditions during the operation of this gas station?

MR. BECK: Again, it falls back to the fact that this ward is one of the highest transient districts in the District of Columbia as stated by Mr. Moore, so the majority of the traffic is transient traffic with the bus stops there and we felt that the relief that we give from South Capitol Street for people to come in to get gas is going to take 10 to 15 minutes, six cars out of the equation, so traffic is not going to be an issue.

MEMBER ETHERLY: But Mr. Beck, if I could,

just to follow up on that question. You would agree that this corridor is a significant commuter artery?

MR. BECK: Yes, I do.

MEMBER ETHERLY: For egress entrance, egress into the District.

MR. BECK: Yes. Into the lot should not be an obstacle, exit is at a light, is at a D.C. light so it's a timed equation and I think the egress to the property to retain a southward towards Maryland or Southern Avenue direction is going to be minimal, very minimal.

MEMBER ETHERLY: Have you or the Applicant done any traffic studies or any analysis of the vehicle volumes?

MR. BECK: No, we had no reason to do it. We haven't had any reason.

MEMBER ETHERLY: Thank you.

CHAIRPERSON GRIFFIS: Mr. Jordan?

MR. JORDAN: Mr. Chairman, I have an exhibit I'd like to be made part of the record to submit.

CHAIRPERSON GRIFFIS: Why don't you make it in your case.

MR. JORDAN: I want them to respond to it.

CHAIRPERSON GRIFFIS: What's the

documentation?

MR. JORDAN: It is a picture of Southern Avenue, everybody is talking about them having traffic exit from the back of their lot and coming up Southern Avenue.

CHAIRPERSON GRIFFIS: So the question is, this is a picture of Southern Avenue. Is this where you're proposing vehicles will exit your facility?

MR. BECK: Yes, this is Southern Avenue.

CHAIRPERSON GRIFFIS: Okay.

MR. BECK: As discussed with Mr. Moore. This is the same road.

CHAIRPERSON GRIFFIS: Enough. Next question?

MR. JORDAN: That's it.

CHAIRPERSON GRIFFIS: Very well, any other cross?

No other cross, Mr. Jordan?

MR. JORDAN: I'm finished now.

CHAIRPERSON GRIFFIS: Good. Thank you very much.

MR. YUEN: Mr. Chair, I just want to --

CHAIRPERSON GRIFFIS: Not now. Let's move ahead. Let's go to if there's no other cross examination of the ANC, let's move ahead to the Office

of Planning's report.

See, we lost him. We've got to throw the whole thing out. No, we'll get him back here.

Mr. Moore, how are you? We're ready for you.

MR. MOORE: Good afternoon, Mr. Chair and Members of the Board. John Moore, Office of Planning.

CHAIRPERSON GRIFFIS: It is afternoon. Let's go ahead.

MR. MOORE: As indicated in our report, we didn't have enough information to analyze the application and therefore make a recommendation. After the information Mr. Way did provide me on Friday of last week, we still are not in the position to offer a recommendation. There are a lot of questions we have on the information that was submitted.

CHAIRPERSON GRIFFIS: Okay, and the similar questions that were provided the Applicant in terms of the bullet points and that go to the parking spaces. Are those adequately addressed from the site plan?

MR. MOORE: No. For example, if you look at the document that I provided you, when I spoke to Mr. Beck to get the location of the parking spaces prior to submitted our application, I was given that

there would be four spaces on the north side of the building, four on the east side and four slanted on the south side, that is the front of the building. What Mr. Way provided me is quite different.

As you can see, there are four handicap spaces. I don't know why -- you only need one at best. But if you look at the location of those handicap spaces and proximity to the entrance and exit to the site, it's a problem as far as I'm concerned.

They mentioned that there would be lights under the canopy. If you theoretically have four handicap spaces, you have no light source at all in that area and a major question that we have is how is the tanker truck service the station because given the sidewalk in front of the store, the convenience store and the location of the aisles for gasoline, it looks a little tight for me to get a truck through there to service.

The parking spaces shown on the east side of it, that's five through nine -- I'm sorry -- do you have copies of this?

CHAIRPERSON GRIFFIS: We memorized it.

MR. MOORE: With a 9 by 9 parking space being required under 22 foot lane, there's only, in our estimation, about 35 feet from the public space,

that is the property line to the nearest pump and when you deduct 19 and add 22 to that from -- there's simply not enough space for cars to use the islands.

CHAIRPERSON GRIFFIS: So you're saying 5 through 9 poses a problem in terms of circulation, cars coming in, those cars pulling in and backing out.

MR. MOORE: Yes. And those are the reasons we asked for a circulation plan that shows how the tanker is going to service, how the cars are going to enter and exit.

CHAIRPERSON GRIFFIS: Excellent.

MR. MOORE: And I agree that Southern Avenue is in disrepair. It's paper at best. It's just a surface down there and we, of course, referred this application to DDOT, the experts on traffic for its recommendation. I think it's part of your record.

CHAIRPERSON GRIFFIS: Good. Of course, in your understanding, even a paper street doesn't prohibit them from using it.

MR. MOORE: No.

CHAIRPERSON GRIFFIS: Okay, but the other issues are there. Are there questions from the Board Members to the Office of Planning? Not noting any questions of the Office of Planning from the Board, let's turn it over to the Applicant for cross

examination of the Office of Planning, any cross?

MR. WAY: Good afternoon, Board, good afternoon, Mr. Moore. It's a pleasure to speak to you again.

In terms of Mr. Beck's statement regarding the location and configuration of the spaces, I think it was probably we didn't have a plan in front of us.

CHAIRPERSON GRIFFIS: Actually, this is an excellent opportunity for you to ask questions of the Office of Planning and actually no opportunity to do anything else. Do you have a question of Office of Planning?

MR. YUEN: Mr. Moore, based on your analysis of the parking space, do you have any recommendation, I mean so that we can make it right?

CHAIRPERSON GRIFFIS: I think his recommendation would be make it appropriate so that all the utilizations of the site can be properly circulated, meaning any of the customer parking that were going to park in 5 through 9 and that be even 1 through 4 and the tanker truck that would service the pumps. They could all be utilized. If the tanker service is at 2 in the morning when the thing is not open, well, then we need to know that, otherwise, we don't know it, so we're not making a decision on it.

At this point, what we have is Mr. Moore's astute observations of the circulation pattern not being efficient or even effective. Your curb pulls out in front of one of the pumps at the back end that seems to really bottle neck the circulation, you know, what is that? Does that also preclude proper circulation through?

MR. YUEN: My question to Mr. Moore is that I believe 12 parking spaces is more than is required for parking spaces for our operation. But we are amenable to work with the Office of Planning to accomplish the type of parking space that will work.

MR. BECK: Based on our history of delivery trucks, we build a lot of stations --

CHAIRPERSON GRIFFIS: Is this a question for Office of Planning?

MR. BECK: Yes.

CHAIRPERSON GRIFFIS: Okay.

MR. BECK: Based on our business of delivery and fuel to these gas stations, this is a very big site compared to some of the sites that we deliver to on a regular basis in the District. And we don't think there would be any problem with the delivery trucks getting in. There's approximately 28 feet between dispensers, between the columns, between

the dispensers themselves and with the entrance from the rear and the location of the fills on the tanks which determine where the truck comes in and how it drops fuel, so that's how the determination on how fuel is delivered to the site based on the engineering and where the fills are --

CHAIRPERSON GRIFFIS: Where is the question mark coming in this? I'll give you ample time in your conclusions to address this and the record is staying open for you to submit something. This is cross examination. This is the time where you really give Mr. Moore a hard time. Mr. Moore, did you visit the site? When did you visit the site? How do you assess there isn't proper circulation? I don't hear any of that.

Any questions of Office of Planning at this time?

MR. BECK: That basically was what I was getting at.

CHAIRPERSON GRIFFIS: Oh no, I doubt it.

MR. BECK: I'm sorry, are you familiar with the site? How did you evaluate --

CHAIRPERSON GRIFFIS: Those are so boiler plate that I didn't even want to hear, believe me, otherwise I wouldn't have put them out there.

I think I understand where you're going. You're going to assess. Mr. Moore has given you his analysis.

MR. BECK: We'll sit down with him.

CHAIRPERSON GRIFFIS: The Department of Transportation is somewhere along in here. We do have it. That will also go in the circulation. So again, we'll give you time, but is there anything directly in terms of Mr. Moore's testimony in there?

MR. BECK: No.

CHAIRPERSON GRIFFIS: Excellent, let's move ahead then.

Does the ANC --

MR. WAY: I did have a question. Can Mr. Moore refer to a section or chapter in any D.C. regulation that outlines the specific landscape or horticultural requirements, for example, such as Prince George's County has what they call the landscape manual, that MNCPBC publishes. Can you refer to me chapter or section wherein I can proactively design a station and put in exactly the right type and number of horticultural features, site type fencing.

I'm very familiar with the code, not as familiar as the Board and as you are, but can you

direct me to chapter, verse or volume where there is prescriptive method such that I can design this in the future to mitigate the need for the questions to be asked?

CHAIRPERSON GRIFFIS: Mr. Moore, might I?

MR. MOORE: Please.

CHAIRPERSON GRIFFIS: Thank you. Yes, I'm going to refer you to 706.5. 706 of DCMR 11. It reads "the Board may impose requirements pertaining to design, appearance, screening, lighting or other requirements it deems necessary to protect the adjacent nearby property." That section gives us full jurisdiction to require you to do anything.

Now, we don't go make this stuff up. We rely on the recommendations of Office of Planning in their analysis and the full staffing of all of Office of Planning, their experience has indicated that there are requirements for landscaping here. If you want specific breeds and trees and heights and all that, I suppose Mr. Moore you may get to that specificity. It's certainly not a requirement, but I would take with great care and listening the recommendations of Office of Planning is making.

Other than that --

MR. WAY: Mr. Chairman, that was my point

exactly, that there is a give and take, sort of a bilateral process.

CHAIRPERSON GRIFFIS: Absolutely so.

MR. WAY: There are no prescriptions such that we can automatically get it right the first time. We expect it to be a matter where we take counsel advice, react to what we do so that we can then redo it.

CHAIRPERSON GRIFFIS: That's fine.

MR. WAY: That's my point.

CHAIRPERSON GRIFFIS: And don't ever lose the fact that it ends here. We're going to look at their recommendations. We're going to look at your proposal --

MR. WAY: Prince George's wouldn't have it, a manual that I could go to?

CHAIRPERSON GRIFFIS: We don't need another manual. Okay, let's move ahead. Anything else from the Office of Planning cross?

Mr. Jordan, do you have any cross questions of Office of Planning?

MR. JORDAN: Yes. Mr. Moore, you made reference to the fact that you had referred to DDOT for their recommendation. Could you please summarize what the DDOT recommendation was?

MR. MOORE: The DDOT report indicated that it too didn't have enough information to provide an analysis.

MR. JORDAN: And the recommendation?

MR. MOORE: The recommendation was not to support the application.

MR. JORDAN: Thank you.

MR. WAY: Question?

CHAIRPERSON GRIFFIS: Of who?

MR. WAY: Well, there's nobody from DDOT here, but may I ask a question?

CHAIRPERSON GRIFFIS: You want to recross OP?

MR. WAY: Well, there's an issue thrown out with regard to DDOT --

CHAIRPERSON GRIFFIS: Let's go to it. Let's go the Department of Transportation because that's where you're going and do you have the Exhibit No. 26, the DDOT report?

MR. BECK: We don't have anything from them?

CHAIRPERSON GRIFFIS: You do know it's your responsibility to check your public file in preparation for this public hearing. Be that as it may, let's get you a copy of the DDOT report. I'm

sorry, Mr. Moore, we really have you jumping over the dais today.

Mr. Moore indicated correctly, the last paragraph in DDOT's report says DDOT requests the Board review the project address provided by the Applicant and determine if the Applicant has provided accurate information on the zoning self-certification form. Accordingly, DDOT does not support the application. They cannot accurately analyze the transportation impact of the site because of the lack of information provided by the Applicant.

DDOT staff conducted a site visit and observed a number of items and raised concern. Those are listed. The project consists of reinstalling new gas storage tanks, six service islands to service patrons.

That's pretty much my summation of it. I know there's a lot more than that, but -- DDOT has concerns that the Applicant continues construction activity on the site without BZA approval or proper construction permits and has been reluctant to coordinate with OP and DDOT staff willing to address agency concerns prior to the hearing date. I didn't really want to get into that.

Vice Chairman Miller has highlighted that

aspect.

MR. BECK: We do have a valid permit. The permit has not been revoked. Construction has been approved by Zoning --

CHAIRPERSON GRIFFIS: As you stated. Indeed.

MR. BECK: I just wanted to put that on the record with reference to that.

CHAIRPERSON GRIFFIS: And let me clear the whole aspect of the permits and all that. It's always and it's a very important and critical issue, but unless this is an appeal of a permit, it's not within our jurisdiction -- it's not worth us taking everyone's time to deal with it today.

MR. BECK: Right.

CHAIRPERSON GRIFFIS: You had cross of DDOT?

MR. WAY: Yes, thank you, Mr. Chairman. Again, where in chapter, verse or regulation or in volume is DDOT, due diligence through a DDOT review process part of DCRA's permit process? For example, the issues that have been brought up, there are questions regarding the site location of gas pump islands, access point parking spaces. If you can just refer me to where in the DCMR 11 or other code or

other statute, DCRA works with --

CHAIRPERSON GRIFFIS: You're saying you're not required to deal with DDOT or any of the recommendations?

MR. WAY: I just want to know if we're being asked to respond to their allegations or their requirements my simple question as a matter of process is where in the process, where under our due diligence by virtue of going for a building permit, is there a checkoff list or a process to which we should respond to these issues.

My question, for example, would be --

CHAIRPERSON GRIFFIS: Under the special exception requirements for the Board of Zoning Adjustment to either grant or deny your application.

MR. WAY: I still don't know where a document or an application to DDOT or something exists. I've not seen it. I've not seen. That's my question. So the issue is why wouldn't DDOT ask of themselves of their fiscal management, how come we haven't appropriated funds to reimprove this street which is more than a paper street. It's not a paper street by virtue of the fact that public traffic --

CHAIRPERSON GRIFFIS: We're at 1:30. I can't take anything else.

MR. WAY: That's my question. If they want to look at our on-site issues, why haven't they talked up the chain to find out why have we --

CHAIRPERSON GRIFFIS: Let me ask you something. Does that really make sense?

MR. WAY: Yes, it does.

CHAIRPERSON GRIFFIS: You mean DDOT should have paved the street before they came in to review your BZA application?

MR. WAY: The street is already paved. The photograph illustrates that the street is paved.

MR. JORDAN: No, it doesn't.

CHAIRPERSON GRIFFIS: We're spiralling into the abyss here.

Go ahead. I've got a Caesar Salad on my mind.

What's next? We'll give you a chance to respond -- we'll leave the record open for DDOT, you can respond as you have the chance to read their analysis, and yes, all these applications are referred to controlling agencies, DDOT being one.

You keep wanting to speak, but you're part of them, right, the application? Are they going to present you or not? Let's move ahead.

Do you have any comments, Mr. Jordan on

the DDOT report?

MR. JORDAN: No sir.

CHAIRPERSON GRIFFIS: Excellent. Let's move ahead then. I don't have any other agency reporting on this.

Mr. Jordan, we're ready for your case presentation.

While Mr. Jordan gets ready, I'm sorry to interrupt you, how many people are here for this case today to present testimony, 17281? Mr. Rashid, I know is here. We have one, two -- we've got to get going here. Let's go.

Mr. Jordan, how long do you need? Excellent, take it. You want the table? Turn your microphone on. Does it bother you to have them sitting here?

MR. JORDAN: No.

CHAIRPERSON GRIFFIS: Actually, gentlemen, in time efficiency, why don't you have seats, because I'm going to fill this with persons to give testimony. And then we're going to call you back for any cross of ANC and then closing remarks, any cross of any of the witnesses.

Whenever you're ready, Mr. Jordan.

MR. JORDAN: Mr. Chairman, the Commission

has submitted its resolution and part of the resolution was the attachment of our issues. As I understand it, there are some concerns regarding whether or not the issues that we're presenting are going to be considered by the Commission, I mean the Board of Zoning Adjustment, but I'm going to present them anyway and you can deal with them however you want to.

CHAIRPERSON GRIFFIS: Absolutely.

MR. JORDAN: The first concern we have, sir, is -- and I don't mean this in a flippant -- wait a minute --

CHAIRPERSON GRIFFIS: Go ahead, Mr. Jordan.

Let's go. Present the report to the Commission which I am assuming is Mr. Jordan and Mr. O.B. Johnson.

MR. JORDAN: Mr. Chairman, let me suggest one thing. He is a member --

CHAIRPERSON GRIFFIS: I don't really care.

MR. JORDAN: I'm just saying I hope they don't disrupt our meetings any more.

CHAIRPERSON GRIFFIS: I'm moving ahead. Mr. Jordan, you've got a letter in here that authorizes you to represent the ANC's position?

You're presenting their resolution?

MR. JORDAN: Yes sir.

CHAIRPERSON GRIFFIS: Let's go.

MR. JORDAN: The thing that concerns me, first of all, is it looks like the Board of Zoning Adjustment is in the hip pocket of the City Administrator, I mean the Zoning Administrator, so to speak, because I don't understand the process. Our Commission is concerned about this. If something has to come before the Board of Zoning Adjustment for a special exception, then why was the permit issued? Why were they allowed to proceed with the permit? What is the role of the Board of Zoning Adjustment if it says no? Or if it says yes, they proceed with it.

So the first thing is that we have a concern about allowing the permit to function as a permit given the fact that there was a need to come before the Board of Zoning Adjustment.

The second one is a notification to the Advisory Neighborhood Commission. The Board of Zoning Adjustment is arduous in its adherence to the law. The ANC laws says that we are to get notice, 30 days notice prior. The ANC also says that the Department of Consumer Regulatory Affairs is going to give us all notice of all building permits.

CHAIRPERSON GRIFFIS: Okay, before we go too far, Mr. Jordan, you bring up an excellent point, us being in the hip pocket of the BZA. That's an interesting comment, but you do know that we are totally and distinct from DCRA. So any sort of notification of permits or anything DCRA, we have no jurisdiction over. We're not a part of that.

MR. JORDAN: Mr. Chair, I understand that. What I'm saying though is they made a decision predicated upon you already agreeing with what they were going to say.

CHAIRPERSON GRIFFIS: And that's incorrect.

MR. JORDAN: But I'm just saying they shouldn't have moved forward.

CHAIRPERSON GRIFFIS: I understand. You have one recourse to that. Bring an appeal to this Board of the permit that was issued.

MR. JORDAN: Yes sir. And we appreciate that.

The second thing we say though is that they didn't give us notice, again, we will deal with that.

CHAIRPERSON GRIFFIS: Who, DCRA?

MR. JORDAN: DCRA.

CHAIRPERSON GRIFFIS: Let's get to our issues.

MR. JORDAN: And what I would like to do, Mr. Chairman, is submit for the record that the building permit notice -- I mean a letter from the -- and I don't have it before me right now, but two letters from the Department of Consumer Regulatory Affairs in which they acknowledge that they do not send notices to ANC. On one they say they send notice, but the other they didn't send us notice on this one. They issued it in one day.

CHAIRPERSON GRIFFIS: I think that's critical, but what do you expect we do with that?

MR. JORDAN: I'm just saying I'm making it a part of the record.

CHAIRPERSON GRIFFIS: But why? I mean we have to have some sort of pertinence to make it part of the record. Certainly, you're asking us to do something. It would make your day if this Board did what?

MR. JORDAN: I'm just suggesting --

CHAIRPERSON GRIFFIS: We don't need extra paper on that.

MR. JORDAN: Let me say it this way. All the arguments that are being made up to this point is

that we have a legitimate permit before you.

CHAIRPERSON GRIFFIS: Good.

MR. JORDAN: Our argument is they don't have a legitimate building permit.

CHAIRPERSON GRIFFIS: It's actually an existing nonconforming use. It doesn't necessarily have to do with anything with the permit.

MR. JORDAN: You're missing my point.

CHAIRPERSON GRIFFIS: Not necessarily, but go ahead.

MR. JORDAN: What I'm saying is the proponents of this application have said all of our permits were validly issued. There's an assumption that there are valid permits. They state it in their application.

CHAIRPERSON GRIFFIS: Right, so you're asking us to either decide or to determine whether the permits are valid or not.

MR. JORDAN: We're saying the permits were not valid.

CHAIRPERSON GRIFFIS: I know.

MR. JORDAN: And we're asking you to make a determination based on that.

CHAIRPERSON GRIFFIS: Excellent. I fully understood your point. Let me tell you very directly,

that's not happening.

MR. JORDAN: Okay.

CHAIRPERSON GRIFFIS: Before us is not the question of whether these permits are valid or not valid. If you want to bring that question before this Board, I suggest you go to the office next door, file an appeal.

MR. JORDAN: We'll do that.

CHAIRPERSON GRIFFIS: Absolutely.

MR. JORDAN: Now the next one has the Applicant has the burden of proof showing that they will not create either dangerous or objectionable traffic conditions at this particular site and we don't think the Applicant has met their burden in doing that.

None of the documents that they have submitted up to this point show that and when we deal with the question of objectionable, I think that would be subjective. This Board will take it and make a determination about that.

But we're talking about a major thoroughfare in the District of Columbia. In the evening time traffic is backed up there from 3 o'clock to 7 o'clock from people leaving the city. In the morning it's the same situation. And they want to

propose putting a gas station right there at a point where people have to come in and go out. But they don't offer any evidence that this won't have any objectionable impact on the traffic flow.

They also say -- you made the point, Mr. Chairman, about a paper street. They can deal with that. Well, let's deal with reality. The reality is that this is not really a paved street and I'd like to submit as part of the record a photograph of that street that shows that it is not really paved. It's full of potholes. It was paved in a sense so that the Recreation Department could get back to its site. But it's not a site that could be used, I mean could be used for the gas station, people entering and then leaving.

CHAIRPERSON GRIFFIS: Okay.

MR. JORDAN: So again, we raised the question about them having meeting their requirement for the traffic. From our position, the ANC's position, it will be an inconvenience -- what is the term specifically? Objectionable. It will create objectionable and they have an obligation to show that it won't.

The next one is the discontinuance question. And we share your concerns, Mr. Chairman,

and the Board's concerns that it is very clear that first thing we note is that that particular site, that square has not always been there as a gas station. We've noticed that the C of O for 1976 shows where the gas station was listed, shows a different square. As I understand it from the Surveyor's Office, squares don't change in the District of Columbia. So we've got a problem.

They're indicating that the gas station was on one square. Their plat shows that they're proposing a gas station on another square so the evidence would appear right now that they're trying to put a new gas station in some place where it never was.

The question of the addresses is confusing and we believe that the whole idea in using 4675 as opposed to 4665 because all the operations for the gas station will occur at 4665 South Capitol Street. That address currently has a C of O for a convenience store. It doesn't have a C of O for a gas station. And so what they are attempting to do is play a little shell game here and that is to say we'll use the gas station address, but we're really going to operate out of the convenience store. If they're doing that, then that's an expansion of the gas station use. So the

use legitimately should be before the Board of Zoning Adjustment. But they tried to play games with that.

And that's why when they went before the Department of Consumer and Regulatory Affairs and filled out the applications and everything, they could do it because they already have a C of O for a convenience store. And they tried to deal with that.

So those are the concerns that we have, the discontinuance of use. They haven't operated a gas station out of there for three years. In fact, the tanks were taken out of the ground in 1995. And it hasn't served as a gas station since then or it hadn't served before that. So there's been more than three years of discontinuance of use. Those are the issues that we are raising as an ANC and those are the issues we'd like to --

CHAIRPERSON GRIFFIS: Thank you very much, Mr. Jordan.

MR. JORDAN: Can I submit this?

CHAIRPERSON GRIFFIS: Yes, you're going to submit that into the record. We do require copies of it. But in this case we're going to have that in, but we have to give the Applicant copies before they leave today.

Also, the record will be left open for

addressing the discontinuance as the Applicant is going to file that and also serve you.

Let's go to questions from the Board?

MEMBER ETHERLY: Very quickly, Mr. Chair, if I may.

Mr. Jordan, two quick questions for you. One, do you know if the intersection at South Capitol Street and Livingston Road is a signal, a signalized intersection? Is there a light at that intersection as well?

MR. JORDAN: Yes, there is, Mr. Etherly.

MEMBER ETHERLY: Okay, so you have a light at South Capitol and Livingston and then one at Southern Avenue?

MR. JORDAN: Yes.

MEMBER ETHERLY: Second question, with respect to the objectionable traffic conditions, based on your familiarity with the subject area, could you give a sense of what the pedestrian foot traffic is light in this area? I believe it was indicated in the Office of Planning report or might not have been, there is a school in the immediate vicinity of this intersection, correct?

MR. JORDAN: Yes, the Patricia Roberts Harris School is within the vicinity, yes.

MEMBER ETHERLY: Yes sir. So from a pedestrian standpoint in terms of any concerns, was there discussion at the ANC meeting about concerns regarding pedestrian traffic?

MR. JORDAN: No, there wasn't any discussion about pedestrian traffic, but we've never been able to get all the information we wanted in terms of traffic flow or the traffic conditions.

You do know there's Eastover Shopping Center, so there's a considerable amount of traffic, pedestrian traffic because the bus lets them off on Southern Avenue and there's a considerable amount of traffic, of pedestrian traffic flow at that intersection.

MEMBER ETHERLY: Okay, thank you. Thank you, Mr. Chair.

CHAIRPERSON GRIFFIS: Good, thank you.

Ms. Miller?

VICE CHAIR MILLER: I just have a quick question. Did the Applicant present their application at your public meeting?

MR. JORDAN: The Applicant was available at our public -- at our ANC meeting. They had an opportunity, five minutes to present their case. And they did.

CHAIRPERSON GRIFFIS: Okay.

VICE CHAIR MILLER: Thank you.

CHAIRPERSON GRIFFIS: Anything else? Excellent.

Applicant have recross of the ANC?

MR. BECK: In reference to the traffic study, there's a light as the drawing shows, the plats --

CHAIRPERSON GRIFFIS: You're asking him, right?

MR. BECK: There's a light at the intersection of Southern Avenue for the side street continuation up towards to the dead end, it actually dead ends there at the fence for the maintenance facility. There's a light there.

CHAIRPERSON GRIFFIS: This is getting to a question of the ANC, right?

MR. BECK: Yes. This is in reference to a question, a concern that he had.

CHAIRPERSON GRIFFIS: We don't need a big set up.

MR. BECK: Okay. There's a light at --

CHAIRPERSON GRIFFIS: Give me the question.

MR. BECK: There's a light at the

intersection there. If there was no road there, there wouldn't be a light facing the exit for that street.

CHAIRPERSON GRIFFIS: Is that correct, Mr. Jordan? Just to help you along with the question there.

MR. JORDAN: I need your help too. What was the question?

MR. BECK: You said the traffic flow was an issue at the facility. You were convinced that there was study based on the egress from the property.

MR. JORDAN: No, my statement was is that have you done a study?

MR. BECK: Yes.

MR. JORDAN: To show that it won't have -- where is the study?

MR. BECK: The study wasn't required for us to submit to before -- for the application. It was not required for us --

MR. JORDAN: He's testifying now.

MR. BECK: -- to submit

MR. JORDAN: Mr. Chairman, he's testifying now.

CHAIRPERSON GRIFFIS: There was a direct question from the Board whether you had done a traffic study and you said no.

So now through cross examination, evidenced that you actually did, but you're not required to show us?

MR. BECK: We did a physical study ourselves, after were required to do a study.

CHAIRPERSON GRIFFIS: Okay, so what's your question of Mr. Jordan?

MR. BECK: For the application, there was no requirement.

CHAIRPERSON GRIFFIS: I understand that. If you don't want to show us it, you don't have to show us it. What is your question of Mr. Jordan?

MR. BECK: So many questions, I'm trying to figure out how --

CHAIRPERSON GRIFFIS: As long as they're short. That's the way it should be. Really, cut to the chase. Poke holes in his case. He just presented a powerful case, Mr. Jordan did. You're about to poke holes in his case through your penetrating cross examination questions. I'm riveted.

MR. BECK: Have you made a study?

CHAIRPERSON GRIFFIS: Mr. Jordan, have you made a traffic engineering study?

MR. JORDAN: No.

CHAIRPERSON GRIFFIS: Good, next question.

If you have a question, give it to him. We don't need 50 people asking questions. Get your whole situation together here.

MR. BECK: Has the immediate community been informed of all the issues presented and as I think at the ANC meeting, we asked you --

CHAIRPERSON GRIFFIS: No, no. That's enough.

Has the whole community been apprised of this application, Mr. Jordan? Are they well aware, anyone that wanted to know?

MR. JORDAN: I don't know about the whole community.

CHAIRPERSON GRIFFIS: Good question and answer. Next question.

MR. BECK: Has anyone objected to the service station through the community?

MR. JORDAN: Let me suggest one thing. In our hearing, I mean in our ANC meeting, we had people who were there in support of the application. I don't remember anyone being opposed to it, but the responsibility was on the Commission to take and make a decision about it. And the Commission's decision was that based on the fact that we had not been able to get information and the fact that DCRA had done

what they did, we were opposed to it.

CHAIRPERSON GRIFFIS: I think your position is very clear. Before we go much further into this, I'm going to ask your faith in the common sense and intelligence of the Board. We have a lot of information up here. We have the ANC. We have DDOT. We have OP. We have the entire regulations. We have your filing. We're going to get through all of that.

If you're concerned with the ANC taking a position that doesn't represent 100 percent of the community, let me say for the record, I don't know anybody that represents 100 percent of anything.

MR. BECK: Right, we don't expect that.

CHAIRPERSON GRIFFIS: What we're looking for are the facts. Tell us what it is. Is there objectionable traffic conditions? Yes. No. Why? We're going to make the decision. Let's move ahead.

MR. BECK: I don't have any further questions.

CHAIRPERSON GRIFFIS: Good. I'll tell you what a good cross examination question would have been. Mr. Jordan, you indicate that this, if a gas station was in existence would actually create objectionable traffic conditions. Is that correct?

MR. JORDAN: No, our question -- what

we're saying is we don't know. We have not been able to get --

CHAIRPERSON GRIFFIS: So you can't assess whether it would or it wouldn't?

MR. JORDAN: No, and our question --

CHAIRPERSON GRIFFIS: That's fine. These are my questions.

MR. JORDAN: Okay, the question we're proposing is --

CHAIRPERSON GRIFFIS: I know, I know.

MR. JORDAN: It's not on us.

CHAIRPERSON GRIFFIS: These are my questions.

Mr. Jordan, sit back and relax.

MR. JORDAN: If you ask me personally, I think --

CHAIRPERSON GRIFFIS: You have, Mr. Jordan and we ask you to turn your microphone off. Sit back and relax. I'm going to go through these very fast. If you can answer yes or no, that's fine. That's the way it should be.

Has this bene a commercial establishment prior to this? You can turn your microphone on now.

MR. JORDAN: Thank you very much. Yes, it was a commercial establishment.

CHAIRPERSON GRIFFIS: And it's been retail, it's been commercial, it's been a gas station. Is that correct?

MR. JORDAN: Yes.

CHAIRPERSON GRIFFIS: It's on a fairly large thoroughfare, is that correct?

MR. JORDAN: Yes.

CHAIRPERSON GRIFFIS: What would give an indication to you that this would create an objectionable traffic condition, if it continued in that type of use?

MR. JORDAN: Because we're looking now at the traffic conditions on South Capitol and Southern Avenue in the evening. Personal observation and that is to say that people are coming in and out of the city who are suburbanites using that area and that creates very --

CHAIRPERSON GRIFFIS: So let me ask you this then, have conditions changed in terms of traffic volume at this intersection from five years ago, 10 years ago? Is today a different scene?

MR. JORDAN: I think the construction on the Woodrow Wilson Bridge has an impact on it. I think there is increased traffic flow in the area because more people have cars.

CHAIRPERSON GRIFFIS: I see, so your direct answer is yes.

MR. JORDAN: Yes.

CHAIRPERSON GRIFFIS: The conditions have changed.

MR. JORDAN: I think so, yes.

CHAIRPERSON GRIFFIS: Excellent.

MR. BECK: But the bridge will relieve that.

CHAIRPERSON GRIFFIS: I know. Thank you. Mr. Jordan, thank you very much. It kind of gets the blood flowing, doesn't it?

Anything else? Any other cross questions of the ANC?

MR. TERREFE: Yes, my name is Berhanu Terrefe. I am the owner of LP Mart. My address is 4665 South Capitol Street.

My question is when I started this construction, after I get all the permits, I tried to communicate with ANC members for six months.

CHAIRPERSON GRIFFIS: This is a question, right?

MR. TERREFE: Yes.

CHAIRPERSON GRIFFIS: I don't need a lot of background.

MR. TERREFE: Nobody came in here, but my question here is is this establishment going to bring jobs and wealth to the community or do you think that this establishment is going to bring --

CHAIRPERSON GRIFFIS: Mr. Jordan, do you think this is going to be bring and wealth to the community?

MR. JORDAN: Mr. Chairman, I don't know. We've never actually asked that question.

CHAIRPERSON GRIFFIS: That's an excellent answer. Good, any other questions?

Anything else? Okay. See what happens when I get hungry? I get very direct.

MR. TERREFE: Okay.

CHAIRPERSON GRIFFIS: We're done. Thank you. Mr. Jordan, we do appreciate it.

Let's move ahead. We have persons to give testimony. I'm going to start with those in support.

Can I see a raise of hands of persons in support of the application, if you would come forward at this time. We're going to fill up the table here to give testimony. After they're finished, we're going to have the next panel. If you're here to give testimony you can prepare yourself. We're going to put five in a row and we're going to start and go

right down.

Before we start, I'm going to say a couple of things. First of all, if you weren't here before, you will need to state your name and address for the record. Secondly, persons are provided three minutes to give testimony. We're going to let that clock run and then it will buzz. I'm going to ask you to really be considerate and we're moving on. I will interject and not let you go beyond three minutes. If there are things that somebody said prior to you that you absolutely agree with, there's no harm in saying I absolutely agree with what was stated by that person and we move on.

That being said you also will be cross examined at the completion of your testimony. You also will take questions from the Board.

So which side do we want to start with? Aha, the fingers are pointing, sir. You're up.

REV. MOTLEY: Good afternoon, Members of the Board, Mr. Chair. My name is Reverend Anthony Motley. I live at 3839 Halley Terrace, Southeast, Washington, D.C. Ward 8. My business operation is at 4415 South Capitol Street, Southwest, Washington, D.C. 20032.

I'm here testifying in support of the

operation of the low price gas station at 4865 South Capitol Street. 4675. As a long-term resident, all of my life I've been Ward 8, except for when I went int he Army and went away to school. I've seen the neighborhood change over the years. I've also been a part of community planning over the years, back in the early 1980s, was part of the planning process when the zoning was changed in that area and one of the things that we were attempting to do was to make sure that we capture some of those dollars that were going from D.C. over into Maryland. We abide D.C. campaign, that's what we want. We want our people to buy in D.C. I for one believe that economic development is something that has not occurred, like it should in our neighborhoods and especially east of the river.

I see the opportunity for businesses coming in to provide jobs and opportunity for our people. The area in question, I remember when it was a car lot down there and a gas station. I remember when the area didn't have anything operating at all, even before the bank was built. I remember the Rite-Aid, when that Rite-Aid was built and it was just empty land.

Now we have an opportunity to do some building in that area. I support it. And if we're

going to be able to capture some of the dollars before they go over into Maryland, I mean we get the traffic anyway and the traffic that comes in, coming down South Capitol from -- at 3:30, 4 o'clock in the afternoon going into Maryland. They need to stop and put some of their dollars into our coffers because they're using our streets. And they're using our services. And so if this is one way to capture those dollars and generate a tax base, which is what everybody is talking about these days, then I support that. And that's pretty much what I have to say.

CHAIRPERSON GRIFFIS: Excellent. Thank you very much. So you clearly see this as a commercial revitalization and offering services for those in the adjacent neighborhood?

REV. MOTLEY: Yes sir.

CHAIRPERSON GRIFFIS: Excellent. Thank you. Yes?

MR. ANDERSON: My name is Charles Anderson. I've been a resident in Ward 8 for over 40 years. I've also been named ANC -- one of the very first ANCs from preparing the map for ANCs to actually putting the legislation together. I've been an advocate for political and economic development during the course of my tenure here.

I'm familiar with a lot of the procedures that have brought us to this table. And I see some -- maybe some blatant overstatements and views that have been presented. I'll start first with the ANC 8D, of which I am a resident. And I have been a resident there for the last two, three years. I have yet to have gotten any information from the ANC regarding this issue.

The way I got involved in this issue was I had the proprietor come to me as someone had told him I had been involved in the community for some time and he said I tried to do everything I could do to do it right. I've been told I did something wrong. Can you help me, please, make it right?

So I went to the ANC and come to find out my Single Member District representative, Mr. Jordan, was one of the proponents that -- opponents that was gathering information against this particular establishment.

Me, looking at the establishing, seeing the advantages that it gave everybody in the community, I was totally flabbergasted that a person that I respected, my representative would even be speaking against this issue. Come to find out he's not speaking against the establishment. He's not

speaking against this proprietor. He's not speaking against this owner. He's speaking against the procedure of which paperwork --

CHAIRPERSON GRIFFIS: Ten seconds, Mr. Anderson.

MR. ANDERSON: A mismark on an application, something that doesn't impact for me as a representative, a resident of that community as a reason to stop this process.

CHAIRPERSON GRIFFIS: Thank you very much. Mr. Anderson, I understand you see an awful lot of advantages that this was actually granted and this was established and you have concern that the ANC, in fact, is more procedurally concerned than substantively and factually concerned in this application. Thank you very much.

Yes?

MS. SEEGARS: Sandra Seegers, Chairperson, ANC 8E. At that location on South Capitol and Southern Avenue, there's a traffic light at Southern and South Capitol. No traffic light directly in front of this establishment. When the Hostess Cupcake business, record shop -- I used to go there. I had no problem with the traffic. I go to the bank there. There's really no problem with the traffic to me and

I'm doing it from -- saying from experience.

The other gas station, the size of this particular gas station here, one is that Naylor Road and Good Hope Road and there's one on Sherman and I think it's Irving Northwest, they have no problem getting gas delivered there. If they deliver gas during the working hours, they stop the cars from in. If they do it at night, there's no problem, so as far as a truck delivering gas, it should be no problem.

The back entrance, once the street is paved, would be great to take the traffic away from the main street there whereby going around the back up to the light.

Mr. Berhanu spoke with me back in September, trying to find the ANC Commissioner. He had tried to reach Robin Imes. Sometimes these Commissions are dysfunctional and there aren't any Commissioners there. He called for Robin Imes several times. I told him let me find out who his Commissioner was. I called Absalon Jordan several, several, several times in order to get in touch with him, leaving him messages. Then he finally grasped hold to what was going on and he came in, like he said and did the process then.

This business should not be punished

because the government's neglect as far as building permits, without telling him to contact the specific ANC Commissioner and now that the ANC Commissioner knows who he is and that he represents them, I think you all should not let that interfere with this process.

Let me see what else, I think that's it.

CHAIRPERSON GRIFFIS: Excellent. Thank you very much, very well said.

You've indicated, of course, that you have personal knowledge and you don't see any traffic problem and there are a lot of other very substantive things which we'll take into account in our deliberation. One of the things that I caught on though is you said "when the street gets paved". Are you aware of a schedule?

MS. SEEGARS: No, I wish it was my district, then I could tell you.

CHAIRPERSON GRIFFIS: But it's your understanding that that is scheduled at some point to be paved.

MS. SEEGARS: They had spoke of it before, but they didn't know how far to go back because federal land, District land --

CHAIRPERSON GRIFFIS: Indeed. Okay, at

some point it's probably going to get done, we certainly hope, maybe this will bring some light and pressure to getting it done no matter what happens with this.

MS. SEEGARS: Right, exactly.

CHAIRPERSON GRIFFIS: Thank you very much. Yes sir?

MR. SUTER: Good afternoon, my name is Bill Suter.

CHAIRPERSON GRIFFIS: Right on the base, there's a button there.

MR. SUTER: Thank you, Chairman. Good afternoon, my name is Bill Suter and I am a former business person in the area, a laundromat at 4409 South Capitol Street, a convenience store at 4031 South Capitol Street. In the years that we've been involved out there, the traffic is pretty much the same as it always has been, when Hostess was there, the gas station was there and also Rite-Aid.

The thing that seems to appear to us is that the jobs and the opportunities and the value of the properties and things around there is going to greatly increase with another business coming and a lot of services that are going to be put out there. Why? Because of a mistake that was made by the

government downtown or something, by the permit not being issued and it was issued, however this thing was happening.

I just can't understand why that would happen and that's my biggest concern.

CHAIRPERSON GRIFFIS: Excellent. Thank you. Clear procedure, obviously a concern for everybody, certainly those in this room. We appreciate that, Mr. Suter, and we also appreciate having, as you've said, you own businesses and operate businesses in the area, is that correct? So you have that base of knowledge and understanding and obviously your testimony goes directly to that. Thank you very much.

Yes sir.

MR. QUEEN: Good afternoon, Mr. Chairman. My name is Perry Queen. I live at 828 Taylor Street, Northeast, Washington, D.C. 20017.

I'm here to support Mr. Yuen who I think is one of the finest citizens that Washington ever had, always there to help others, always got his hands out to help others.

He's committed to help the ANC Commissioners whenever they want him. He's even committed to help any community citizen's organization

that want help and I think you couldn't ask for a finer citizen than Mr. Yuen.

Mr. Yuen also spoke to me about having a little league football team and baseball team. He's willing to support them. You couldn't ask for anybody better than that. And I think it's regrettable that he didn't notify the ANC Commissioner when he first made out the application, but he was not aware of it so let's not lynch him to that. We're not here to stop business. Every time a business come up, somebody always want to kill it. We're not here to kill business. We're here to enhance and I think this Board and Mr. Chairman, I think you should give a stamp of approval to his application.

CHAIRPERSON GRIFFIS: Good, thank you very much. Very powerful. Let me be absolutely clear, of course, we're not getting involved in issues of whether the proper permit or not and I have no question that all our Applicants are some of the best citizens in this city and if it was that the basis which we approve or deny applications our job would be very simple because there would be no time to take.

But we have very specific regulations and requirements, no matter how great the citizens are and other aspects that they're doing and that's -- the

process that we have before us today is very straight forward in terms of the sections and requirements, we're going to take all that information in and we're going to make the best judgment possible. But we absolutely appreciate your support of the application and we certainly take that under advisement.

Very well, anything else from -- let's go to cross then. The Applicant -- we're going to have one person cross the witnesses, is that correct?

Who is doing the cross? Is there any cross?

I'm sorry, Mr. Etherly.

MEMBER ETHERLY: Just a very quick question. Ms. Seegars mentioned in her testimony and the Office of Planning mentioned in their report that there had been other uses that have been on the subject site, whether a store or restaurant. You indicated a Hostess bakery at one point in time and perhaps Reverend Motley, you might be familiar with those prior uses before.

I just wanted to be sure I understood correctly and I think I heard it clearly that in the history of those uses, as far as you are familiar with, there were no traffic concerns or any types of conditions that were created that lent themselves to

any jam ups on South Capitol Street?

MS. SEEGARS: No, especially with the Hostess Cupcake place and I never even have seen an accident.

MEMBER ETHERLY: Okay, thank you. Appreciate.

Reverend Motley, same question.

REV. MOTLEY: No problems that I've ever seen and I travel -- I'm like Sandra. I bank at the Bank of America right there next door. I go to the Rite-Aid now. When it was Hostess and even when it was a used car lot, back in the day, we've never had any problems.

MEMBER ETHERLY: And there would be no concerns about any crazy or hectic movements of motorists and they would try to get into any of those driveways coming in either direction?

REV. MOTLEY: Not --

MEMBER ETHERLY: Not that you've experienced?

REV. MOTLEY: I've never experienced that.

MEMBER ETHERLY: Thank you. Thank you, Mr. Chair.

CHAIRPERSON GRIFFIS: Any questions by the Board of the witnesses who we have heard?

Very well. Cross? Any cross questions? Very well.

Thank you all. I appreciate your patience and being down here today.

Let's go to the panel again then. Those -- are there any others in support or --

MR. ANDERSON: My hat is off to you, Mr. Chair.

CHAIRPERSON GRIFFIS: Thank you very much. I can't do it without these guys though. Okay. The next five. Can we have the next five people?

(Pause.)

REV. HINES: My name is Booker T. Hines, Sr. I'm 75 years old. I lived at 721 Congress Street ever since 1963.

I know the area real good. I had a little business on Lavonne Street, Southeast. And I deal with ex-offenders and substance abuse people. I am glad that somebody thought enough of the community to try to bring in something to help them. This service that is being brought here on South Capitol Street would help the unfortunate people to find jobs. Over 50 years I have been dealing with those type people, minorities and I search for jobs for them. Some of them have little children that are hungry, nowhere to

live and at this day and time you've got to have a job to get an apartment. You have to have a job to buy food. And you're being turned down.

I had referred them to drug treatment centers but after they go to the drug treatment centers and come out, you have to find a job. I train them, but sometimes jobs are hard to find and when a person comes in off of drugs they need somebody to give them attention. They need somebody that they can lean on, somebody that they can trust to heal the wounds that the drugs had damaged in their minds. Although they may have gone to school and have got an education, but they need somebody to understand their problems and this is what I do.

I thank God for this service that is being brought in because his heart is open to the public, of those that are in need.

Now if you all let this go through, I have another place that I can refer somebody that can deeply need to a job.

CHAIRPERSON GRIFFIS: Good, thank you very much. So you clearly see this as a job opportunity for those in the immediate area and those perhaps of the greatest need. Thank you.

Yes sir.

MR. HARLEY: Good morning. My name is Duane Harley. I live at 1454 Bangor Street. I was the electrician on that job.

CHAIRPERSON GRIFFIS: On this specific job?

MR. HARLEY: On this specific job.

CHAIRPERSON GRIFFIS: Okay.

MR. HARLEY: I kind of lost of what was going on and I mean we followed the proper channels so I was -- why are we here?

CHAIRPERSON GRIFFIS: Good question. Okay? Anything else. Do you support the application?

MR. HARLEY: I support him. He's been very helpful to me and a lot of my friends and gave us jobs. So he's been very helpful.

CHAIRPERSON GRIFFIS: Excellent. That's an excellent point. I think this has been a bit of a regulatory confusion in terms of our regulations and all and hopefully we're going to bring some clarity to that when we make our decision on this. But the most important aspect of the public hearing is gathering all the information, so we have it before us and we can make a proper and judicious decision. I appreciate your patience and I appreciate your showing up.

Yes?

MS. HODGINS: My name is Toi Hodgins and I'm a resident of 4632 Livingston Road for the last 20 years and I'm also working at LP Mart and I also on my free time I go to the school and the other stores around, the liquor store, the bank, the schools, the community. I know a lot of people and get people to understand that I feel like if you have one store here, why limit the community to have to pay one price if someone's willing to come in the community to help the community with lower prices. And I have a lot of support for the community as far as bringing the low price store into the community.

And as far as the traffic going into the store, I live around there and it's been stuff built there. It's been Hostess. It's been a Willies. It's been a Rite Aid. The traffic is the same regardless. It's going to be the same if you put something else. It's still going the same way. And I'm just here to support the store.

Thank you.

CHAIRPERSON GRIFFIS: Excellent. Thank you very much. Obviously, that's good testimony to understand what was there prior and whether there would be any anticipated impact, especially with

traffic.

Yes sir.

MR. EGEZABHER: Good afternoon. My name is Lulu Egezabher. I work for Lowest Price for four years right now. And then I'm a manager of Lowest Price gas stations. I am work with Mr. Yuen for almost four years. And then we are working with the community always. We help the community. We hire from the community people. That's how we do our job. One day we asked Mr. Berhanu and we asked him what is the meeting, the person it is and they give the wrong address. And then we not be at the meeting because the person right here, he give out the wrong address and then we find out the right address and then we were in the meeting.

CHAIRPERSON GRIFFIS: Okay, excellent. So you clearly are open to working with the community and listening to their concerns. I appreciate that, although you would rather get the right address for meetings that you're required to be at. Okay.

Good afternoon.

MR. HINES: Good afternoon. My name is Donald Hines. I'm Reverend Hines' son.

CHAIRPERSON GRIFFIS: Indeed.

MR. HINES: I've been living in Washington

at 721 -- couple of places.

CHAIRPERSON GRIFFIS: Sure.

MR. HINES: For about 45 years. You know I've worked with him up there at Booker T. Hines Human Resource Center which is an ex-offenders' program. We help young men and the biggest problem that we have and I feel that this business can help us create jobs. The location where it's at is not a bad location. You know I hear talk about traffic, but it's a business community down there. You know, it's all type of stores down there. So if -- and it's been that way for years. So I don't feel that one more is going to make the traffic any worse.

The biggest problem that we have, that this business can help us do is find ex-offenders jobs because a lot of the guys don't have a work history, so we have to get them the low grade jobs to start off to create a work history. And this is the type of job where they can start off because once you get out of prison, you're not going to go straight to work on a $50,000 a year job. It takes time for you to create a résumé and you have to start somewhere.

And I think this business here is a good place for a lot of our clients to learn the responsibility of holding down a job. If he's willing

to hire ex-offenders, which a lot of other businesses have a problem with, we need him in our community because as long as an ex-offender is working, he won't go back to what he used to do and that's robbing you, you and you. You know? So they need jobs.

CHAIRPERSON GRIFFIS: Indeed.

MR. HINES: Or out on the street selling drugs.

CHAIRPERSON GRIFFIS: Thank you very much.

MR. HINES: Thank you.

CHAIRPERSON GRIFFIS: We appreciate that testimony. You've indicated at the end that if this Applicant was willing to hire ex-offenders, do you have any assurance that they actually will?

MR. HINES: I say if he is willing.

CHAIRPERSON GRIFFIS: I know, have you had conversations? There's now two, three testimonies --

MR. HINES: Yes, yes, yes.

CHAIRPERSON GRIFFIS: So you have assurance that they will?

MR. HINES: Yes.

CHAIRPERSON GRIFFIS: Okay. Ms. Miller, did you have a question?

VICE CHAIR MILLER: That was my question.

CHAIRPERSON GRIFFIS: Indeed. I know this

Board too well.

Thank you all very much. Let's go to any cross?

MR. JORDAN: Cross, yes sir.

CHAIRPERSON GRIFFIS: Does the Applicant have any cross first, just to keep our procedures in order.

Applicant, any cross of the witnesses? Good.

Mr. Jordan, cross?

MR. JORDAN: Yes sir. The individual who has identified himself here, I can't remember his name, sir, if he could --

MR. EGEZABHER: My name is Lulu Egezabher.

MR. JORDAN: Mr. Egezabher, just a couple of questions. You raised the question about getting notice of the meeting, but you did receive copies of the flyers prior to the meeting, is that correct?

MR. EGEZABHER: Yes.

MR. JORDAN: And you did attend the meeting, is that correct?

MR. EGEZABHER: Yes.

MR. JORDAN: Okay, now the next thing is you keep talking, you are a manager with the Lowest Price Gas, is that correct?

MR. EGEZABHER: Yes.

MR. JORDAN: How many stations do you currently manage?

MR. EGEZABHER: Thirty-eight stations.

MR. JORDAN: You manage yourself?

MR. EGEZABHER: Yes.

MR. JORDAN: How many employees are there currently at these Lowest Price Gas Stations?

MR. EGEZABHER: All of them?

MR. JORDAN: Yes.

MR. EGEZABHER: Let me see. Each one has six people. Six times 38.

MR. JORDAN: Is that an average six or --

MR. EGEZABHER: Six.

MR. JORDAN: How many of these are residents of the District of Columbia?

MR. EGEZABHER: All of them. Most of them.

MR. JORDAN: Most of them.

MR. EGEZABHER: Yes. She is one of them. She works for our Lowest Price.

MR. JORDAN: As I understand it, she works for the convenience store.

MR. EGEZABHER: Yes.

MR. JORDAN: There's a difference between

the convenience store and the Lowest Price Gas Station.

MR. EGEZABHER: It's all the same.

MR. JORDAN: Now how many jobs will be created when the gas station, if the gas station is approved, at 4665 South Capitol Street, how many new jobs will be created there?

MR. EGEZABHER: Around 15.

MR. JORDAN: Fifteen new jobs, but all your other stations just have six?

CHAIRPERSON GRIFFIS: Easy guys, you're not on the record, so it's not worth saying.

It's a good follow-up question, Mr. Jordan. Don't be frustrated.

Ask him. You indicated that your other stores have six employees, but this one is going be twice as big as the rest and have 15?

MR. EGEZABHER: This one we have the carryout, what they call the chicken place, gas station, plus we cash checks, check cashing.

CHAIRPERSON GRIFFIS: I see. So you have more services so you'll be having more employees?

MR. EGEZABHER: Yes.

MR. JORDAN: How many employees --

MR. EGEZABHER: And D.C. Lottery.

MR. JORDAN: How many employees do you have there now?

MR. EGEZABHER: Right now?

MR. JORDAN: Yes.

MR. EGEZABHER: How many do we have right now?

MS. HODGINS: In my store or all of them.

MR. EGEZABHER: In your store.

MS. HODGINS: From the community, one.

MR. JORDAN: But how many employees totally at the store?

CHAIRPERSON GRIFFIS: How many employees do you have at the store now?

MS. HODGINS: We have five now.

MR. JORDAN: Five employees.

MS. HODGINS: Including myself.

MR. JORDAN: And only one of them from the community. So how many will be hired if the gas station is approved?

MR. EGEZABHER: You can ask Mr. --

MR. JORDAN: Thank you, Mr. Chair.

CHAIRPERSON GRIFFIS: I get your point, Mr. Jordan. Good questions. Thank you all. Thank you all very much. Appreciate you being down here today.

Are there other persons to give testimony in opposition? In support? That's fine.

I just want to fill the chairs. They're free and they're hard to fill. Anybody else to give testimony, either neutral, support, opposition? Opposition.

You're going to testify as a person in support and you were part of the case presentation? Let's hold it together, guys. Let's give some people that haven't spoken an opportunity.

Mr. Rashid, are you going to testify? You're not required. Now would be a good time though as opposed to you'll have no other time.

Let's move ahead, starting on my left. A very good afternoon to you, sir.

MR. RAY: Good afternoon, Mr. Chairman and Members of the Board. My name is John Ray and I reside at 4310 20th Street, Northwest, Washington, D.C. I'm a lawyer with Manatt, Phelps and Phillips and we represent DAG Petroleum. DAG Petroleum is a jobber that owns all the Shell Stations in the District of Columbia and some stations in Maryland.

We do not oppose this station being at this location. We don't oppose stations at all. What we do oppose is not applying to the rules and it's

been very revealing here today and I understand why we have so many of these stations that are now up and operating that did not come before BZA, because it's clear that the developer of the stations feel that because a station was there before they don't have to come to BZA. The discontinued use is very clear.

There hasn't been a station at this address since 1987. 1987, where the previous station was located at 4675, a bank received the Certificate of Occupancy there and a bank has been there every since up to the present Bank of America. And keep in mind this Lot 1 and Lot 4 has not been consolidated. These are separate lots as well.

And part of the reason that we're here today, Mr. Chairman, is not because out of the blue this came before you. It's here because we filed a complaint about four other stations that are already in operation that did not come before BZA.

CHAIRPERSON GRIFFIS: And you put that letter into the record?

MR. RAY: And this station.

CHAIRPERSON GRIFFIS: Good. Did you provide the Applicant this submission?

Let's get a distribution as we're getting stuff. We can give it to them. Sorry to interrupt.

MR. RAY: Yes, and when we went to see Mr. Denzel Noble at the time, we went because we couldn't understand how this station was being constructed and going up when we can never get a permit to do anything until we come through you. I mean even in situations which we will be talking about later today, where we have an existing building that we're simply renovating on the same footprint, we were told even if you put an additional pump, if you put a new canopy, if you do any of those things, you've got to go to BZA.

And let me give you one of the most chilling examples. Chevron and General Motors is doing this hydro station. We wanted to put up a canopy there, an additional canopy. They said no, you've got to go to BZA. And if you go by that station now, we don't have a canopy there because we haven't had a chance to come here yet to get that.

CHAIRPERSON GRIFFIS: Indeed.

MR. RAY: So we just want to make sure that the rules and regulations are followed and we realize that some aspect of this we still have to deal with DCRA, but when we read the application, it was clear that they felt that they were not coming here. It was demonstrated for you to approve this, but it was just sort of some administrative process. Because

they said finally in their application to you that they characterize this not as a BZA proceeding, but sort of as the Board's recommended outcome that we're filing this application to get the Board's recommended outcome.

CHAIRPERSON GRIFFIS: Indeed.

MR. RAY: I couldn't understand what that was all about. So I'm here today. This should be before the BZA. It's a proper matter before the BZA and that you have jurisdiction over this and that this exception cannot take place unless approved by the BZA.

CHAIRPERSON GRIFFIS: Understood. Thank you very much, Mr. Ray, we appreciate it. You've also submitted a lengthy written testimony which we have in the record. The Board will obviously clearly read all of that. You've also submitted into the record what is -- as I haven't had a second to read it, but a letter that's signed by Mr. Bell, Zoning Administrator, perhaps as you've indicated a response to your letter which is attached behind it. The Board obviously will look at that. The Applicant has been provided a copy and I'm assuming also, Mr. Jordan, representing the ANC, is also going to provide us as a party in the case.

Thank you very much and we do appreciate your reiteration of following the correct rules and procedures. Obviously, this Board has a full intent to do that.

Any questions from the Board at this time?

Let's move ahead then, Mr. Rashid?

MR. DEVER: Thank you, sir. My name is Jerry Dever, as stated before. I represent Mr. Rashid. He's the current crown dealer at 5321 Indian Head Highway.

For the record, I wish I would have had a griller chicken salad for you to make things a little bit better, but unfortunately, I don't.

Again, as stated, I believe this Applicant -- we oppose this BZA case as the Applicant, we believe, has circumvented the approval process and expects this Board which appears as though they're not going to rubber stamp this application. We don't feel he meets the basic requirements.

I've been involved and developed and been involved in several special exception hearings in cases throughout Maryland and Virginia and redeveloped several properties within the District of Columbia and any time we require a special exception in the oil industry, we always -- if we had traffic issues, we

were always submitting a traffic analysis. And I contend that the reason they have not submitted one in this particular case, is they're afraid of what they're going to find out.

There appears to be just a total lack of information. We believe that this application should comply with Section 706.4 that requires that a gas station not create a dangerous or other objectionable traffic conditions. We think they're cramming too much into this paperbag. It's a 2,000 pound paper bag and they're trying to put in 10,000 pounds.

We haven't even seen their site plan? Okay? But it's my opinion they've got stacking problems. They have delivery problems. They've got a site that serves breakfast, lunch and dinner. They've got lottery and they've got check cashing. And when you add gasoline with six dispensers on a tiny site like this, and this site is probably bigger than most in the District, but there's very, very few sites that have six dispensers, 12 fueling positions sitting on 25,000 square feet with these other uses on the property really anywhere that I know of.

Typically, you putting six dispensers with a canopy, you're looking at at least an acre to an acre and a half, when you throw in a 3,000 square foot

building. It's going to create a very chaotic situation.

I think the site is traffic bound. It's very, very difficult to get in and out of during peak periods and I think in my opinion the signal -- it may be a failing intersection. I'm not a traffic expert.

CHAIRPERSON GRIFFIS: Ten seconds.

MR. DEVER: And the history speaks for itself. When this gasoline use was established in the early 1950s it was a different area, different car usage, less traffic, less cars, different driving patterns and the other point I want to make is --

CHAIRPERSON GRIFFIS: Last point.

MR. DEVER: The building permit and I'm not sure the building permit is even valid, if it was properly issued, without coming before this BZA approval board. Thank you.

CHAIRPERSON GRIFFIS: Excellent. Thank you very much. We obviously agree with the fact that the permit is invalid unless they have a special exception and obviously they can't construct it. So to allay everyone's fears in that matter, they have taken the correct route in terms of bringing an application before the Board and that's what we do.

I appreciate your assessment and also in

terms of the background of other situations and the traffic analysis that might be needed in order to even put together the study as the Applicant would look at this sight and also the comparativeness of the square footage that might be appropriate for six pumps or more.

The intersection you mentioned is in your estimation might be failing. I think it's a good qualifier. You did say you're not a traffic engineer, so we don't know what grade it actually has, but I think we have ample personal testimony on that to assess unless we're given other definitive factual information to deliberate on.

Very well. Oh, I'm sorry, yes sir.

MR. AMEFILIN: My name is Peter Amefilin.

CHAIRPERSON GRIFFIS: I'm sorry, can you just state that again?

MR. AMEFILIN: My name is Peter, Peter Amefilin. I am a business man. I own an Exxon station next to this location.

CHAIRPERSON GRIFFIS: We're bringing out all the oil men.

MR. AMEFILIN: This location in question and I've been there since 1990.

CHAIRPERSON GRIFFIS: Indeed.

MR. AMEFILIN: So I have ample knowledge of the area. The address that I saw on this application is wrong address. And when they are talking about reestablishing a gas station, there hasn't been any gas station at that location unless someone tells me there has been one before 1990. Now there was a gas station, Sunoco gas station that was right where the Rite-Aid is now. I have it in a picture here. My work, as we are playing around, I am taking pictures. 1995.

After that, there used to be a Hostess -- no, no, before that, sorry, used to be a used car sales lot between this Sunoco gas station and the Hostess Cupcake. We are located on the east.

Now the Rite-Aid is using that location as their parking lot. Now this location in question for this new gas station they're talking about used to be a Hostess and they changed to Willie's. They all closed out. And then he opened it up as part restaurant and part shop. I've gone to that shop. Some of them who work there know me very well. I go there and buy my food. So I like to welcome them as business.

Next to that building has been a small parking lot, a very small parking lot. The previous

business used to use as their parking lot and the bank also.

My concern here is the size of the location where they're putting the gas tanks. I feel it's so small to fit this large, this much underground hazardous materials is what we're talking about here. I don't know how well the people concerned have, I didn't look into that, but from my understanding the Department of the EPA, how they come to us and they filed Department, I don't see how the fire truck can get in there. This is hazardous material handling.

CHAIRPERSON GRIFFIS: Okay.

MR. AMEFILIN: And I would like to know if those processes were taken and if those gave the approvals.

CHAIRPERSON GRIFFIS: Good, thank you very much. I think I understand, in terms of the size of the site, you think just the access in based on the fact that there may well need to be fire trucks getting in and out, that you don't think on the documentation that you've seen that there's adequate space involved. Again, you've supported a lot of the testimony in terms of prior use on this site.

Thank you very much. I appreciate your being down here.

MR. AMEFILIN: I'm not finished.

CHAIRPERSON GRIFFIS: I know you're not, actually, you are.

(Laughter.)

Last statement. Last quick statement, very briefly, please.

MR. AMEFILIN: On the traffic pattern, I heard the people talk about traffic pattern. I understand that a traffic pattern of a gas station is quite different from the traffic pattern to a grocery store or the kind of store he has. I feel if he wants to put a gas station there, they will have to demolish the building for them to fit a gas station for the purpose of access.

CHAIRPERSON GRIFFIS: Do you think it can't handle all the cars coming and going or why would they have a demolish the building?

MR. AMEFILIN: We're all drivers --

CHAIRPERSON GRIFFIS: I know, but why demolish the building?

MR. AMEFILIN: We have to have an entrance and exit.

CHAIRPERSON GRIFFIS: Okay, so there's not enough room to move around.

MR. AMEFILIN: Exactly.

CHAIRPERSON GRIFFIS: Good. Thank you very much. I think it's very clear. Let's go to any cross examination of the witnesses you just heard?

Excellent.

MR. BECK: The locations of the dispensers and the layout --

CHAIRPERSON GRIFFIS: Who is this a question to?

MR. BECK: Yes, it's to this gentleman right here.

CHAIRPERSON GRIFFIS: Excellent.

MR. BECK: The application was submitted to the Board of Zoning and the Zoning Department and everyone and if it didn't fit it wouldn't have been approved. I just want to make that point.

CHAIRPERSON GRIFFIS: No point is made. Quick question, quick answer.

Let's go.

MR. BECK: I'd like to address a question to the Crown owners here. Are you guys residents of the District of Columbia?

MR. DEVER: No sir.

MR. BECK: Is your station in the District of Columbia?

MR. DEVER: No sir. We already stated

that.

MR. BECK: That's all I wanted to ask them.

The question that I want to ask to the attorney is in the testimony --

CHAIRPERSON GRIFFIS: I'm sorry, hold on just a second. I have a legal question, not being an attorney myself.

Mr. Ray, you have put yourself in an interesting position as providing testimony as a person. So I'm going to allow the cross examination.

MR. BECK: It's going to be brief.

CHAIRPERSON GRIFFIS: I know. You just have to clear it with the attorneys before you go at them, you know what I mean?

MR. BECK: Because I haven't had a lot of time -- this is the first I've this letter.

CHAIRPERSON GRIFFIS: Indeed, first we have.

MR. BECK: And are you aware of accessory uses for addresses for gas stations, the zoning requirements? Are you aware that 4675, the gas station is capable of using 4655 as accessory use?

MR. RAY: That's not the issue.

MR. BECK: The issue is the zoning

requirement.

CHAIRPERSON GRIFFIS: Turn your mic on, Mr. Ray. I'm sorry to interrupt you. Can you turn your mic on in front of you? You've asked a question, let him answer it.

MR. RAY: At the end of the day, the issue is really this, is that even if you were building the station on the site, I'll take your argument of accessory use. The regulations and the code is very clear. You can continue to use a nonconforming use as long as you continue, but once it stops for a period of three years --

MR. BECK: Only if it becomes a nonconforming property --

MR. RAY: No, no, no, no, no. You don't understand the law.

CHAIRPERSON GRIFFIS: Question answered. Excellent answer to the question. Next question.

MR. BECK: That's all I have.

CHAIRPERSON GRIFFIS: Good, thank you both very much.

No other cross. Does the ANC have any cross?

ANC? Okay.

MR. YUEN: I have cross.

CHAIRPERSON GRIFFIS: This is it. Just give it to one person. We'll have one person cross by the Applicant.

Let's go.

MR. YUEN: Thanks for your indulgence. Mr. Dever, how long have you been familiar with this project from what day forward?

MR. DEVER: Off and on for the last two, two and a half months.

MR. YUEN: Okay. You only came aware at the time we tried to retain you, is that how it goes?

MR. DEVER: Yes sir.

MR. YUEN: You've given this testimony strictly as an expert or as your personal opinion?

CHAIRPERSON GRIFFIS: He's got to be personal. We haven't qualified him as an expert witness. Next question.

MR. YUEN: He just stated that he was the Shell oil man for many, many years. I'd like to know his occupational background that gives him the ability to talk about traffic.

CHAIRPERSON GRIFFIS: He's representing a person. I would allow that if he was actually an expert witness brought before the Board, but in terms of his background, it's no different than anyone else

in the public that's coming forward to provide testimony.

MR. YUEN: It's all a conclusion that you stated here before the Board, require you to do due diligence on your own? I mean visit the site, talk to the engineer, traffic engineer or anything regarding that?

MR. DEVER: I visited the site. And I stated that I have not done a traffic impact study.

MR. YUEN: How many time you visit the site before you come to this conclusion?

MR. DEVER: Probably four or five times.

MR. YUEN: How many hours did you spend on my site?

MR. DEVER: Every time I was there I went in the market and spent probably on average an hour.

MR. YUEN: Okay, do you -- can you give me an account how many stations are in that general area between your client's location and the Eastover location in the District of Columbia?

MR. DEVER: You have the Chevron. You have his Crown. You've got the Shell and you also have the Exxon and if you go up further along Livingston Road, you have some additional competition.

MR. YUEN: Do any of those other sites

caused a similar problem like the proposed site that you believe that it will?

MR. DEVER: I don't think so because a lot of them are located, other than the Shell on service roads. That impacts those sites in terms of getting people off the major thoroughfares and back on a lot easier. My only opinion is based on several years in this business and as a former real estate manager of Shell Oil Company.

MR. YUEN: How long have you been with Shell?

MR. DEVER: I was with Shell for 20 years.

MR. YUEN: When did you leave Shell?

CHAIRPERSON GRIFFIS: Let's move on.

MR. YUEN: Okay, related to -- so you agree that that's ample competition in the area because you just recited about six locations on the Maryland side as well as inclusive of the D.C. side, is that correct?

MR. DEVER: There's competition in the area.

MR. YUEN: Is it your belief that our site will dilute the business to your client?

CHAIRPERSON GRIFFIS: I'm ont sure why it's germane to us. Let me put it in a hungry tone,

why do we care? Next question.

MR. YUEN: This question is for our neighbor here who operates the Exxon station since 1990. Your name again, sir? Peter. How do you compare the lot size, the size of our lot to your Exxon station? Is it much bigger?

CHAIRPERSON GRIFFIS: I'm going to need a mic in front of him. He's very soft spoken for an oil man. Can you move your mic over to him?

MR. YUEN: My question is the site at 4675, where the station has been built now, how does that compare to the size of your particular gas station across the street where the Exxon is, is it about two times bigger?

MR. AMEFILIN: The size where they want to put the station now is about one quarter or less than my gas station.

MR. YUEN: Do you know the exact square feet of your gas station, sir?

MR. AMEFILIN: We have that on paper, but I don't have it right in front of me now.

CHAIRPERSON GRIFFIS: The answer is no. Next question.

MR. YUEN: So if I said that our lot size are twice as big as the Exxon, would you have any

reason to doubt that?

MR. AMEFILIN: Definitely.

MR. YUEN: What basis do you have on that? Measurement, did you take tape measure or you had a survey?

MR. AMEFILIN: I can see.

MR. YUEN: So that's strictly your own perception?

MR. AMEFILIN: Yes.

MR. YUEN: Okay. Mr. Ray, my question to you is that in your research how many stations previously or currently, located in Square 6274, that means inclusive of the Rite-Aid lot, of the bank lot and the Hostess lot. We only have three lots there.

CHAIRPERSON GRIFFIS: I wasn't aware, unless you read his statement, I wasn't aware that Mr. Ray testified to the previous gas station uses on the site.

MR. YUEN: He did mention about a historic background.

CHAIRPERSON GRIFFIS: Mr. Ray?

MR. RAY: Well, what I indicated was that 4675, which you indicate is where a gas station is going to be, that our research indicated that there was a gas station on that site at one time. In 1987,

a bank got a C of O for that site and that a bank has been there ever since.

And the point that I wanted to make as to 4675, where you say you're going to build the station and you're re-establishing the station, that there has not been the use of a station there since 1987 that's been used for another use. And under the code and the regulation, discontinuance of use after three years, there's a presumption that it's not going to be continued to be used as that and you have to come through BZA to establish the use again.

In fact, I would argue that you are building a new station, that you're not re-establishing a station.

CHAIRPERSON GRIFFIS: Indeed, but no need for new argument. We're full up already.

Next question.

MR. YUEN: One follow up question for my neighbor here. Are you aware of the gas station was at the Rite-Aid site at one time, since you have history of going back to 1990?

MR. AMEFILIN: I'm sorry, am I aware?

MR. YUEN: Yes. Are you aware that there's a gas station on the Square 6274 as recently as you occupy the Exxon location since 1990?

MR. AMEFILIN: Yes, that's what I said in my testimony. Sunoco gas station.

MR. YUEN: How would our station make any difference than a Sunoco station that was there one time?

MR. AMEFILIN: That's exactly my point. This picture here shows the space that's all around it. The south side of it is all wood space. There are no two buildings beside this station. That's exactly my point.

MR. YUEN: If I would give you a survey map on the Sunoco site and a survey map on our site, if they are equal in size would you have any disagreement among that or do you know?

MR. AMEFILIN: I know quite well that there Sunoco gas station used to sit, I have it here in picture. It's very spacious. I reiterate that I know two buildings squeezing it in.

MR. YUEN: You did not answer my question, sir.

CHAIRPERSON GRIFFIS: Okay, but you're also asking him to do a lot of speculation.

MR. YUEN: I understand. Thank you.

CHAIRPERSON GRIFFIS: Anything else?

MR. YUEN: That concludes my cross.

CHAIRPERSON GRIFFIS: Thank you very much. Okay, yes, Ms. Miller?

VICE CHAIR MILLER: I want to ask Mr. Ray a couple of questions. I just want to make sure that I understand your testimony and are you saying that the gas station that they want to establish now is going to be established in a different location than the previous gas station that existed before?

MR. RAY: Yes.

VICE CHAIR MILLER: And is that on a different lot or a different square?

MR. RAY: Different lot.

VICE CHAIR MILLER: It's on a different lot. Okay. And then I know the parties are going to address this jurisdiction question anyway. You're not necessarily a party, but I would think that you could be free to address in writing anyway. But one question I would, will have is --

CHAIRPERSON GRIFFIS: Not a great assumption right off, but go ahead.

VICE CHAIR MILLER: Okay. We don't usually turn, well, never mind. Okay. Then I want, that's what I want to ask you right now. Your opinions, since you're right here and have studied this issue. The Applicant's relying on 199.1,

definition of nonconforming use. And that, in the beginning, it talks of use of land.

And I'm wondering if you have looked at whether use of land means use of a lot, use of a site, use of property as a whole, use of, you know, give an opinion on that.

MR. RAY: I interpret it that in all my experience that that term refers to the actual location where that use is taking place.

VICE CHAIR MILLER: The exact location, no matter --

MR. RAY: Yes, absolutely.

VICE CHAIR MILLER: -- it's limited to the size of the space it's taking up .

MR. RAY: It doesn't mean down street, it doesn't mean next to it, it doesn't mean all over the block . And I think that's supported in law. It's --

VICE CHAIR MILLER: Yes.

MR. RAY: -- that location.

VICE CHAIR MILLER: Do you have, do you happen to know where that's supported in the law?

MR. RAY: I can find it for you, I think.

VICE CHAIR MILLER: Okay. Thank you.

MR. BECK: Can I speak to that? Just briefly. An accessory use under 2500. A gas station

can be located in any partial of the lot. Under 2500, under accessory uses, the gasoline dispensers, kiosks and canopy can be located on any portion of the lot or the partial. You just asked him a question in reference to where the location can be in reference to lot or plat or what it be. The 2500, accessory use, says that at a gasoline station, the pumps, dispensers, the activities, can be located anywhere on the lot or adjoining the lot, adjoining the lot.

CHAIRPERSON GRIFFIS: Right. Which wouldn't establish them as a separate structure which would require further relief in terms of constructing --

MR. BECK: Right

CHAIRPERSON GRIFFIS: -- two different, independent structures.

MR. BECK: I just wanted to clear that up.

CHAIRPERSON GRIFFIS: And that's your first answer about it --

MR. RAY: Mr. Chairman?

CHAIRPERSON GRIFFIS: No. I'm not going to get into a lot of legal argument on this. It's an interesting thing that Ms. Miller has brought up. It's the Applicant's burden obviously to address it. I think you understand exactly where she's going on

that.

Mr. Ray?

MR. RAY: Mr. Chairman, I just wanted to point out that I pointed out that there's two lots here.

CHAIRPERSON GRIFFIS: Indeed.

MR. RAY: And that's what I'm talking about.

CHAIRPERSON GRIFFIS: Look. I'm very clear on all the issues. I think the entire Board is clear. So we have it all before us. The Applicant has Mr. Ray's written submission, of which you've had more time than we have to look at it. Obviously, the record's open for you to respond to that that and there are some particularly interesting pieces that are brought up. Its fundamental point I think is well taken and obviously understood by the Board.

Let's move ahead. If there's no other persons present, thank you all very much. I appreciate your being here.

Any other person present in this morning Application 17281 to give testimony? Support or opposition? We wore them out. It only took until 2:30 to do it. Then let's go ahead. We'll give the Applicant closing remarks. This is your time to give

rebuttal testimony in closing. However, the record is remaining substantially open for you to address all these things. So if your time is better served -- I'll wait until you guys pay attention to me to through this, but --

(Pause.)

Mr. Jordan, I don't think there's going to be an opportunity for you.

MR. JORDAN: In closing, sir?

CHAIRPERSON GRIFFIS: No. You presented your case. This is the closing of the Applicant and rebuttals.

Okay. Let me state again as you were coming forward and not listening to me, which is okay. But nonetheless, it is obviously your opportunity to present rebuttal testimony and closings. But, let me underscore the fact that, one, it's ten of three, but that doesn't mean anything to us, we've got to finish your case.

The record is being widely opened for your submissions. So, you don't need to feel like you're covering absolutely everything right now after four or five hours on this case. A written submission will be very sufficient. In fact, maybe, maybe, in fact, you're much more hitting it home, but there it is.

I'll turn it over to you.

MR. YUEN: Mr. Chairman, I have a couple of housekeeping questions.

CHAIRPERSON GRIFFIS: Yes.

MR. YUEN: How long will the record be open?

CHAIRPERSON GRIFFIS: I'll set a schedule at the end.

MR. YUEN: Fine.

CHAIRPERSON GRIFFIS: It will be based on the decision making --

MR. YUEN: And the follow up question is do I have the opportunity to yield to Mr. Way for closing?

CHAIRPERSON GRIFFIS: This is all your case. You don't yield time. This is your case.

MR. YUEN: So I can do my closing as well as Mr. Way can say a few words on the closing, is that okay?

CHAIRPERSON GRIFFIS: Several words, of course.

MR. YUEN: May I stand to present this. I feel more comfortable if I stand, is that okay?

CHAIRPERSON GRIFFIS: Whatever you're comfortable with. You just need to be near a mic.

MR. YUEN: I want to thank the BZA panel, the ladies and gentlemen who took the time to hear our case this morning and this afternoon.

I state my name again. I'm Mr. Koo Yuen. I am the co-manager of the Power Fuel, the Applicant. It came a time back in Year 2003 we had the opportunity to acquire the Rite-Aid, the Willy Record Shop and the Bank of America, the underlying real estate as one complete package.

Through my diligent research and through the help of Mr. Way, we were able to establish that the gas station is being routinely or historically on the site. I use my diligent effort with good faith effort, I secured an occupancy permit shortly after we have entered into the contract of purchasing the entire square, one from the Rite-Aid to Bank of America where the subject gas station is going to be built at 4675 which is right where Bank of America -- between Bank of America and 4665, the convenience store.

Subsequently, Mr. Berhanu Terrefe who is the owner of the operation, so we released this site to Mr. Berhanu who has given a brief testimony about his involvement with the property. He routinely secured all his permits, secured all his interior

construction without any interference from the ANC and from the --

CHAIRPERSON GRIFFIS: We don't need to spend a lot of closing time on process.

MR. YUEN: I understand that. Thank you. And there is no interference from anyone regarding his portion of the work. We got our permit to construct the gas station. We followed properly. We have completed disclosure on the site plan on where everything goes. We went through many, many departments before we could secure this. Department of Transportation looked at it. Zoning looked at it. Department of Health looked at it. Electrical looked at it. Fire looked at it. Everything, you name it, District of Columbia has scrutinized this application.

Mr. Way was able to secure this permit of June of 1994. We did not begin -- I'm sorry, 2004. I backtracked my chronological.

CHAIRPERSON GRIFFIS: That's okay.

MR. YUEN: Mr. Way has delivered the permit to me in June of 2004 and we did not begin construction until about September of 2004, about middle of September. We have posted permit, the plan, everything was properly posted.

We have allocated over half a million of

capital to construct this site and many lost hours because of the interference from the ANC and whatever body that we have heard from people today that have testified.

So we have yield to come to this forum so that we can cooperate with the Administrator or whatever mistake one have done or not have done. If I had known about that every process has to go to the ANC or at least we give them a courtesy call, I would have done so. Obviously, that's water over the bridge or spilled milk already. It's nothing I can do to correct a wrong.

And my statement is simply that we've been alleged by the District Government or being alluded by the District Government with valid permit in hand, pay fee and many hours of architectural drawings with many hours spent during the permit office.

We began our construction between September 15 until about October somewhere in the early part of October. We were given a stop work order. And Mr. Bellow, who took over the Administrator's position in the Zoning Department has lifted that stop work order based on his recommendation that we come before BZA, which we yield to his wish and to make it right.

All I can say to this Board is that my company is strictly a distributor. My interest there is for the community to have independent business men like Mr. Berhanu Terrefe there to be able to operate successfully. They are local businessmen and we fund them the capital to build a station in hope that they will do enough business to repay us.

So therefore, it's the local businessmen like Mr. Berhanu Terrefe who are being put into the burden and hardship at this moment because of the sense of security really is really not a sense of security because of the whoever have challenged our permit before this Board.

I am doing what I believe is a responsible citizen to come before the Board to give you the fact, give you the history. The history of the site, no question has been gas station, not one, but two; and not two, even three. Yes, there might be some question about whether the continuation was there or not, but as we're reading the law, with the nonconforming use, I believe we fit into the conforming use and we are not asking for enlargement. Before it was a six pump operation. We have a six pump operation today. We are not asking for any enlargement of the building. We are not asking for

any extension of any part of the lot or use of the structure and as my construction manager who spent many work hours to look through the regulation and so on. He even cited accessory use, about the right under normal procedure.

So I'd like to just express my gratitude to each one of you to be able to collect all this data and I hope that each one of you to know where my hardship is and where Mr. Berhanu's hardship. Not only that, Mr. Berhanu was given a letter from Mr. Marian Barry yesterday and that letter is on the record and Mr. Barry who is our Ward 8 Council Person, just newly elected, "Dear Mr. Berhanu, I am in full support of your opening the Lowest Price Gas Station on South Capitol Street. First of all, your business is a minority-owned business. Secondly, you will provide jobs and provide a product for area residents at not only competitive prices, but also lower price and stimulating economic growth where it is so desperately needed."

New paragraph, "please note that I am looking forward to the completion of the project as well as the official grand opening. I congratulate you and thank you for your business endeavor in Ward 8. Sincerely, Marian Barry, Council Member, Ward 8,

dated February 7, 2005" addressed to Mr. Berhanu Terrefe, Lowest Priced Gas and LP Mart, South Capitol Street, Washington, D.C. 20032.

CHAIRPERSON GRIFFIS: Indeed, thank you for making a point to put that into the record. It is Exhibit 29.

MR. YUEN: I know this is a confusing matter for all concerned. Certainly it's confusing to me when the situation comes to me about the record, but I hired the very best in the business. Mr. Way has done many years of business, architectural rendering for his clients and I entrust that he followed every procedure that ever can be followed and that the permit was given to us in good faith.

Thank you very much for listening to my closing statement.

Mr. Way, I'd like to turn the time over to you.

MR. WAY: Thank you very much, Mr. Yuen, and to the Board, to the Chairman and to all present. Thank you for your time.

I somewhat am in a sticky situation. I contemplated recusal on the grounds that the next case before the Board, the next scheduled case before the Board of Zoning Adjustment today I am also involved

in. Mr. Ray and I have had the pleasure of being on the same side of --

CHAIRPERSON GRIFFIS: Is this part of the closing? Do you want to recuse yourself from this case --

MR. WAY: No, no --

CHAIRPERSON GRIFFIS: -- or the next case?

MR. WAY: -- I'm making a statement. I'm putting my activity day in context. I contemplated --

CHAIRPERSON GRIFFIS: Okay.

MR. WAY: -- recusal on the grounds that the next case before the Board I am also involved in.

CHAIRPERSON GRIFFIS: That's fine.

MR. WAY: And so I didn't want to have any difficulties in --

CHAIRPERSON GRIFFIS: Nothing precludes you from doing that.

MR. WAY: With, with that being said, my hearing of the testimony seems to come down to a couple of things. Again, no disrespect. Good to see you again, John. Mr. Way is not offering any opposition to the station. The ANC, the quorum from the neighborhood, there's no real opposition to the station. What there seems to be going on is basically a cry of a foul ball or something, you know, a matter

of "Whoa, was that ball inside. Did the guy's foot touch the out of bounds line?", or whatever.

We went through every process that we knew to exist when we created these plans and submitted them to DCRA. And I could sleep at night because I know that we went through the known processes.

Now, with regard to some the rationales, unfortunately, again, Mr. Ray, that you put forth that on a number of stations that I've designed in both this jurisdiction and in other jurisdictions, especially replacement work or restoration work, I've not had to go before a zoning body, a special zoning body. No variances, no special exceptions, no Board of Zoning Adjustment, bench decisions or anything. It's just been a matter of put together my plans, go through the permit, permit process, and submit the plans. So, under that rationale, then there are a lot of permits that, that I and my clients have procured, then which somehow would be invalid. And I don't think Mr. Ray would want that. And I don't think that, because we actually share some clients. I just don't think that --

CHAIRPERSON GRIFFIS: Okay. We'll keep the record open for you to provide those permits and addresses and applications.

MR. WAY: And so, as I conclude my statement, I think that this station has gone through the approval process. It's regrettable that there's been a cry of foul, but I can assure you that we went through every process that we knew to exist when we took on these projects.

CHAIRPERSON GRIFFIS: And our decision has nothing to do with the process. You're here for a special exception, or --

MR. WAY: I understand that, but I can't ignore what brought us here today sir.

Thank you very much.

CHAIRPERSON GRIFFIS: Well, it's an interesting statement that both of you are making. It's as if you've been forced to come here. There it is.

Ms. Miller, any other questions?

Board?

(Pause.)

What?

Let's go. We're going to set this for a decision making on the first of March. There's several things we'll assess.

Let's go down, and we can assess whether that's enough time for you to get all the information

in. I can't imagine it isn't, but we're going to keep the record open for any written submissions that you have in terms of the preliminary matter of whether there is actual relief required in the jurisdiction of the Board. To that, Ms. Miller, do you have specific questions --

VICE CHAIR MILLER: Look --

CHAIRPERSON GRIFFIS: -- that you would like to be addressed?

VICE CHAIR MILLER: From what I've heard today, I mean I have certain questions that I would appreciate if you would address that I think would be helpful for the Board to decide this question.

The first is we've heard that the, there were gas stations at the, there was a gas station prior to May 1958, but we don't have any evidence on it. I mean, if we're going to rule we need evidence on it.

Then, when exactly, the use lapsed. And I'm confused whether it lapsed, and then there was another gas station, or if there was only, you know, for one period of time and then it lapsed. And, so a chronology of use would be terrific, including other uses. But at least when it lapsed and when the final lapse was and confirmation. Has it moved, has the

location of the gas tanks moved from one lot to another lot and, if so, when did that happen?

And then, the question was raised with respect to 2500. Is this an accessory use? And how is this an accessory use? If that's what you're, if that's what Applicant is saying. And if it is, and how does that fall into the analysis of 199.1 or whatever point you were making?

CHAIRPERSON GRIFFIS: All right. The clear aspect of that is that if it's an accessory use, what's it an accessory to? So, what's the principal use? The principal use in the --

MR. RAY: Gas station.

CHAIRPERSON GRIFFIS: -- in the sense of, right, but we're not asking for questions now. Or answers now.

Okay. Ms. Miller, other?

VICE CHAIR MILLER: I think that basically covers it --

CHAIRPERSON GRIFFIS: But --

VICE CHAIR MILLER: I mean, unless you --

CHAIRPERSON GRIFFIS: -- there it is.

VICE CHAIR MILLER: -- it falls under the general 199.1, you know, that you're relying on. Thank you.

CHAIRPERSON GRIFFIS: Anything else?

MEMBER ETHERLY: Mr. Chair, very briefly. Mr. Beck mentioned in testimony that there was indeed some type of traffic look that had been conducted. If that could be offered into evidence, into the record, I think that would be very, very helpful.

To the extent that --

CHAIRPERSON GRIFFIS: To keep the record open for it, but not require it?

MEMBER ETHERLY: No. Actually, I would --

CHAIRPERSON GRIFFIS: You would like to require it?

MEMBER ETHERLY: I would require it.

CHAIRPERSON GRIFFIS: Indeed.

MEMBER ETHERLY: I think there's enough of a question regarding the traffic impact that I would be comfortable seeing a little more detail from the Applicant, specifically as it relates to traffic movements into and out of the subject property. So, if that document covers that, that would be helpful. If not, I'm not suggesting a full-blown traffic study. I'd leave that up to the Applicant to make a determination. But, some type of

MR. YUEN: No problem.

MEMBER ETHERLY: Thank you. Thank you Mr.

Chair.

CHAIRPERSON GRIFFIS: Excellent point Mr. Etherly. And again, also, the record's open for any sort of representation, graphic or narrative addressing the Office of Planning's concerns as part of the application. And they're all listed there. Mr Moore actually gave further information on that today.

Of course, all that needs to be put into and served on the ANC. Let's run through schedule and see if we can actually make our March 1 date on this.

Ms. Bailey, what do you think?

MS. BAILEY: February 22nd, Mr. Chairman, would be the time that we would need to have things in to get it in sufficient time to the Board. Is that doable for the Applicant, February 22nd, that's about two weeks from today?

CHAIRPERSON GRIFFIS: Does that give ANC ample time to respond?

MS. BAILEY: Actually, it does not. I mean, unless the ANC can get a turn-around response by that Friday. The 22nd is a Tuesday. I don't think so.

CHAIRPERSON GRIFFIS: Are you going to need more time?

MR. BECK: Yes. We can't, I don't think

--

CHAIRPERSON GRIFFIS: There's no problem with that.

MR. BECK: -- we'll be able to get a good traffic study. We want to be thorough when we come back here.

CHAIRPERSON GRIFFIS: Good. Let's do it. We'll give you as much time as you need. I wanted to get this through quickly, but I think you're right. Probably, ample time is needed.

Let's set this for our public meeting in April, which is, what date, Ms. Bailey?

MS. BAILEY: The first meeting in April of the Board is April the 5th, Mr. Chairman.

MR. BECK: Can we do it in May?

CHAIRPERSON GRIFFIS: May?

MR. BECK: The Chairman will be out of town.

MR. YUEN: I will not be available, so I would very much --

CHAIRPERSON GRIFFIS: Oh yes. Pushing it out further is easy. It's getting it closer which is hard for me. You should see the schedule. We haven't ended our morning yet.

MR. YUEN: I'll tell you. If we can a

revisit on this.

CHAIRPERSON GRIFFIS: Good. We're going to do May. So, let's get the schedule together. Obviously, you can put it in wherever it's ready --

MR. YUEN: May, May 20th or after would be better. Okay?

CHAIRPERSON GRIFFIS: First, first of the month, first Tuesday of every month is our decision-making, our public meeting. So, it's either, we'll do it the first Tuesday in May. Is that appropriate or no? You need it further?

MR. YUEN: Yes. I won't return until May 20th.

CHAIRPERSON GRIFFIS: Okay. So we're doing the first of June?

MR. YUEN: Okay. That would be fine, sir.

CHAIRPERSON GRIFFIS: Excellent. The first meeting in June is?

MS. BAILEY: June, June 7th.

CHAIRPERSON GRIFFIS: Nice date. Okay. That gives us ample time.

MR. YUEN: June 7th?

CHAIRPERSON GRIFFIS: No. Yes, the decision-making is on June 7th. We're going to back off four weeks from there where the Applicant's

submissions are due.

MS. BAILEY: And we can go up to May 2nd, Mr. Chairman?

CHAIRPERSON GRIFFIS: May 2nd, you can have your information in? That's going to be served on the ANC. We'll allow two weeks for the responses to the ANC?

MS. BAILEY: And, May 16th.

CHAIRPERSON GRIFFIS: And then, we'll allow you to the last minute to --

MR. YUEN: May 16.

MS. BAILEY: So that's May 2nd for the submissions, May 16th for the ANC to respond.

CHAIRPERSON GRIFFIS: And then a week before for the Applicant to do final submissions in response to the ANC and any sort of findings and conclusions.

MR. BECK: A week prior to June 7th?

CHAIRPERSON GRIFFIS: She's going to give it to you.

MR. BECK: Oh.

CHAIRPERSON GRIFFIS: Great. Very well. Ms. Bailey, when she's ready, is going to read through the schedule again so we're all clear.

MS. BAILEY: One more time. Decision

would be June 7th. Submission from the Applicant, submissions from the Applicant would be May 2nd. The ANC's is to respond by May 16th. And then, the Applicant has a final opportunity to respond to the ANC on May 23rd.

CHAIRPERSON GRIFFIS: Everybody clear on that? Any problems with those dates?

MR. YUEN: Mr. Chairman, is June 7 a public forum in here?

CHAIRPERSON GRIFFIS: It's a public meeting. You're certainly welcome to be here. There won't be any additional time for testimony or evidence. It's just the deliberation of the Board. The record will be full and closed a week before that.

MR. YUEN: Thank you.

CHAIRPERSON GRIFFIS: And we've left open, specifically what the record will accept and so outside of that we won't accept any other additional information.

Okay, if everyone is clear on that schedule? Thank you very much, gentlemen. I appreciate your morning with us.

That being said, I don't believe we have any other issues for the morning, Mr. Moy? Concerns?

MR. MOY: No sir, just for the Staff's

clarification, early on in the testimony there were issues of site plan, things like that. Is that still asked of the Applicant to submit?

CHAIRPERSON GRIFFIS: Yes. We asked that of in terms of responses to all of the points that the Office of Planning has listed.

MR. MOY: I just wanted to make sure.

CHAIRPERSON GRIFFIS: Good. Excellent point to bring up. Okay, if there's no other further business for the morning session, it's 10 after 3, the Board has to take a break for some business and also for some lunch. We're going to take 40 minutes. We're going to try our best to be back here at 10 of 4. We have rebuttal witnesses and conclusions is going first as we had established last week. We had always hoped to be closer to 1 o'clock, closer than we are now, but we're going to make every effort to get through that, obviously and then we'll call the next cases advertised in the afternoon.

If there's nothing further for the morning session, we'll adjourn. Thank you all.

(Whereupon, at 3:13 p.m., the public hearing was recessed, to reconvene at 4:09 p.m.)

A F T E R N O O N S E S S I O N

4:09 P.M.

CHAIRPERSON GRIFFIS: Good afternoon, ladies and gentlemen. Let me call to order the 8th of February 2005 afternoon session of the District of Columbia. My name is Geoff Griffis, Chairperson.

Joining me today is Vice Chair Ms. Miller and also our important colleague and Member of the Board, Mr. Etherly. Representing the National Capital Planning Commission is Mr. Mann.

Copies of today's hearing agenda are available for you. I imagine you all have had ample time to read that and reread it and look for more reading material. However, let's get right into it. We have several important aspects for all hearings before the Board of Zoning Adjustment. We are being recorded in two fashions. One is the court reporter sitting to my right on the floor. He's creating the official transcript. Secondly, we are being broadcast live on the Office of Zoning's website.

Attendant to both of those, we ask several things. First of all, I would ask people to turn off all their cell phones and beepers at this time so that you don't disrupt the transmission of these proceedings.

Secondly, when coming forward to speak to the Board, I would ask that everyone fill out two witness cards. Witness cards are available for you at the table you entered into the Hearing Room. They would also be available for you at the witness table in front of us.

You need to give those to the court reporter prior to coming forward to speak to the Board. When you're ready to address the Board, I ask that you come forward, have a seat, make yourself comfortable and you will need to state your name and address for the record prior to speaking. You only need to do that once, obviously, so we have your name on the record for all the important things that you will be providing the Board.

The order of procedure for special exception and variances is first we hear from the Applicant, the presentation of their case. Secondly, we hear from any government agencies responding to the application. Third, we hear from the Advisory Neighborhood Commission. Fourth would be persons or parties in support of the application. Fifth would be persons or parties in opposition. Sixth, finally, we will have closing remarks by the Applicant.

Cross examination of witnesses is

permitted by the Applicant or parties in a case. The ANC within which the property is located is automatically a party in the case and therefore will be able to conduct cross examination. Nothing prohibits this Board from limiting cross examination, both in time and in content. We obviously look for cross examination and its scope to be on point to those aspects before us in a specific application.

The record will be closed at the conclusion of the hearing on a case, except for any material that we specifically keep the record open for. And I will go through that in detail if that is the case with which application.

The Sunshine Act requires that this Board conduct its proceedings in the open and before the public. This Board may enter into executive session both during or after a hearing on a case for purposes of reviewing a record and/or deliberating on a case. That would be in accordance with the Sunshine Act and it also would be in accordance with our rules of procedure and regulations.

Let me say a very good afternoon to Ms. Bailey who is sitting on my very far right with the Office of Zoning. Mr. Moy will be joining us shortly and the representative from the Office of Attorney

General is with.

Ms. Bailey, actually before we go to that I would ask that anyone planning to give testimony before the Board today to please stand and give your attention to Ms. Bailey. She's going to swear you in and anyone that hasn't been sworn in on the continuation of the case, can also stand and give your attorney to Ms. Bailey as she swears you in.

Anyone contemplating giving testimony, excellent.

Ms. Bailey?

MS. BAILEY: Please raise your right hand? Do you solemnly swear or affirm that the testimony you will be giving today will be the truth, the whole truth and nothing but the truth?

(The witnesses were sworn.)

CHAIRPERSON GRIFFIS: Excellent at this time the Board would consider any preliminary matters that we need to take up immediately. Preliminary matters are those which related to whether a case will or should be heard today. Request for a postponement, withdrawal or whether proper and adequate has been provided might be a preliminary matter that we need to look at at this time.

Ms. Bailey, are you aware of any

preliminary matters?

MS. BAILEY: Very quickly, Mr. Chairman, and that has to do with DAG Real Estate Holding Application 17282. Initially, we did receive a request from the ANC to postpone, however, we have since received another letter from the ANC indicating that they want to go forward today so I just wanted to clarify that at the top for the record, sir.

CHAIRPERSON GRIFFIS: Excellent, thank you. Is that correct understanding? Does anyone have a different understanding of Application 17282, you can bring that to the Board's attention now by coming forward.

Not noting any indication, let's move ahead then. We do have a continuation for rebuttal testimony and closing in our first case and Ms. Bailey, if you're ready, why don't we call that case?

MS. BAILEY: Application No. 17232 of RLA Revitalization Corporation, pursuant to 11 DCMR 3104.1 for a special exception from the roof structure requirements under Section 411 and pursuant to 11 DCMR 3103.2 for a variance from the off-street parking requirements under subsection 2101.1 to permit a multi-use commercial establishment at premises 1400 through 1420 Park Road, N.W.; 3100 through 3220 14th

Street, N.W.; and 1417 through 1437 Irving Street, N.W. The property is located in Square 2674, Lots 719, 820, 812, 832, 863, 866, 869, 870, 871 and 872.

CHAIRPERSON GRIFFIS: Thank you very much. Mr. Glasgow, are you ready?

MR. GLASGOW: Yes sir. Mr. Ruffin has one brief preliminary matter he wanted to bring to the Board's attention.

CHAIRPERSON GRIFFIS: Excellent. Mr. Ruffin?

MR. RUFFIN: Thank you, Mr. Glasgow, and certainly thank you, Mr. Chair. For Kelsey Temple Church of God in Christ and the Temple Church Building and Economic Development Corporation, we would like to offer a declaration under penalty of perjury that offers a correction of mistaken testimony by the Board of Trustees Chairperson, Ms. Delores Ruffin. She testified last week at the hearing, she gave an inaccurate estimate of the size of the parking lot and in light of the questions -- since she was under oath and she really felt that she needed to double check and it really came to her after she was listening to the questions from the Board. She double checked it and she came in with what she believes are certainly more accurate estimates, both the size of the lot for

purposes of amount of cars that can be parked there and also a more accurate statement of the amount of cars that typically park there.

Yes, I have copies.

CHAIRPERSON GRIFFIS: So it's all in the written submission?

MR. RUFFIN: It's all in the written submission.

CHAIRPERSON GRIFFIS: Perfect. We appreciate that correction. I think that's an excellent thing to bring to the attention.

MR. RUFFIN: As for the rest of her testimony, she still stands by it, but she needed to correct that. Thank you very much.

I assume the Applicant has a copy of that?

MR. GLASGOW: Yes sir. We reviewed it. We'll be responding to that briefly because I think, as I had mentioned, that our estimates as to the utilization size of the lot were just so vastly different than what we heard in the testimony we were just going to handle it in rebuttal.

CHAIRPERSON GRIFFIS: Okay.

MR. GLASGOW: This gets the numbers more in line, not quite where we are, but at least a lot closer than where we were before.

CHAIRPERSON GRIFFIS: Good.

MR. GLASGOW: Mr. Chairman, I'd just like to quickly proceed then to our three rebuttal witnesses, Mr. Drew Greenwald, Mr. Lou Slade and Mr. Steven Sher.

Mr. Greenwald will you please identify yourself for the record and proceed with your rebuttal testimony.

MR. GREENWALD: My name is Drew Greenwald. I want to address several questions that have been raised since my previous testimony.

The first question is the parking adequately sized to meet the demand generated by the proposed development? The project, as originally planned more than five years ago, contained approximately 540,000 square feet of retail and entertainment space with two levels of parking. The original size of the parking facility, approximately 1,000 spaces, was baaed on discussions with retailers and an examination by Grove Slade of comparable D.C. projects including Georgetown Park with 1.5 spaces were 1,000 square feet and Gallery Place which had not yet been built, with 1.3 spaces planned per 1,000 square feet.

Both of these projects have significantly

less than the two spaces per 1,000 square feet at DCUSA. It is important to point out that both developers and tenants of retail projects have a vested interest in providing the appropriate amount of parking for the retail patrons. Happy customers translate into higher sales volumes and stronger rental values.

From the first zoning analyses and traffic studies, it was quite obvious that more spaces were required than actually needed. A decision was made to seek a special exception to reduce the parking by 25 percent from the 1810 spaces required to 1364 spaces. At this number of spaces, a third parking level was required to be added to the project. Grove Slade studies indicated that although there would be 1364 spaces, the recommended parking supply with theaters and the tenant mix at the time would be 1243 spaces and the recommended parking supply without theaters in the mix and with a big box tenant such as Target would be reduced to 1,071 spaces.

It became clear once additional subsurface information was obtained the design concept was developed further and the public financing process was advanced that unique site conditions were making the project impracticable. At the time of the signing of

the LDA, as the party in opposition pointed out in their presentation, "the test borings indicate that soil conditions won't enable the site to be excavated to this level without ground water problems" referencing the third level. End of quotes. That statement was based on three test borings taken by Geo Concepts in November 2000, indicating ground water would be found at elevations ranging from 162 feet to 166 feet. It was anticipated at the time that the final slab on grade elevation would be at 166 feet.

More detailed architectural drawings were subsequently developed, placing the slab on grade at an elevation of 160 feet. Mueser Rutledge performed an extensive geotechnical analysis and their reported dated in April of 2004 indicated ground water was found at an elevation of 166 to 168. So in other words, you went from the basement being above water to being about eight feet below water.

The District and the developer then examined various alternatives and determined that the project could be reduced in size to slightly less than 500,000 square feet of retail with 1,000 parking spaces on two levels. Grove Slade has shown that the demand for parking would only be 983 spaces for that reduced half a million square foot project. Grove

Slade's analyses have been supported by OP and DDOT.

The second question I'd like to respond to, is the garage intended to serve the retail customers or the general public? The zoning regulations require that the parking be accessory to the retail use. The LDA, Land Disposition Agreement, requires the parking to be available for the retail customers. And recent letters submitted by RLARC and Councilman Graham also support the position that the parking will primarily serve the retailer and will be managed and operated that way.

It's also important to point out that the parking for all new developments in the area will be sized to meet the needs of that particular project.

Thank you.

MR. GLASGOW: I'd like to now proceed with the testimony of the next rebuttal witness, Mr. Lou Slade.

MR. SLADE: Good afternoon, Mr. Chairman and Members of the Board. For the record, my name is Lou Slade. I'm going to recap some of the demand numbers that have been discussed in prior testimony.

We used industry standards, particularly the Urban Land Institute research and documentation and references on parking for retail to establish that

983 parking spaces, the demand on the twentieth highest hour at this retail facility. The twentieth highest hour is another standard within the retail industry. That's the design target for which parking is most economical.

This means that out of about 3700 operating hours of the year, 99 percent of the time we're going to have more parking than the retail requires and in fact, according to the Urban Land Institute's research, 40 percent of those operating ours, half the spaces or more will be vacant. So about 500 vacant spaces, about 40 percent of the time during the operating hours of the retail center.

As prior testimony just indicated, that information will be provided and documented, was reviewed by OP and DDOT and they concurred with us.

There's been another issue about parking demand raised by the opposition and this is the demand for parking that exists today on the property on leased land area to the church. I have scanned the document that Mr. Ruffin just submitted to you and it's very consistent with our findings on how that leased parking area is utilized and how much capacity it has.

There is 40,000 square feet leased with

access from Park Road across from the church and we did a -- the parking area isn't laid out with stripes so you can't count the spaces, but we did a hypothetical layout which we thought was the most efficient way, if it were self-parked, and we got 106 spaces.

If there was attendant assisted parking, the kind of parking we've talked about potentially, there you could get another 24, 25 spaces and bring it up to about 130 spaces. And if you jammed cars into the parking facility, you could go above 130. Of course, retrieving cars would be difficult by the owners of those cars. There would be some management that would have to take place.

So the capacity of that 40,000 square feet that's leased by the church from RLARC is on a day to day basis around 100 cars. We went and surveyed how that parking is used. We visited the property in January and early February on three weekdays, two Saturdays and three Sundays, including the day before yesterday. And we found that the parking is used -- the most use that we observed was on a Sunday, each of the three Sundays. The highest accumulation that we observed during the 12-hour period from 8 a.m to 8 p.m. on those Sundays was 40 to 46 cars on those three

particular Sundays.

On the weekdays, we observed significantly less parking on that 40,000 square feet. The most active day that we observed was 10 cars on a weekday and again on weekdays we were there for 16 hours of the day.

CHAIRPERSON GRIFFIS: Those are total counts?

MR. SLADE: No, this is the maximum number of cars that we observed on our visits. I'm glad you asked that. This past Sunday we visited the parking facility once every hour. We have a trained field crew. They visit, they count the number of cars in the lot. They take a picture that's time stamped and dated so we know they were there.

CHAIRPERSON GRIFFIS: So the period on a Sunday, just to clarify from 8 a.m. to 8 p.m., you would make spot checks and do a count and the maximum you found was 46 spaces on the site?

MR. SLADE: Yes.

CHAIRPERSON GRIFFIS: Okay.

MR. SLADE: And on weekdays, the maximum we found on one particular day was about 10 cars, as I recall.

I went by there myself the other morning

and there were a number of cars parked on the property. It wasn't by any means full. It was a weekday morning and I am guessing there was maybe 12 cars. I didn't really count them.

The next thing I want to talk about is the operations of the proposed garage at DCUSA and this a very straightforward point I want to make that you will have observed from your own use of parking facilities such as the ones that my colleague here cited in his testimony. Two new garages, Gallery Place is now open to the public; 4500 Wisconsin Avenue has been open for a year or two. As a motorist when you drive to those garages, even though the purpose of those garages is to serve the retail there, there's no indication that would restrict you in any way from using the garage if you had business in the neighborhood or wanted to use it for anything. So that is at this moment how we intend that this garage at DCUSA would also be operated.

Finally, we talked about attendant assisted parking. I just wanted to clarify that the architects in my firm worked on laying out a layout of attendant assisted parking where cars would be parked in the aisles. This is a standard operating procedure in a lot of garages in D.C. I've never parked in this

building, but I understand it's done here. And we found that we could increase the capacity of a garage by approximately 244 spaces from a 1,000 to about 1244 spaces.

So if you think about those 40 percent of the year where we would have 500 vacant spaces in a garage of a 1,000, it could be even significantly more than that, as many as 744 spaces. And on days when the retail portion of the project, the retail portion of the project is very busy, it would be utilizing most of the spaces, most of the 1,000 spaces and we could still have another 244 spaces.

So there's ample capacity on most days and potentially even on peak days to handle the kind of demand that's being parked on the property right now, if the Board chooses to establish that as a condition.

Thank you.

CHAIRPERSON GRIFFIS: Thank you.

MR. GLASGOW: For the last witness, I'd like to call Mr. Steven Sher.

MR. SHER: Good afternoon, Mr. Chairman and Members of the Board. For the record, my name is Steven E. Sher, the Director of Zoning and Land Use Services with the law firm of Holland & Knight. And what I want to focus on is back to the beginning of

what we're here for which is a variance from the parking requirements.

The Board is familiar with the standards for a variance. It's a three-part test. We have to show that there's some exceptional or extraordinary situation or condition of the property. We have to show that the strict application of the regulations causes a practical difficulty for the owner. And we have to show that the relief can be granted without substantial detriment to the public good and without substantially impairing the intent and purpose and integrity of the zone plan.

Have we done that? In my humble opinion we have. We have been through many hours over several days now discussing the attributes of this property, the exceptional or extraordinary situation or condition, its size, its shape, the water table, the presence of the Metro rail tunnel, the planning and zoning history of the site, all combined in my opinion to create that exceptional situation or condition.

The practical difficulty, have we demonstrated this practical difficulty? I believe we have. The cost premium which you've heard discussion of in the previous sessions with testimony from the representative of RLARC concerning what it would take

to put two levels of parking underground, what it costs, what those premiums are, we have basically demonstrated that that's all the parking we can get on the site and create a feasible project that can be built.

Detriment to the public good. Have we addressed the question of detriment to the public good? Well, in reviewing the transcript from last week's hearing because I was not present at that time, the opponent, the Kelsey Temple Church and the Economic Development Corporation and the testimony of Ms. Ruffin argued that the application should be denied because there are other uses in the neighborhood that have insufficient parking and the present parking lot on this site helps to offset that deficit.

Well, if that's the basis for denying the application, that's a total misreading of the variance provisions of the regulations and the statute. This Applicant is not required to provide parking for the neighborhood. It is required to provide parking to satisfy the regulations based on the square footage of the development proposed on this lot. At the size of the building we have, we are required to have 1600 spaces. We're proposing 1000. We need the variance

for approximately 600 spaces.

I assume that the existing buildings in the area which were discussed lacked parking because they were built prior to the time that parking was required. I went through the list that was cited in the transcript and most of those buildings were built in the 1920s, 1930s, some of them back as far as 1900. Parking was not required in the regulations until 1958. So any of those buildings that were built before that time didn't have parking because they weren't required to have parking.

Any development of this site with or without a variance would result in the loss of the existing parking lot on the site. So that parking lot is not going to necessarily remain whether the Board grants this variance or not. When the regulations and the statute talk about the Board having to find that the relief can be granted without substantial detriment, another way of looking at that perhaps would be to say does approving the reduction in the number of parking spaces for this project cause any detriment to the public good. It's not asking if you take away a use that's on this site that happens to be providing parking for the neighborhood for buildings which weren't required to have parking when they were

built because they weren't required to, that's not the test here. The test here is does this reduction for the proposed building cause any substantial detriment? And I believe we've demonstrated that it doesn't.

The size of the development is slightly less than 500,000 square feet was calculated related to the number of parking spaces which could feasibly be provided on site. You heard Mr. Greenwald's testimony a few minutes ago. The number of self-parked spaces that we're providing meets the expected site-related demand for all but those 20 peak hours of the day.

The additional 244 -- peak hours of the year -- not of the day. Additional 244 spaces that we can provide through attendant assisted parking provides for a margin of error if we got it wrong, if it turns out to be that there's a slightly greater demand than we thought there was, we've got extra parking spaces that we can provide and it also accounts for whatever residual neighborhood demand there may be that doesn't derive out of this property, as we've indicated before, if you want to come in and pay the freight, you can park in that site.

We've accounted for that level of demand plus any potential miscalculation that we may have

made about how many parking spaces there are, by being able to give you a 25 percent increment over the 1,000 self-parked spaces that we have.

I think it's been pretty clear from the testimony that we've given that new retail development on this site is consistent with planning objectives for Columbia Heights. It's long been part of the plans for this area going back as far as the 14th Street urban renewal plan done in the late 1970s, I guess.

As the Board focuses on its decision on this matter, you must remember that you can impose conditions reasonably necessary to protect surrounding properties and to ensure that the intent of your approval is carried out and we would suggest that if you are inclined to grant the application, which I believe you should, that there are at last two conditions you may want to consider. One, to say that we would provide the 244 additional spaces through attendant assisted parking at such time or any such time as the 1,000 self-park spaces are filled. And as RLARC has committed in its letter to you that we establish pricing and validation mechanisms to ensure that the primary users of the garage are customers of the retail project.

Taking all those things into account, I believe that this application meets the requirements of the regulations and the statute for the granting of a variance and the Board should do so.

MR. GLASGOW: That concludes our rebuttal testimony.

CHAIRPERSON GRIFFIS: Excellent. Thank you very much.

Mr. Sher, you mentioned, of course, the variance test starting with the uniqueness. I have one quick question. The opposition raises the point of size and shape. It may well be unique, but it's large, it's big and you're saying it's not big enough to handle the parking.

How do you briefly respond to that?

MR. SHER: Well, that's part of it. The size and the shape, the presence of the water, the presence of the Metro and so forth.

CHAIRPERSON GRIFFIS: I'm talking about size and shape. Why is that part of your discussion of uniqueness? What practical difficulty arises out of it is the direct question.

MR. SHER: I believe that if this were not shaped in the way that it is with the various pieces that -- let me put it a different way. If this were a

rectangular site and you could lay out a parking garage that was exactly orthogonal and get the number of spaces in there, I think we could get more than 500 parking spaces were level. So the fact that it's not, the fact that you've got a site that goes off in this direction, goes off in that direction, you lose efficiency in the garage and therefore that's part of the reason why we can't get as many spaces per level as we could if it weren't affected by that size and shape.

CHAIRPERSON GRIFFIS: I see. You're saying and obviously that falls into the practical difficulty also of the cost premium. I guess I'm wondering if that is a successful argument in this, how is cost premium of anything of any variance not looked at favorably by the Board. If you just come in and say after all, I can't afford to put two units in this R-4 building. I need to put six to make it cost efficient.

MR. SHER: Let me put my glasses on so I can think better.

I think the Board has recognized before that the question of cost and economics is a part of any application before the Board.

CHAIRPERSON GRIFFIS: I don't disagree.

MR. SHER: If cost were never an issue, then there probably would never be a basis for getting a variance because if you could spend an unlimited amount of money, there's always a way to accomplish something.

CHAIRPERSON GRIFFIS: And everyone would be in development.

MR. SHER: Right, and we'd all be making -- we'd all be on the other side of the table or whatever.

What happens here is that the conditions that we've described of the site lead you to the conclusion that two levels of underground parking is all you can get here. If you start to go down to that third level, you begin to really increase the cost of providing that additional parking and given the fact that as Mr. Slade just testified, 40 percent of the time, half of those spaces aren't going to be used anyhow. Why would you require somebody to go through that additional expense to provide parking that you don't need?

CHAIRPERSON GRIFFIS: Is that a practical difficulty that's actually viable for us? If anyone comes in and says our regulations require this aspect, but you know, we're never going to need it. Is that

the basis to grant a variance?

MR. SHER: I think that's part of the basis, yes. I mean just to take it into a different context, the Board has had any number of cases involving variances from residential recreation space. I'm just going to pick on it because it's a topic, where the regulations require a level of space to be provided that in most circumstances where we've come to you the Board has said that's excessive, you don't need to have that, there are other ways to offset that space and to require somebody to provide it, you're either eating up program space in the building, taking out uses on the ground floor that you otherwise would want to have on the ground floor and so forth. I want to take it out of the context of parking for a moment.

You could come back to the same situation here. Is there a way to provide parking on the upper floors of this building? Sure. I mean there's a way to do it, but what you're doing then is going right at the nature of what this building is supposed to be.

CHAIRPERSON GRIFFIS: When you say upper floor, that's parking on the roof?

MR. SLADE: Or take one floor of retail out of the building and make it parking.

CHAIRPERSON GRIFFIS: Right.

MR. SLADE: But that's not what this is about. And so again, if those type issues are never to be considered, if the feasibility and desirability of the development and what this is all about is not of interest here, there's always a way to accomplish it. But I'm saying that's not what the Board's task is in addressing this question for a variance.

CHAIRPERSON GRIFFIS: Indeed, thank you. Well said.

Mr. Slade, you indicate the 20th highest hour. We've had a lot of discussion on that. Can you reiterate again the two days that you're assuming that the 99 percent -- let me see if I'm correct. In the 20th hour, it was basically the high peak shopping days, is that correct?

MR. SLADE: That's correct.

CHAIRPERSON GRIFFIS: And those were which days?

MR. SLADE: Well, the most notorious, historically, has been the Friday after Thanksgiving.

CHAIRPERSON GRIFFIS: Okay.

MR. SLADE: Okay, but of course, those 20 hours are typically spread over anywhere from four to nine days or something like that. It just varies from center to center and the calendar each year.

CHAIRPERSON GRIFFIS: Okay, so if I understand what you're saying is actually although you could use a formulaic aspect of a 20th hour in calculating and making the statement that 99 percent of the time you'll have parking available, you won't max out the parking there, but in each individual retail establishment it may change when that 20th hour happens?

MR. SLADE: Yes, yes.

CHAIRPERSON GRIFFIS: Well, correct me if I'm not absolutely right.

MR. SLADE: I think though that first of all the ULI data was collected over many, many years by flying aerial photographs over shopping centers across the country.

And the pattern, you know, I don't know that there was any rigorous statistical analysis of all those sets of data, but the pattern was consistent across the country in all settings.

CHAIRPERSON GRIFFIS: I understand that, but didn't you just make the statement but each retail establishment might vary a little bit?

MR. SLADE: All I'm saying is that those 19 hours of the year that are greater than the -- where the parking demand is greater than the 20th

highest hour of the year.

CHAIRPERSON GRIFFIS: Right.

MR. SLADE: Those hours can fall all on only three days of the year or as many as nine days of the year. That's a variable.

But --

CHAIRPERSON GRIFFIS: What do you think it's going to be here?

MR. SLADE: I don't have any idea.

CHAIRPERSON GRIFFIS: How would we get an idea?

MR. SLADE: Well, you could look at Target-anchored centers.

CHAIRPERSON GRIFFIS: To see when the high peak shopping is there? So for instance, it could happen for whatever reason Saturday afternoons at 4 o'clock could be the highest peak time?

MR. SLADE: Sure, but it relates to traditional sales days.

CHAIRPERSON GRIFFIS: Right.

MR. SLADE: And seasonal holidays where gifts are given, so that whatever you discover if you did that kind of research this year might be different next year because sales days will fall on different days.

CHAIRPERSON GRIFFIS: Right. We may establish the Hallmark Toaster Day where everybody is buying toasters.

Okay. Mr. Greenwald, you ended your statement saying that, in fact, our regulations required that parking be accessory to the retail. Is that a correct hearing of what you said?

MR. GREENWALD: Yes.

CHAIRPERSON GRIFFIS: And just for clarification, were you meaning in terms of how accessory is used in our regulations or were you meaning that it is obviously there to serve the retail establishment of which has been built?

MR. GREENWALD: I meant that the retail usage is what generates the required amount of the parking and it is there to be accessory and to serve the retail. You can look at it two ways.

CHAIRPERSON GRIFFIS: Okay. I'm not pushing this, but I just want clarification. Are there specific regulations you're actually looking at that wanted us to view in terms of that statement?

MR. GREENWALD: No. It's just that it was a retail accessory parking, that's okay.

CHAIRPERSON GRIFFIS: Understood. Now specifically, you mentioned and we had it in the other

testimony, this is a reiteration of the past testimony. At one point, five spaces that went to, I believe, it was the Georgetown Park, we had 1.3 per 1,000 for the Gallery Place. Are those figures based on 1,000 square feet of retail as most of those, if my understanding is correct, are mixed use, actually have residential and commercial office space.

MR. GREENWALD: I would direct that to Lou Slade as it appeared in his report.

CHAIRPERSON GRIFFIS: Excellent.

MR. SLADE: In each of those cases, we separated out the parking that was available for retail use from the parking that was available for the other use.

CHAIRPERSON GRIFFIS: That's an excellent clarification as would be the requirements in the regulations themselves to be calculated differently. So to reiterate then, the 1.5 spaces for the Georgetown Park, I believe it was what you cited per 1,000, is 1,000 square foot of the retail.

MR. SLADE: That's correct.

CHAIRPERSON GRIFFIS: Excellent. That's all the questions I have.

Others?

MEMBER ETHERLY: Yes, Mr. Chair. Just

very briefly. I wanted to kind of pursue with Mr. Sher, a little bit of the conversation around parking.

We perhaps have had some discussion at prior hearings around this issue of relying on what is essentially public parking for purposes of satisfying a variance test or variance requirement.

I guess the starting point of my question is does this -- if this decision, if this application were to be viewed favorably by this Board, would that, in your mind, establish a precedent for variance applicants to rely on public parking as a rationale for not satisfying, otherwise satisfying a parking requirement? By that I mean if you have an instance where let's say we're talking about a property and granted the circumstances are going to change in a little bit from our present case, but let's say we have a property downtown which has a parking requirement that can't be met because of some practical difficulty or uniqueness or what have you, does your argument support or suggest that this Board should accept the argument that because of the public parking stock that we have in the immediate vicinity of a particular property downtown, i.e., public parking garages or on-street parking, that a parking requirement shouldn't be adhered to that would

otherwise be required?

It's a little bit of a convoluted question, but what I'm trying to massage a little bit is does this, in your mind, open up a slippery slope whereby if I can rely on a public parking in the vicinity or adjacent or in the neighborhood of a subject property, should I ever be required to include parking on my own property?

MR. SHER: I would say that goes to the third part of the variance test. In other words, if I can get past the proposition that I -- well, let me put it differently.

If I demonstrate that there is an exceptional situation that causes a practical difficulty, then the Board can look at the adequacy of parking or other -- of satisfying the demand for persons who would be going to that particular establishment, whether it's retail, office, residential or what have you. How do you accommodate the demand if you can't provide the parking?

You accommodate it either because you have mass transit. You accommodate it because you have mixed use. You accommodate it because there may be on street parking. You accommodate it because there may be other off-street available parking. But if you can

demonstrate through whatever that combination of factors is, that by not providing the parking on-site, you are not contradicting the intent, purpose and integrity of the zone plan, then I think that's a factor the Board takes into account.

I don't think that's a slippery slope at all. In fact, I think it's the kind of things that the Board looks at now in granting variance applications. But you don't get there until after you've gotten past parts 1 and 2, in my opinion.

MEMBER ETHERLY: In your experience, are you aware of other cases or instances where this Board has indeed looked at such a set of circumstances?

MR. SHER: Well, I'd have to think about the parking thing for a while, but at the risk of having the Chairman roll his eyes again, if you talk about residential recreation space the question has always been are there other recreational opportunities in the neighborhood? We've looked at availability of nearby parks which are public parks, but provide the recreational opportunity for not providing it on site.

MEMBER ETHERLY: So in the same way that we looked at efforts to satisfy or otherwise address residential rec requirements, you're suggestion that this is essentially a very similar vehicle for which

to look at parking?

MR. SHER: Yes, I believe it is.

MEMBER ETHERLY: Thank you. Thank you, Mr. Chair.

CHAIRPERSON GRIFFIS: Ms. Miller?

VICE CHAIR MILLER: I'm not sure who wants to answer this one, but basically what I've heard in this case is a lot of the uniqueness or exceptional circumstances and practical difficulty go towards building a third level underground of parking. And you touched upon this slightly, I guess, Mr. Sher, and maybe I think it was -- about well, you could go to the roof, but that defeats the project or something. And we really didn't hear that much about parking on the roof and I'm wondering what is the case with that. Why would that not be feasible or why would that be costly or how did the Applicant look at that?

MR. GLASGOW: Mr. Greenwald can address that and a lot of it has to do with the structures that are already on the roof and the placing of Target.

MR. GREENWALD: Part of the application we're asking you for the multiple roof structures because we have large retail tenants and the roof is quite filled with structures. It also would require

you to ramp up 65 feet from grade, take a significant amount of space out to actually get up.

We looked at this at one point. We have to have sort of intermediate levels to get you up which would mean we'd be losing 80,000 or 100,000 square feet of retail to be providing more parking and then you get into the issue of the project changing significantly from the concept for Columbia Heights in terms of the development of this site.

So that was never an approach that was popular in all the original discussions with RLA and with NCRC.

CHAIRPERSON GRIFFIS: It seems like a lifetime ago we were talking about roof structures.

(Laughter.)

CHAIRPERSON GRIFFIS: To reiterate that, sometimes it's important for everyone's understanding, when you say you have to ramp up 65 feet, it sounds to me like that's no big deal. How long of a ramp. I'm not asking for the exact 12 percent slope, but what are you talking to get up 65 feet?

MR. GREENWALD: You're talking about a ramp that would be 750 feet long.

CHAIRPERSON GRIFFIS: And the site is about 410 feet long.

And so you're actually ramping around twice?

MR. GREENWALD: Yes, and also because of the fact that it's an L-shape, it's very complicated because you can't get up more than a certain amount. You have to head the other way. You have to come back and you wind up eroding an amount of the number of retail square footage and Target had sort of a required footprint.

CHAIRPERSON GRIFFIS: Couldn't you have like kiosks on the ramp, kind of like a market plaza?

MR. GREENWALD: Maybe like the Guggenheim Museum, we could run through that.

CHAIRPERSON GRIFFIS: Ms. Miller, follow up questions?

VICE CHAIR MILLER: Just a couple. One is kind of a comment and a question just to confirm, but on that discussion of how does cost factor in. I think this was brought up before with respect to I think I asked you, Mr. Greenwald, I'm not sure like if we denied the variance, what would happen and I think the response was the project couldn't go forward.

And however, back to this question of cost, is that the cost is so prohibitive to do a third level of parking that if you had to do it, the cost

would be prohibitive and the project wouldn't go forward. Is that correct?

MR. GREENWALD: Not in its current form. It would have to be a very significantly different project. One story of retail with parking on the roof which is not the plan for the area.

VICE CHAIR MILLER: Okay.

MR. GLASGOW: Ms. Miller, that tied in with when we talked about as part of the uniqueness and the zoning history of the area. That's been stated in Court cases that the zoning history is important with respect to uniqueness. That's in the Monaco case versus DC BZA, 407 Atlantic 2.d 1091.

VICE CHAIR MILLER: So what zoning history are you referring to?

MR. GLASGOW: What the Court says --

VICE CHAIR MILLER: I know the case. I mean in this case what zoning history?

MR. GLASGOW: Well, the zoning history that was testified by the Office of Planning alluded to by Mr. Jasso and Mr. Sher --

VICE CHAIR MILLER: You mean the TIF and all that kind of stuff?

MR. GLASGOW: Not only that, that would be part of it, but also the planning history in this area

that this site was going to be the site of the major retail development in the Columbia Heights area.

VICE CHAIR MILLER: Right, okay, thank you. My last question, Mr. Sher, I didn't quite get, maybe you can do this one more time, with respect to the third prong, the public detriment, why we won't weigh the displacement of parking?

MR. SHER: Well, the literal language of the variance statute is after exceptional situation and practical difficulty, provided that the relief can be granted without substantial detriment to the public good and without and substantially impairing the intent, purpose and integrity of the zone plan, as embodied in the zoning regulations in map.

It is that the relief can be granted. It's not that the displacement of an existing use is going to be affected because whether this relief is granted or not, if this site is developed in some other fashion, that parking goes away. The relief being sought here is a reduction in the number of parking spaces. And it is not -- that relief doesn't result in the displacement of those existing parking spaces.

The number of parking spaces that the regulations require is calibrated based on one per

every 300 square feet of gross floor area and solid floor area and excess of 3,000. Yes.

It doesn't take into account and one for every parking space that's not in the apartment house across the street and one for every space that the Riggs Bank on the other side of Park Road doesn't have. It's one for every 300 for this particular project. And so it would be granting that relief to reduce that requirement is what you have to consider.

VICE CHAIR MILLER: Thank you.

MEMBER MANN: Mr. Sher had mentioned that the trigger for attendant parking would be when the 1,000 space garage fills up.

I was wondering if there had been any discussions regarding national implementation of attendant parking?

MR. GLASGOW: Just briefly, Mr. Mann. That we were planning on doing on an operational basis with the parking lot operator. We represent some of the parking lot operators in the city and we know what they do with their tenants and with their landlords, if you will, and they coordinate.

If Target is having a big sale and a couple of other people are having a big sale, then they're saying we're going to have a lot of people

that day. It's like a lot of other type of events and you plan toward that and marshal your forces toward that.

MEMBER MANN: So you'd be able to do it based on the projected demand, just based on historical data that you know about, the parking lot demand in shopping, I guess.

MR. GREENWALD: We'll also have as we open for operations we'll get a feel of the utilization of a facility and if you know on X day you have this many people it's likely that on whatever the big shopping Friday you're going to have three times that or whatever it is. So I think we'll be able to get a gauge for it.

MEMBER MANN: Thank you.

VICE CHAIR MILLER: Mr. Slade, you made a statement that about 40 percent of the time there should be 500 vacant spaces based on the ULI studies? Okay. Do you have any other figures like 50 percent of the time there would be 400 spaces available or anything else?

MR. SLADE: I don't have it with me, but the ULI research reference documents goes into that in great detail.

VICE CHAIR MILLER: We can find it in what

was submitted to us in the record, is that what you're saying?

MR. SLADE: Yes, yes, yes.

VICE CHAIR MILLER: And one other question. Did you observe how long the cars were parked in that lot that you observed that there are now?

MR. SLADE: Well, yes, in that we didn't track individual cars and say that the green car with the D.C. tag arrived at a certain time and left at a certain time.

But by being there this past Sunday every hour and on the other Sundays by the way it was every other hour, we saw that -- we saw the pictures and we had a profile through the day and on the Sundays parking began to accumulate, as you would imagine, since it was church parking an hour before probably the service started and lasted three or four hours. In other words, there were cars parked there for three or four hours, but the peak period -- at the peak time of our observation, the busiest Sunday was 46 cars. So the hour before may have been 35 cars and an hour before that might have 15 cars.

VICE CHAIR MILLER: Did you catch the hours that were the busiest?

MR. SLADE: This past Sunday, the hour at 1 p.m. The Sunday prior to that it was at noon. And the Sunday prior to that was it was at noon. I'm sorry, I misspoke about the dates. The dates were starting with the earliest date January 9th, Sunday, January 9th and it was noon on that day. That was 40 cars.

Sunday, January 16th, there were about 45 cars at noon. And Sunday, February 6, there were 46 cars at 1 p.m., give or take a few minutes.

VICE CHAIR MILLER: Okay. This is really my last question on this, but how about, could you say like from 10 to 1 was the peak use time --

MR. SLADE: Yes. This past Sunday there were 40 cars at 11 a.m. There were 42 cars, 43 cars at noon. And there were 46 cars at 1 p.m. Then it dropped down to about 30 and then to about 10.

VICE CHAIR MILLER: Where my question was going is just that we heard that there's a church that's interested in this case and that there's a demand for parking for them. To whatever extent we consider it, I just wanted to know what are those hours that there's a -- there could be a conflict with the target interest or there might not be. Is there an overlap, you know.

I guess we would just find out when the services are, but unless you saw that from 11 to 1 that was the most busy hour, I mean you just noticed certain hours. You didn't notice a range of time?

MR. SLADE: As I said, we were there every other hour for the first two Sundays and every hour for this past Sunday. And our observation is in the form of how many cars were there when our surveyor walked through the lot and counted the cars.

CHAIRPERSON GRIFFIS: Are you submitting that date? Or is it just your testimony?

MR. GLASGOW: It's just his testimony. This is rebuttal testimony.

MR. SLADE: So the pattern confirmed that it was church-related. We didn't check what time the services were. It was church-related.

VICE CHAIR MILLER: Okay.

MR. SLADE: There was a little bit of demand a little later in the evening which may have been a meeting or dinner.

VICE CHAIR MILLER: Okay, thank you.

CHAIRPERSON GRIFFIS: Anything else?

(Pause.)

Very well, Mr Ruffin, are you ready?

MR. RUFFIN: Mr. Slade, if you don't mind

would you just help me to understand what exactly were the Sundays that you went to Kelsey Temple Church of God in Christ to monitor the parking?

MR. SLADE: Sunday, January 9th of 2005; Sunday, January 16th and Sunday, February 6th.

MR. RUFFIN: You didn't go on January 23rd or the 30th when there was a heavy snow, did you?

MR. SLADE: No.

MR. RUFFIN: Have you ever done this during the summer?

MR. SLADE: At Kelsey?

MR. RUFFIN: Yes sir.

MR. SLADE: No.

MR. RUFFIN: So these are the only Sundays that you've ever done this?

MR. SLADE: Yes.

MR. GLASGOW: Mr. Chairman, that was his testimony.

MR. RUFFIN: I'm just trying to be clear. I'm just trying to be clear.

Now if I'm not mistaken, although you've taken this very careful study of the parking requirements on these three Sundays --

CHAIRPERSON GRIFFIS: Can you ask your question without the embellishments?

MR. RUFFIN: Yes sir. If I'm not mistaken, you have never ever determined the tenants who would be at the DCUSA mall, am I right?

MR. SLADE: I don't understand the question.

MR. GLASGOW: Mr. Chairman, that wasn't part of this rebuttal testimony. His cross is supposed to be on the rebuttal.

CHAIRPERSON GRIFFIS: Indeed, and that's understood, I know, by Mr. Ruffin that he's crossing the exact testimony, but let me understand where you're going with this.

MR. RUFFIN: Okay, Mr. Slade indicated that half the parking will be vacant most of the year. And that he also indicated that in relation to that in prior testimony he gave testimony about what actually affects parking at a retail establishment.

CHAIRPERSON GRIFFIS: Okay.

MR. RUFFIN: And insofar as --

CHAIRPERSON GRIFFIS: If I understand what you're saying, Mr. Slade, correct me if I'm wrong, your question to him is okay, you've talked about this 20th hour, this peak, 500 extra spaces, but do you know who the actual tenants to calculate that kind of demand? Is that your question?

MR. RUFFIN: That's another way of putting it, yes sir.

CHAIRPERSON GRIFFIS: Okay, Mr. Slade?

MR. SLADE: Do I know who the actual tenants are, no.

CHAIRPERSON GRIFFIS: Is it accurate for you to throw around these 500 spaces that would be empty?

MR. SLADE: I wouldn't characterize it as throwing it around. I was simply reporting the results of decades, decades of research by the Urban Land Institute.

CHAIRPERSON GRIFFIS: Good.

MR. SLADE: In conjunction with the retail industry.

CHAIRPERSON GRIFFIS: Your response is all those things are done on a formulaic basis on the studies, years, you're saying decades of ULI?

MR. SLADE: Yes, and the industry who does that research has determined that rather than looking at parking demand and traffic demand and a tenant by tenant basis, when you have a mix of tenants in a --

CHAIRPERSON GRIFFIS: Okay, I understand that.

MR. SLADE: -- shopping center, it is

better to approach it that way.

CHAIRPERSON GRIFFIS: But Mr. Ruffin was about to say, if I can assume --

MR. RUFFIN: That isn't it true that the mix of retail tenants in the mall such as this is very much determinative of the sort of -- the amount of patronage that would be at the mall, yes or no?

MR. SLADE: Yes.

MR. RUFFIN: In fact, the Urban Land Institute in its January 2004 study indicated in Chapter 2 that, for example, restaurants being part of a mall such as this, would be a factor that would increase the patronage at the mall. Isn't that true?

MR. SLADE: Correct.

MR. RUFFIN: Also indicated that entertainment establishments or retail entertainment facilities are determinative in the fashion that it would increase the patronage in a mall like this, isn't that true?

MR. SLADE: I believe that specific reference was to movie theaters which we don't have in DCUSA.

MR. RUFFIN: But isn't it --

MR. SLADE: If you had movie theaters, then the parking demand would be higher.

E-V-E-N-I-N-G S-E-S-S-I-O-N

(5:00 p.m.)

MR. RUFFIN: If I'm not mistaken, just so that we can save some time, the Urban Land Institute in Chapter 2 has a Table 1 which indicates that restaurants, entertainment and cinema space are factors that could increase the patronage for malls such as this. Am I right?

MR. SLADE: Correct.

MR. RUFFIN: So in other words, when I use entertainment, now you understand that I'm talking about it distinct from theaters, you see that?

MR. SLADE: Yes, I understand that.

MR. GLASGOW: Mr. Chairman, I'd like, in a sense, interpose an objection as to the scope of this, but also the Board dealt with this issue in the prior case with a condition. Because I don't know how long this cross examination is going to go on on this line.

MR. RUFFIN: Really short.

MR. GLASGOW: What the Board did in that case was say you can change around the mix of uses essentially however you want in that project, as long as your parking requirement does not go above 1810 spaces and then from that you took the 25 percent

reduction. Because everyone knows that we don't know all the users that are going to be in the facility. So the Board had a mechanism for dealing with that and dealt with it through a very -- essentially a one sentence condition that said if your parking requirement goes above 1810 in that particular case, I think I'm using the precise number, then you're going to need to come back or adjust your uses so that your parking requirement does not go above that.

We have the same thing here with the 1600, 1612 spaces that the Board can impose a condition on that and deal with that issue.

MR. RUFFIN: The problem I have is that Mr. Glasgow and his witnesses opened the door by talking about that half the parking space wont' be used for most of the year, and I'm just setting the groundwork to show that Mr. Slade in providing that opinion made what I think were faulty assumptions and hence, his advice, however well learned, in most instances is bad advice in this instance, insofar as the fact that the Board must consider. I'm almost finished, actually.

CHAIRPERSON GRIFFIS: Let's take a question or more because we have gone kind of encapsulating the entire ULI study for recross.

MR. RUFFIN: Thank you, sir. With regard to this information, isn't it true that in light of the fact that the mixture of retail establishments within a mall like this is a factor that determines whether or not the patronage would be increased, your estimate of the amount of parking space is one that you came to without considering what establishments would be there as a draw in the patronage, isn't that true?

MR. SLADE: Mr. Ruffin, the method of computing the number of spaces required for a shopping center, following industry standards, does not take into account specific tenants, but utilizes the gross square footage as we did because while you may have a tenant that generates a little more than the average demand, you'll also have a mix of tenants that generate a little less than the average demand and the industry research has shown that the approach that we used is advisable because it takes into account those variations.

MR. RUFFIN: But Mr. Slade, at the least, if we can close out very shortly, this mall, as at last presently configured, would include a Target, a Bed, Bath and Beyond and a Washington Health Club as three major magnets in this mall, am I right?

Do you at least know about those three?

MR. GLASGOW: Mr. Chairman, he didn't testify as to that under rebuttal.

CHAIRPERSON GRIFFIS: Right, I understand that.

MR. RUFFIN: But insofar as that's the case though, Mr. Slade, how about this, if I can close, in your testimony on December 21 of last year --

CHAIRPERSON GRIFFIS: We can't go back to his testimony then.

MR. RUFFIN: Insofar as it would contradict what he said today?

CHAIRPERSON GRIFFIS: That's fine, let's see if we can do that.

MR. RUFFIN: Isn't it true that you testified that part of the unknown in this is who are the other tenants going to be? The shopping center industry has been building shopping centers for years and the idea is that there is something in the shopping center that is a magnet, that draws people to the shopping center. Sometimes there are multiple magnets. Here, it's going to be Target and perhaps a grocery store and so forth. I mean there will be

things that people will know are there and they'll come there.

I can show you the testimony. If you remember giving that testimony -- I'll leave with that. Thank you very much.

CHAIRPERSON GRIFFIS: That was hardly a cross.

MR. RUFFIN: What's that?

CHAIRPERSON GRIFFIS: That was hardly a cross.

MR. RUFFIN: That was hardly a cross?

CHAIRPERSON GRIFFIS: You just read his testimony. You made a great statement.

MR. RUFFIN: Insofar as I made a great statement, Mr. Slade, and I didn't make a complete cross, doesn't that indicate that the nature of the businesses must be calculated before you can estimate how many parking spaces will be absent or not?

MR. SLADE: It's never done in the industry because we don't know who the tenants are before we build the project.

MR. RUFFIN: When you look at the Urban Land Institute's studies, it actually examined malls that are constructed with fixed patronage. Isn't that true?

MR. SLADE: Yes.

MR. RUFFIN: In this particular mall proposal, the mall hasn't been constructed, has it?

MR. SLADE: Correct.

MR. GLASGOW: Mr. Chairman, we'll stipulate that we haven't built this project and no case essentially that comes before this Board is the project constructed.

MR. RUFFIN: What I'm asking is I need Mr. Slade to stipulate to is that he has not surveyed any proposed patrons to indicate whether they would travel to this mall either by car, Metro, foot or by plane.

Isn't that true, Mr. Slade?

MR. SLADE: That's correct.

MR. RUFFIN: Thank you very much.

CHAIRPERSON GRIFFIS: Okay, thank you. Any other cross of the other witnesses?

MR. RUFFIN: I wanted to cross examine briefly Mr. Sher.

CHAIRPERSON GRIFFIS: Sure.

MR. RUFFIN: Just a second, Mr. Sher, I'll be right with you.

(Pause.)

MR. RUFFIN: Mr. Sher, in your testimony, if I'm not mistaken, you gave all of us an analysis of

the factors that are important for a variance in this case. Am I correct?

MR. SHER: Yes.

CHAIRPERSON GRIFFIS: Quickly to the question.

MR. RUFFIN: And insofar as you made that analysis, you talked about how that analysis bears upon the practical barriers against the developer building more than two levels of underground parking, am I right?

MR. SHER: Yes.

MR. RUFFIN: However, in your testimony, you acknowledge, if I'm not mistaken, two things. First of all, that with all the barriers that you tstified as being in place for the construction of underground parking, there could be a construction of above ground parking without these barriers. Am I right?

MR. SHER: The same factors that affect going down are not the -- would not be the same factors that would affect going up. It's not to say that there aren't factors that would affect going up.

MR. RUFFIN: But you indicated that this particular project, at the proposed DCUSA mall, had not been designed with the consideration of above-

ground parking, is that true?

MR. SHER: I don't think I testified to that, no.

MR. RUFFIN: If I'm not mistaken, do you remember testifying that the purpose of this particular big box construction using all of the area in the parcel is one wherein a construction above ground would be totally against what had been negotiated between the developer and the RLA Revitalization Corporation?

MR. SHER: I think it was Mr. Greenwald who said that, but I would agree with the statement.

MR. RUFFIN: Do you remember testifying that there are a number of ways of accomplishing a construction of this parking, the parking requirements as set out in the regulations without having to deal with underground parking?

MR. SHER: Something like that, yeah.

MR. RUFFIN: In the course of your testimony, you did add one other thing and that is that there were in this construction of a mall, with this unique size and shape, the water in the Metro construction issues, that there were, in your opinion, some problems that may be impracticable for the developer to comply with the zoning regulations. Did

you say that?

MR. SHER: It's a combination of two parts of what I said, but in essence, yes, that the first two parts of the variance test are demonstrate an exceptional or extraordinary situation or condition and to show how that situation or condition causes a practical difficulty for the owner, and the combination of things that you just recited is what I said.

MR. RUFFIN: However, in your opinion, if this whole construction site was rectangular, purely rectangular, these problems wouldn't exist, do you remember saying that?

CHAIRPERSON GRIFFIS: Mr. Ruffin, are we just recounting his testimony? Frankly, at this point I remember very clearly.

MR. RUFFIN: Okay. I'm almost finished, but --

CHAIRPERSON GRIFFIS: Take your time. I just don't need to have him restate his entire rebuttal testimony.

MR. RUFFIN: That's a good point, okay. Mr. Sher, then I'll put it to you in the most blunt way possible, insofar as you've prepared for this testimony, but you had to miss the last instance where

we were in these hearings, you indicated that you had to review prior testimony to prepare for today's testimony. Do you remember that?

MR. SHER: Yes.

MR. RUFFIN: In your review, have you noticed in the testimony where Mr. Greenwald and also Ms. Budoff and moreover, Mr. Jasso, indicated that cost in terms of the government procured financing by way of the tax-incentive financing was such that it made the construction of underground parking unaffordable in this case because the tax revenue expected would not be sufficient to match -- to justify the tax incentive financing package in this case. Did you read that on the part of Mr. Jasso, for example?

MR. SHER: Yes, I read Mr. Jasso's testimony.

MR. RUFFIN: And in your discussions about the unique size and shape and what you call the impracticabilities, if I'm not mistaken, you don't get into that economic or financial problem which Mr. Jasso indicated as an impracticability that stopped this project from being able to construct underground parking down to the third or fourth level. You seemed not to talk about that, is that true?

MR. GLASGOW: Mr. Chairman, I'm going to object to the question. There was a lot of testimony by Mr. Jasso and others including the structural engineer as to --

CHAIRPERSON GRIFFIS: Actually, I'm going to go faster to that.

Mr. Ruffin, it's hard to cross Mr. Sher based on the fact that he stated he reviewed the past testimony and now you're asking him to answer his opinion or analysis of those that gave other testimony. It's an interesting strategy. I just don't think Mr. Sher actually would be capable of assessing what their testimony actually was or meant.

But let's ask him directly on what he presented today and move on from there.

MR. RUFFIN: Assuming that, I'll try this, Mr. Sher. Assuming that the tax revenue to be obtained from this project is not sufficient to justify more than the $42 million that the government has set aside for the tax increment financing in this case, for the underground parking, wouldn't that be the barrier that you describe as an impractical one for the construction of the underground parking to the third or fourth level?

MR. GLASGOW: Mr. Chairman, I'm going to

raise the same objection.

CHAIRPERSON GRIFFIS: What, that he didn't testify to the financing available?

MR. GLASGOW: Right, Mr. Sher didn't testify today as to that.

MR. RUFFIN: I just asked if he assumed that information, wouldn't that be the impracticability?

CHAIRPERSON GRIFFIS: That seems to be a very direct question in terms of Mr. Sher, you laid out the test uniqueness -- so is the TIF and it's important and a serious point. We had a lot of testimony. Isn't the financing from the District of the $40 million, $2 million is going somewhere else? Isn't the $40 million part of the practical difficulty?

MR. SHER: I'll turn it around and answer it a little differently. The ability to construction more than two levels of below-grade parking because the money isn't available to do it is the practical difficulty.

CHAIRPERSON GRIFFIS: Okay.

MR. SHER: Whether that money comes from whose pocket, I don't care.

CHAIRPERSON GRIFFIS: Mr. Ruffin, any

follow-up?

Well, why is that a practical difficulty just because someone is not giving you more than $40 million?

MEMBER ETHERLY: Or another way to ask it is is it a self-created hardship? Because in actuality would you necessarily be here if the mix of stores that you have in mind weren't the mix of stores?

MR. SHER: The self-created hardship test by law applies to use variances and not area variances. So I would sort of like to put that one aside and not answer that beyond that statement.

As to whether or not there is any self-imposed condition here, I guess I'd say two or three things about that. Number one, the nature of a project always has to be considered by the Board in determining the matter that's before it. I'll jump away from this particular case and talk about the Newseum.

CHAIRPERSON GRIFFIS: That's too far.

MR. SHER: No, not too far. It was a special purpose building that was designed in a way to accommodate a particular set of users and a particular design configuration. If that building had been an

office building or an apartment house and not a Newseum with its combination of uses, we probably would have had the need for the variance relief that was granted.

In this case, if this were not a major retail mall designed in accordance with city planning and zoning policies for this neighborhood, you probably wouldn't -- if you were going to build one level of retail shops on the ground floor with parking in the back, we wouldn't need a variance. So the nature of what is in front of you obviously is a key part of what it is that you have to decide in granting a variance application.

In other properties with similar -- maybe not the same zoning, but with commercial zoning in Columbia Heights, where the buildings were proposed to be apartment houses with ground floor retail on parcel 26 to the south across Irving Street, on parcel 15 to the east across 14th Street, there were other areas of relief that were required because of the nature of those buildings. If they had been major retail buildings, maybe we would have had a parking variance there too. But in this particular situation for this project on this site with all the things we've described, and because the Board has to determine the

reasonableness of proceeding and not just if money were no object we could do anything, I think we've demonstrated that we've met the test for a variance.

CHAIRPERSON GRIFFIS: Mr. Ruffin?

MR. RUFFIN: But Mr. Sher, isn't it true that the developer and all of its partners have chosen to build a mall that would occupy the whole site without providing, without even thinking of providing any above-ground parking. Isn't that the case here?

CHAIRPERSON GRIFFIS: It's clear in the documents that are submitted.

Would you agree, Mr. Sher?

MR. SHER: I know that the project as proposed occupies pretty much 100 percent of the site and doesn't have any above-ground parking. I'm not privy to what schemes the developer may have considered before at arriving at that particular scheme.

CHAIRPERSON GRIFFIS: Oh, I see. Okay.

Mr. Ruffin?

MR. RUFFIN: That's enough. No thank you. I don't have any other questions.

I want to question Mr. Carlson, no, pardon me, Mr. Greenwald, pardon me, Mr. Greenwald. Very briefly.

Mr. Greenwald, in your testimony, you made a comparison between this proposed construction of the DCUSA mall with Gallery Place, am I right?

MR. GREENWALD: Could you repeat the question? I wasn't fully paying attention, I'm sorry.

MR. RUFFIN: Sure. Mr. Greenwald, when you were testifying, if I'm not mistaken, you compared the proposed DCUSA mall with two different projects. One was the Gallery Place and the other was what?

MR. GREENWALD: I didn't compare the project. I indicated that in Grove Slade's analysis they looked at the parking per 1,000 square feet for Gallery Place and the Shops at Georgetown.

MR. RUFFIN: Insofar as you mentioned that -- you said Mr. Slade?

MR. GREENWALD: I said it was mentioned in the Grove Slade analysis.

MR. RUFFIN: Right, in the Grove Slade analysis. Insofar as they cited Gallery Place and Shops, how does that make this particular project one wherein -- let me take that back.

Insofar as this project once had 540,000 square feet and it's now been reduced in terms of square feet for retail, isn't it true that that was

based on the amount of parking that would be required for the site?

MR. GREENWALD: No.

MR. RUFFIN: What was the basis for that reduction?

MR. GREENWALD: The project was originally 540,000 square feet as I testified previously. A 1,000 spaces was believed to be the appropriate number from the retailers' perspective, as well as from discussions with Grove Slade. That was on a very preliminary basis six years ago. When we got into the issue of the impracticability of doing three levels, we looked at reducing the size of the project.

A decision was made that it could be reduced to two levels of parking, a 1,000 spaces which would support 500,000 square feet of retail and that's what the Grove Slade analysis indicated that 983 spaces would support the 500,000 square feet of retail on the site.

MR. RUFFIN: But Mr. Greenwald, did you in earlier testimony on December 21 say that this project was designed to provide the amount of parking that the developer thought the retailers would want?

MR. GREENWALD: I don't recall my testimony without having a transcript in front of me,

but I did say today and what you just indicated you think I said before, appear to be consistent. We decided that 1,000 parking spaces would work for 540,000 square feet. When we embarked on the zoning process, we chose a special exception which wound up requiring more than that. We then cut back when it turned out to be impracticable to do the three levels below grade. We sized the project to match up the square footage with the amount of parking spaces that Grove Slade thought would work with the reduced square footage of the project.

MR. RUFFIN: But Mr. Greenwald, my original question was whether the reduction in the square footage for retail purposes, was based on parking and you said no. Am I right? Yes or no?

MR. GREENWALD: The reduction in the --

MR. RUFFIN: Didn't you just say no?

MR. GLASGOW: Mr. Chairman?

MR. GREENWALD: You're confusing me.

CHAIRPERSON GRIFFIS: Ask the question again.

MR. GREENWALD: Can you restate it clearly enough because you're confusing me. You've asked it three different ways.

MR. RUFFIN: I'm simply saying that you

just testified in response to my question that my question being wasn't it that the reduction of the retail square footage from 540,000 square feet to what it is now based on parking, you simply said no. Isn't that true?

MR. GLASGOW: Mr. Chairman, the record would reflect he said no and then went on to explain his answer.

CHAIRPERSON GRIFFIS: Right.

MR. GLASGOW: He has explained his answer I think twice since then.

CHAIRPERSON GRIFFIS: Right. We're going to get to the basis of the answer, so for clarification, Mr. Greenwald, the question is was this size based on the parking?

MR. GREENWALD: The project was resized in order to work with the resized parking garage.

CHAIRPERSON GRIFFIS: Okay.

MR. RUFFIN: I don't understand what you just -- it was resized for the resized parking garage?

MR. GREENWALD: Would you like me to read my testimony again? I'm being asked the same question over and over again.

The project went from 540,000 square feet to 500,000 square feet. The project was reduced in

size because in order to have a project that worked with a parking facility that was reduced to two levels and a 1,000 square feet.

MR. GLASGOW: A thousand spaces.

MR. GREENWALD: A thousand spaces, I'm sorry.

CHAIRPERSON GRIFFIS: Let's move on.

MR. RUFFIN: And it was reduced to 1,000 spaces because there was not enough financing to provide more than 1,000 spaces. Isn't that true, Mr. Greenwald?

MR. GREENWALD: As I stated before, there were a number of reasons for the reduction. It was impracticable because of the unique situation and obviously the cost incumbent upon the unique site situation that that would not be feasible to do the three levels. So in that sense, yes.

MR. RUFFIN: So the answer to the question is yes.

MR. GLASGOW: Mr. Chairman, he has to answer the question, not the person examining him.

MR. RUFFIN: I'm just trying to understand the question. The answer to the question is yes, that the inability to get enough funding for more than 1,000 parking spaced led to the reduction of this

parking space.

MR. GLASGOW: Mr. Chairman, that was not his answer. I mean if we want to start going back and listening to the tape and have the witness --

CHAIRPERSON GRIFFIS: Follow up with questions if you don't think he's gotten clear answers, but let's not keep reiterating or restating the answer. Ask a new question. I'm pretty clear on what his answers are.

As I say, reinvestigate the question and keep going. Let's move it in a direction.

MR. RUFFIN: When you testified that parking will be sized for the particular need of the project, does that mean that this mall in its parking requirements for -- pardon me, that the DCUSA mall requirements for square footage is based and driven by the amount of parking that you could get at this site?

MR. GLASGOW: Mr. Chairman, he's answered the question.

CHAIRPERSON GRIFFIS: Right. Haven't we asked that?

That's been answered three times from my understanding.

MR. RUFFIN: It's just that -- it seemed to me that he didn't answer it directly except that he

actually gave a lot of introductory remarks and so he didn't respond to the question.

CHAIRPERSON GRIFFIS: So you're not sure how they sized the project for the parking?

MR. RUFFIN: I wasn't sure how he answered the question. That's simply it. And insofar as he was giving an answer, he was actually, in my view, talking in a fashion that was nonresponsive and then he said yes. So it wasn't clear what he was actually saying yes to. That's where my problem arose.

CHAIRPERSON GRIFFIS: Okay. I would say you've done a valiant effort to get the answer. I don't see it coming to your satisfaction. Let's move on to your new line of questioning.

(Pause.)

MR. RUFFIN: Mr. Greenwald, why were there never discussions between the developer and RLA about a ramp for above-ground parking?

CHAIRPERSON GRIFFIS: Where are we going? What's the purpose of the ramp for the above-ground?

MR. RUFFIN: This is what he testified to on direct.

CHAIRPERSON GRIFFIS: I know, what was your specific question?

MR. RUFFIN: I simply asked --

CHAIRPERSON GRIFFIS: I'm sorry, I didn't hear.

MR. RUFFIN: I'm sorry, I'm sorry. I asked Mr. Greenwald why there were no discussions between the developer and RLA about the construction of a ramp and above-ground parking?

CHAIRPERSON GRIFFIS: Let's start it off. Were there discussions of parking above?

MR. GREENWALD: The only discussions about parking above grade occurred back at the time of the RFP and the RLA at the time preferred, its predecessor, preferred our scheme because it solved the parking problem at the time, two below grade levels.

MR. RUFFIN: The original proposal from the developer was for two below-grade levels?

MR. GREENWALD: Yes.

MR. RUFFIN: It wasn't for four below-grade levels?

MR. GREENWALD: No.

MR. RUFFIN: So after the original proposal, the proposal expanded to one that would provide for more than 1600 parking spaces at four levels, is that correct?

MR. GREENWALD: No, not more than 1600. I

explained in my testimony today the chronology, the sequence of the project going from two levels for 540,000 square feet to a three-level facility in order to make the application for the special exception, it was 1364 spaces on three levels.

MR. RUFFIN: When the project was originally slated for 540,000 square feet of retail space, it was only slated at most for 1,364 parking spaces? Is that what you're saying, sir?

MR. GREENWALD: When you say "originally", there are many different schemes and many different dates of schemes. You'd have to reference the specific date and the document for me to tell you whether that was accurate for that particular moment.

MR. RUFFIN: I'm trying to really understand this and that is there has never been on the table a construction of underground parking for more than 1364 off-street parking spaces. Is that right?

MR. GREENWALD: I would have to go back and look through all the various drawings. I don't recollect at this moment. I don't believe so, but I don't fully recollect.

MR. GLASGOW: Mr. Chairman, the record will reflect that with respect to the Board's history

with this property, there was the three-level parking garage with 1364 spaces.

CHAIRPERSON GRIFFIS: Right, which I think is the only pertinent, jurisdictional aspect that we have. Okay, let's move on.

MR. RUFFIN: Mr. Greenwald, insofar as you testified about Attachment C to the final contract between the developer and RLA Revitalization Company --

CHAIRPERSON GRIFFIS: Did I miss that today?

MR. RUFFIN: He testified about it.

CHAIRPERSON GRIFFIS: Today?

MR. RUFFIN: Yes.

CHAIRPERSON GRIFFIS: Exhibit C? I could have missed it.

MR. GREENWALD: I didn't reference Exhibit C. I made reference to the party in opposition's case that they presented last time they referenced a sentence in the development plan summary of the LDA.

CHAIRPERSON GRIFFIS: Oh, okay. Mr. Ruffin, a question?

MR. RUFFIN: Pardon me, just quickly and I'll be about finished.

(Pause.)

MR. RUFFIN: The Land Disposition and Redevelopment Agreement was signed by the parties on what date, if you remember, Mr. Greenwald?

MR. GREENWALD: If you have it --

CHAIRPERSON GRIFFIS: Let's get to the heart of the matter.

MR. GREENWALD: I would say if you have it in front of you, I would check the date, because I don't know off the top of my head.

CHAIRPERSON GRIFFIS: I don't know him to establish a fact. I mean if you want to just present it, the date, if it's not already in the record.

MR. RUFFIN: It's not in the record. Wasn't the Land Disposition and Development Agreement finally signed by the parties in about 2004?

MR. GREENWALD: You'd have to show me the signature page. I think it was signed before then.

CHAIRPERSON GRIFFIS: Where are you going with this? I really want to get to the substance here. I don't think I really care when it was signed, yet. But you're going to show me the way why I care.

MR. RUFFIN: With regard to the Land Disposition and Development Agreement, it did include Attachment C which was parcel 27 DCUSA Development Plan Summary. Am I right, Mr. Greenwald?

MR. GREENWALD: Yes, there is a Land Development Plan Summary attached to the LDA.

MR. RUFFIN: And to the degree that it included that document, it included the document that was shared with the Board last week, which I'm going to share with you and I also share with Mr. Glasgow, if you would look at it.

CHAIRPERSON GRIFFIS: What's the question?

MR. RUFFIN: Just making sure -- I'm just cross examining him on a point that was made earlier.

MR. GREENWALD: Do you want me to look at the green piece?

MR. RUFFIN: The green piece?

MR. GREENWALD: There's green highlighting.

MR. RUFFIN: I'm talking about -- is what's before you, is that not an accurate, a fair and accurate copy of Attachment C to the Land Disposition and Development Agreement.

CHAIRPERSON GRIFFIS: Next question. What's the next question? Where are we going?

Do you want him to answer something about something in that?

MR. RUFFIN: Yes sir.

CHAIRPERSON GRIFFIS: Let's get to it.

Ask it. He doesn't need to put that into evidence. Let's go.

MR. RUFFIN: No, I'm not trying to put it into evidence. It's already before the Board. I just want him to testify that this is part of -- this is the attachment.

CHAIRPERSON GRIFFIS: I don't care. What's the question based on the document that you want him to answer?

MR. RUFFIN: Mr. Greenwald, when your company Grid Properties, Incorporated negotiated and signed the Land Disposition and Development Agreement with RLA Revitalization Company and it included with it Attachment C which is parcel 27, DCUSA Development Plan Summary --

CHAIRPERSON GRIFFIS: We got that already.

MR. RUFFIN: Did it not include in that Attachment C the statement that the test borings indicate that soil conditions will enable the site to be excavated to this level, that is three below-grade levels without ground water problems?

CHAIRPERSON GRIFFIS: Good question.

MR. RUFFIN: Isn't that true, sir?

MR. GREENWALD: I already testified today --

MR. RUFFIN: No, but my question is --

MR. GREENWALD: That that is in that --

CHAIRPERSON GRIFFIS: Let him answer.

MR. GREENWALD: That is in Exhibit C and I then explained, I spent the portion of my testimony explaining that sentence.

MR. RUFFIN: So I just want to be clear. In the Land Disposition and Development Agreement where your company actually acquired a promise from RLA Revitalization Company to acquire fee simple ownership of -- to acquire control and ownership of the mall property, and also you and your partners would actually be allowed to develop the site, it included this statement which you are now disowning, is that true?

CHAIRPERSON GRIFFIS: Already asked. Let's go. Next question. It's the same question you're asking him to say yes to.

MR. RUFFIN: But --

CHAIRPERSON GRIFFIS: We got it. LDA states that borings would allow three levels. Exhibit C.

MR. RUFFIN: There was no amendment to this provision, attached to the Land Disposition and Development Agreement, is that true, sir?

MR. GREENWALD: There is in current works an amended development plan summary because the project has changed significantly since that time as we've discussed here and as I described today, the conditions of subsurface information that was available at that time is different than the information that was acquired when more detailed analysis was done on the site. So that sentence is no longer applicable today.

MR. RUFFIN: The agreement called for you to take the property as is, isn't that true? Isn't that true?

MR. GREENWALD: I cannot respond to that question without going through detailed analysis of every aspect of the LDA. There are aspects to it that are as is. There's other aspects that are the responsibility of RLARC.

MR. RUFFIN: You're saying you actually engaged your company in this agreement without knowing the details --

MR. GLASGOW: Mr. Chairman, I object to that question.

CHAIRPERSON GRIFFIS: We're going to move off the agreement because frankly, Mr. Ruffin, the agreement speaks for itself. You have it put into the

record. The Board's reading it and has read most of it already. We don't need to rehash what's actually in it. We're going to read it. And you've brought up an excellent point. Let's move on and make another zing point or let's move off it.

MR. RUFFIN: Last point, on this particular provision, is that as of today there has been no amendment to the statement that the test borings indicate that there will be no problem with ground water problems, that excavation of this level will not -- pardon me --

MR. GLASGOW: Mr. Chairman, I'm going to object to the characterization. There is nothing in the record or nothing that Mr. Greenwald testified to as to what the status of negotiations are with respect to revisions to the LDA, other than what he just said. That is in process.

CHAIRPERSON GRIFFIS: Agreed.

MR. GLASGOW: So to continue to ask questions on the old LDA, I don't know that that's particularly helpful and I object to that.

MR. RUFFIN: The point, though, Mr. Greenwald is you're now bringing to the Board's attention that there is some negotiation to make changes and this is after you heard about this.

CHAIRPERSON GRIFFIS: You brought that up.

MR. GLASGOW: Mr. Chairman.

CHAIRPERSON GRIFFIS: On a cross. I'm letting it -- we need to let it go. I don't see where we're going. There's no need to talk about what other negotiations are going. We've got an application before us. It is what it is. It's been presented. It's been documented. We need to poke holes in it, poke holes in the case, but let's move on beyond this stuff that's happening outside of this case.

MR. RUFFIN: I'm finished with my cross examination, Mr. Griffis. Thank you very much.

CHAIRPERSON GRIFFIS: Thank you very much. Let's move ahead then.

Ms. Miller, follow-up questions?

VICE CHAIR MILLER: I have one clarifying question I think. There was some discussion about how you don't know for sure who the tenants of the project are going to be and that that may affect the validity of the parking demand estimate. And my question is well, one is the factual and we know that Target is a tenant for sure, I've been told that. Do we know that Bed, Bath and Beyond and Washington Sports are definite tenants or we don't?

MR. SLADE: I don't know how definite any

of that is.

VICE CHAIR MILLER: Okay, my question is when I as a lay person or whatever look at the ULI study, there's a sentence in there that says the recommended parking ratios are applicable for centers in which retail shops occupy at least 80 percent of the GLA.

If I'm looking at the right part, and my question is do we know that? That 80 percent of the project is going to be retail, of the GLA?

CHAIRPERSON GRIFFIS: That's for Mr. Greenwald.

MR. GREENWALD: Well, the 100 percent of the project is going to be retail, so it's not -- I think that might have been referencing a project that had residential or office, but this is solely a retail project.

CHAIRPERSON GRIFFIS: That's a statement for clarification. It's a statement that says look, our formulas are only applicable to those centers that have at least 80 percent of the gross leasable area as retail. So if you had 20 percent leasable to retail, this wouldn't fit. So she's asking you is this 80 percent?

MR. GREENWALD: One hundred percent of the

leasable area is for retail use.

VICE CHAIR MILLER: Fine, so even if we don't know what type of retail, we know it's retail and that we can use this formula. Okay.

MR. GREENWALD: Yes.

VICE CHAIR MILLER: Okay, thank you.

CHAIRPERSON GRIFFIS: Good. Excellent question.

Anything else from the Board?

Very well, Mr. Glasgow, I turn it over to you for closing remarks.

MR. GLASGOW: Yes sir, just very briefly with respect to the closing. As the Board is aware that we do need a decision in this application in the near future. That has been the Deputy Mayor for Economic Development had alluded to that previously with respect to the time frames that we have given the TIF legislation, the alley closing legislation. We do have the letter from the Ward Council Member also discussing the need for decision and the ANC testimony on this and the request of RLARC.

We do believe that we have met our burden of proof and the case is ready for disposition. I know that the Board has a large record in front of it. So I'm not necessarily saying whether the Board is

able to dispose of this application and we believe with conditions today, but we do need a decision in the near future and that's what we are particularly asking for. I'm not going to go back over the burden of proof and everything else. That's been covered.

So that is really where we are ending up at this point in time. There are about three conditions that were discussed. Two of them were discussed with Mr. Sher. There was a third one that I alluded to, following up on the order of the Board previously, if there was a concern about what the mix of uses would be, that if the parking requirements exceeded 1600, 1612, whatever number you want to use on that, that so long as our uses within the facility equal that or are lower, then those are the mix of uses in the project. If they're above that, then we would have to come back to this Board for a modification or other issue or other disposition of that issue. And that is no different than the condition that we had last time where this same question came up before the Board as to what mix of uses would be in a project to be constructed.

CHAIRPERSON GRIFFIS: What if this was actually timed? The condition of approval for a set amount of years in order to assess how it was working?

MR. GLASGOW: I don't think we would be able to finance the project. The project would be built, so that would -- I don't see that that would work for us. And plus, we do have the condition where if our numbers are off, where you would have the ability to attendant park and have 1244 spaces, I think if you were to look at the ratios between what was provided last time and what was provided this time, they're within an eyelash of each other, you know, reducing from 1810 spaces to 1364, call that about 464 space reduction as opposed to 1600 spaces to 1244, which is a 350 space reduction.

CHAIRPERSON GRIFFIS: So you're saying a similarity to what was previously approved?

MR. GLASGOW: Yes. We wanted to get them as close as we could together with the attendant parking so that the Board would have a basis upon which to say all right, we're reducing this almost pro rata. It's not quite, but it's almost.

CHAIRPERSON GRIFFIS: Okay. Anything else?

MR. GLASGOW: That's it.

CHAIRPERSON GRIFFIS: Thank you very much, Mr. Glasgow.

MR. GLASGOW: Thank you.

CHAIRPERSON GRIFFIS: Good, thank you all very much. This has been a lengthy process and Mr. Glasgow has made a point in which he's saying he wants to expedite this and I think the Board does also. It is a lengthy record. However, we've kept up with our reading.

So what I want to do is set this for decision making -- let's see if this works -- for the first of March. That's our next public meeting. What I'm going to require and keep the record open for, Mr. Ruffin and Mr. Glasgow, is proposed findings of fact and conclusions of law, draft orders, gentlemen. There is no response time for that as this is based exclusively on the record, the establishment and then any conclusions that you could draw.

Right now, it looks like we're viewing three proposed conditions. I would imagine the party in opposition proposed draft order would be different than that of the Applicant's, but take that into account, the conditions that have been suggested for the Board's review at this time and those reiterated again would be setting a maximum amount of parking of which this variance would be a reduction from. If that maximum amount had to be recalculated based on the regulations, then a new application would be

required. Pricing program in order to set up the aspect of temporary nature of the parking service, the retail above it and also whether attendant assisted parking would be provided, whether it would be provided on a needs basis or whether it would be provided in a required time during the year. That obviously hasn't been decided or deliberated by this Board. But those are out there. Anything else I'm missing, Board Members?

Very well, Mr. Glasgow, any difficulty in having a proposed findings of fact and conclusions submitted by end of business day on the 23rd of February?

MR. GLASGOW: No sir.

CHAIRPERSON GRIFFIS: We'll call it 3 o'clock.

Ms. Bailey, does that work with your schedule?

MS. BAILEY: With our schedule, sir, yes.

(Laughter.)

CHAIRPERSON GRIFFIS: Yours is mine and mine is yours. We're all in it together.

The 23rd, 3 o'clock?

MS. BAILEY: Yes sir.

CHAIRPERSON GRIFFIS: Excellent. Mr.

Ruffin, any difficulty in meeting that schedule?

MR. RUFFIN: I would prefer that it would have fallen at the end of the month because I'm actually going to have a --

CHAIRPERSON GRIFFIS: That's right, you indicated prior --

MR. RUFFIN: On the 23rd, I have a matter in trial that I have to prepare for.

CHAIRPERSON GRIFFIS: Obligation.

MR. RUFFIN: Yes.

CHAIRPERSON GRIFFIS: We need it in by the Monday before March 1st. Is that the 28th?

MR. GLASGOW: That's the 28th.

CHAIRPERSON GRIFFIS: Is the 28th doable, Mr. Ruffin? That can't be done.

MR. RUFFIN: Is that enough time for you?

CHAIRPERSON GRIFFIS: I just got two kicks in my chin from the Board Members on that one.

(Laughter.)

Friday. That would be the absolute latest.

MR. RUFFIN: Friday, the 25th?

CHAIRPERSON GRIFFIS: Yes, does that help you out a little bit?

MR. RUFFIN: It helps me out a little bit.

I hope that it's adequate. I'll do my best.

If I may, Chairman Griffis, the first proposed condition, I didn't understand it when you said that I didn't understand what Mr. Glasgow said and that's on me, I apologize.

CHAIRPERSON GRIFFIS: That's okay.

MR. RUFFIN: Would the two of you please explain that first, setting the max parking.

CHAIRPERSON GRIFFIS: It's a complicated condition. The whole point is that we're being asked to grant a variance and the variance is usually when they walk away we granted variance relief and it's a stated parking that has to be provided, right? So if we were to grant this, it would be for 1,000 spaces must be provided. And what Mr. Glasgow is saying is look, if we're concerned that this is kind of a moving target and that requirement of parking might go up or down, these are my thoughts, based on the tenant in this proposal, well the safety valve for that is if it was recalculated as the tenants were put together or anything else that changed it, didn't impact anything else in the zoning, but the calculation of the parking requirement went above the 1612, that would trigger a reapplication because it would be different and they couldn't rely just on the variance of the parking that

they received.

Mr. Glasgow, is that adequate?

MR. GLASGOW: Yes sir.

CHAIRPERSON GRIFFIS: Okay, is that clear?

MR. RUFFIN: It's clear, but it seems to me, if I'm understanding Mr. Glasgow's proposal, that we're talking about circumstances not only at the time of the ruling but at any time before, as Mr. Glasgow alluded to, the construction begins.

CHAIRPERSON GRIFFIS: I'd say this is where I see it triggered. The request for the Certificate of Occupancy. When they walk down to DCRA and they start saying well, we've got 62,000 movie theaters in here. We've got an amusement park up top and I don't know what else, what else is a big parking demand and draw? You know, some of the most severe pieces to it, DCRA would say well, we can't grant a C of O. You've got a restriction of a calculated max of 1600. This would calculate it out to 50,000 parking spaces required and then coming back here, all of which are a little extreme in the ends of numbers. Does that make sense?

MR. RUFFIN: Setting a maximum parking requirement, short of having to seek another application for it?

CHAIRPERSON GRIFFIS: Yes. Kind of.

MR. RUFFIN: Variance or exception, okay. I think I understand.

CHAIRPERSON GRIFFIS: If not, you need to have clarification before you write this, Ms. Bailey, Mr. Moy, they've sat through this along with all of us. They're the Office of Zoning staff. They can answer technical questions. Mr. Glasgow has indicated in the past review of this there's something similar to it. It's obviously worth looking at that. There is ample place for you to get these answers outside of the four Members that are presently here. Obviously, we can't answer those.

Anything else? Anything else on the dates?

MR. RUFFIN: No sir.

CHAIRPERSON GRIFFIS: We're clear on process?

MR. GLASGOW: The 25th?

CHAIRPERSON GRIFFIS: The 25th. You didn't get the extension for the 25th. Okay, you can have it. 25th. We need those. If they're done beforehand it would absolutely facilitate the Board. We're going to be reading it as soon as we get them, so you want us to be clear on exactly what we have.

There is no responses to these submissions, but they are submitted into the record, obviously, and served on everyone else. But that's what it is.

Okay, nothing else, great. Thank you very much and thank everyone that is still here for our afternoon case. I'm going to have everyone stand up and walk around and get the blood flow. We're going to take five minutes and then we're going to get right to this thing and get through it.

(Off the record.)

CHAIRPERSON GRIFFIS: Very well, let's resume calling this case today.

MS. BAILEY: Application Number 17282 of DAG Real Estate Holding Company LLC, pursuant to 11 DCMR 3104.1, for a special exception to enlarge a gasoline service station/mini-mart store under sections 726.1 and 2302, and a special exception to establish a fast-food restaurant in an adjoining structure under subsection 733.1, in the C-2-A District at premises 3101-3103 Rhode Island Avenue, N.E., Square 4308, Lot 45.

CHAIRPERSON GRIFFIS: Are we ready?

MR. RAY: Good afternoon, Mr. Chairman, and Members of the Commission. I'm John Ray, an attorney from Manatt, Phelps and Phillips. I'm

appearing before you as legal counsel to the Applicant.

The Applicant, DAG Real Estate Holding Company LLC, whose managing members, Mr. Joe Mamo, who is with me here today, Mr. Mamo and his architect, Jeff Way, are here today. Mr. Way is prepared to walk you through the details of revising the site and landscaping plan and other matters.

Mr. Mamo is a resident of the District of Columbia and has been doing business in the District for more than 20 years. He presently owns all 16 of the Shell brand of service stations in the District and several in Maryland.

As noted earlier today, Mr. Mamo's station at 335 Benning Road, Northeast, was selected by Shell Oil last November for its first introduction and demonstration of hydrogen fuel for motor vehicles. Shell and General Motors have cooperated in installing a hydrogen fuel pump and a Visitor's Center at the Benning Road site to help educate the public about safe, clean, hydrogen fuel as an alternative to foreign oil.

We request approval of two special exceptions. One to permit enlargement of Mr. Mamo's Shell station at 3101 through 3103 Rhode Island

Avenue, Northeast and the other permit and to permit use of the proposed addition as a fast food restaurant. The property is in ANC-5A-11 in Ward 5 and it is zoned C-2-A.

The proposed addition is 2,325 square feet in size and it's connected to the service station's structure by a common party wall. It is designed to accommodate one to two retail establishments. Mr. Mamo has made no final decision about the type of retail establishment to be located in the proposed addition. He has invited in C-5-A and especially the Commissioner who represents Single Member District 5-A-11 to make recommendations about the type of retail businesses community residents would like to see brought into that space. He has pledged to do everything possible to secure the type of retail tenants the community prefers.

The 3100 block of Rhode Island Avenue Northeast and the nearby area provide very little in way of retail services for neighborhood residents and visitors. We are confident that we would be able to bring in new retail services that will benefit the neighborhood.

One option Mr. Mamo is considering and has discussed with the ANC and other community leaders is

a sandwich and salad shop such as a Blimpie's or Subway. This type of shop most likely would use both of the potential retail spaces in proposed addition and would include significant space for sit down service as well as carryout service.

Upon reviewing the Board's discussion of the fast food restaurant definition in his decision November 2, 2004, in a case involving a Blimpie's shop, we determined that even with substantial space for sit down service, we would need a fast food restaurant special exception to locate this type of establishment in the proposed addition. We included this in our application so that Mr. Mamo could proceed with this type of establishment, if that is the ultimate decision in collaboration with the community.

If some other type of retail service is selected for this space, it would come under the matter of right provision of the zoning regulation applicable to C-2-A zoned districts.

In April of 1999, this Board approved Mr. Mamo's application to re-establish gasoline service station use at 3101 through 3103 Rhode Island Avenue, Northeast location. The Board's order in Application No. 16439 is in your case file for today's hearing. The Board's 1999 order incorporated the voluntary

agreement entered into at that time by Mr. Mamo and by the ANC Commissioner who then represented SMD 5A-11.

As Mr. Mamo proceeded to develop the gas station and food mini-mart authorized by the 1999 BZA order, he realized the site was sufficiently large to accommodate additional retail uses. In December 2003, he submitted an application to the Department of Consumer and Regulatory Affairs for a building permit to construct the proposed addition. The building permit was approved and was issued on February 4, 2004. And Mr. Mamo proceeded with the authorized construction.

Six months later, by letter dated August 20, 2004, DCRA issued a stop work order blocking off the work on the proposed addition. The letter from DCRA Building Inspector Division said the building permit was issued in error. And Mr. Mamo seeks approval of the proposed addition as an enlargement of the previously approved gasoline service station. Mr. Mamo immediately stopped work on the proposed addition. As you see, in the photographs attached to our application documents, the proposed addition remains substantially unfinished.

Compliance with the zoning regulations, our revocation is subject to C-2 zoning special

exception provision applicable to enlargements of gasoline service stations and the location of fast food restaurant establishments as Section 726.1 and 733.1 of the zoning regulations; the gasoline service station enlargement provisions at 2302 and other overall C-2 zoned rules regarding height, density, floor/air ratio, lot occupancy and parking.

Our application documents and also the Office of Planning report describes our compliance with each of the applicable regulations, so I will not take time to elaborate in details on that aspect.

Throughout the application process, we have worked closely with Office of Planning staff and I believe they will attest to our efforts to cooperate and provide timely responses to their questions and concerns.

We reviewed the OP report dated January 31st, initiated a meeting with OP staff to discuss matters addressed in the report and filed our response document with the Office of Zoning on Friday, February 4th and delivered copies to the Office of Planning and also to Mr. Kenneth Layton of the District Department of Transportation. In our February 4th written response to OP report, I believe we have essentially and successfully addressed and remedied most of OP's

concerns.

My colleagues and I are prepared to further elaborate on any of these matters in response to your questions.

In preparation for this hearing, I reviewed the transcript of the Board's meeting and discussion on April 7, 1999 leading to the Board's vote to rule Mr. Mamo's 1999 application. Then Chairperson Sheila Cross Reid commented that the Applicant seemed to be extremely cooperative in meeting all of the requests that the ANC had made.

Mr. Mamo continues to be extremely cooperative with the residents and the ANC and civic leaders of the neighborhood where he does business. This spirit of cooperation is underscored by the fact that ANC-5A has voted unanimously in support of the proposed edition.

As you will hear later, Mr. Mamo has worked closely and cooperatively with ANC-5A, particularly ANC-5A-11 Commissioner Franklin Malone to revise and update the 1999 voluntary agreement addressing community concerns regarding the Rhode Island Avenue gas station and the proposed addition.

At the appropriate time during today's hearing, the ANC-5A representative is prepared to

provide the Board with amended voluntary agreement that Mr. Mamo and the ANC representative have signed.

Mr. Mamo will look forward to forge a continuous, cooperative and mutual working relationship with ANC-5A, the SMDA 5A-11 Commission and other civic leaders in the neighborhood.

This concludes my opening remarks. With the Board's permission I would like to ask Mr. Way to present and describe revised and extended site plans including landscaping.

CHAIRPERSON GRIFFIS: Excellent.

MR. WAY: Good evening. For the record, Jeffrey Way, principal architect of A Plus Architecture doing business at 2137 Espey Court, Suite No. 4 in Crofton, Maryland 21114. Telephone number 301/262-3121.

I believe the Board has been issued a site plan.

CHAIRPERSON GRIFFIS: Right. It had been submitted in today, is that correct?

MR. WAY: Yes. I believe so. Dated February the 4th, 2005.

This is an updated iteration of the site plan that was earlier provided. And I think, I possibly recall, it was reviewed by the Office of

Planning. But this is, again, an updated iteration. We took some comments that we have received from Mr. Mamo and Mr. Ray and other staff and have embellished this plan to indicate certain features.

I should like to call your attention to the sort of middle of the page where you see the existing building and then in larger lettering it says "15-foot public alley". So the upper right-hand corner of that is the addition, the subject of this case.

The addition is roughly the same square-footage as the footprint of the existing building. A number of things are indicated hereon. Some things in public space, such as the public sidewalks, the Pepco power poles, are indicated in open circles. The existing tree boxes, as it were, are indicated with the tree form. The driveways, which were many, have been designated as whether they're closed or whether it should not be used.

I'm calling your attention to the lower middle of the page. There was an existing driveway apron which this plan now shows as being removed. And public sidewalk shall continue, and a brick wall indicated by angled hatching in the wall will be constructed to close in that area and create a

retaining wall that runs northerly on this page. I'm sorry, rather, easterly on this, westerly on the page and then runs into the corner of the existing building.

The existing building is somewhat raised from the public alley grade and there's a retaining wall there. This new retaining wall would effectively terminate and run flush into the existing retaining wall. The material and character of the new retaining wall would be brick or masonry material, approximately six feet in height.

The other features on this plan include a designation of the parking spaces with stop blocks, as we call them, tire blocks at the head of each parking space. We've indicated a space for the dumpster, and alongside of that we've created, we propose to create a curbed landscaping area which is indicated with a little deciduous tree. And the character of the dumpster enclosure would be a 6-foot high brick wall with a site-type gate.

That pretty much describes the basic features and the improvements on-site. Again, all the driveways are existing. To the very left extreme, sort of on the left triangle of the site, we have two driveways, existing driveway apron, not to be used for

public; for fuel delivery only. That's to the extreme left on your page, in the very triangular portion. There's one that faces Rhode Island Avenue, in the very apex of the triangle. And one that faces Newton Street, existing driveway apron not to be used for public, for fuel delivery only.

The canopy will contain lighting underneath, and there are also proposed 13-foot high light masts, seven to be exact, spread around the site, mostly in perimeter locations. And there are lights mounted high up on the fascia of the building and there are six of those which provide again some beneficial perimeter lighting.

The canopy is a raised canopy of posts. It's largely of a cantilever-type structure which allows for good flexibility of vehicular movement around the site including that of delivery trucks as the height of the canopy would be conforming to the Federal Highway Administration clearance of roughly 15, 16 feet or so.

The character of the addition. What's unique about this building and I forget the exact history, whether it was built as an Amoco or something, but it's a very unique gas station building in that it has a very nice residential scale to it.

It has around a 6 to 12 roof pitch and a very deep overhang. It looks almost like a ski chalet. It's roughly a two-foot overhang on the eaves.

The addition is designed exactly in that same character with a very nice domestic scale roof, shingled roofing, nice fascia and overhang and eave overhang to match.

And finally, the building walkway apron which extends from the existing building to the entire frontage of the addition is intended to be handicap accessible, so it will meet the parking lot grade, if you will, flush at one or more locations for ease of access.

Thank you very much.

CHAIRPERSON GRIFFIS: Thank you. Sorry, there was a big of confusion. The issue, the submission that we got actually today had the old site plan which is why we had a lot of paper ruffling up here. We now have the current one in front of us which makes a lot more sense.

Going back to the closest existing drive apron toward the corner, towards that triangle shape, you've indicated it is an existing and you're anticipating would just be for service for the trucks that would come in.

MR. WAY: That's correct.

CHAIRPERSON GRIFFIS: Who is that actually programmed? What would preclude a care from pulling right in there.

MR. WAY: In fact, it's the drive which to the every extreme faces Rhode Island. The other faces Newton, so it's a very extreme left-most driveways.

I suppose that that can be regulated with perhaps little ballards or pipes or cones or any number of things that could be architectotically very nice or they can be simply as utilitarian as orange cones.

CHAIRPERSON GRIFFIS: Let me get to an understanding then of why are you trying to preclude those uses. Putting ballards in there would be a nice idea unless a car was actually in traffic and pulled in and then would have to back out because it wouldn't be able to get in, but why preclude circulation through those?

MR. WAY: We just believe that the driveways further north represented greater proximity to the actual fueling function.

CHAIRPERSON GRIFFIS: I see.

MR. WAY: And further north even to access to the existing building, C store, and then further

north to the very extreme northerly driveway, all of them are wide enough for legitimate two-way ingress and egress. They're just proximity-related issues.

CHAIRPERSON GRIFFIS: Okay.

MR. WAY: We thought it afforded a tremendous lack of conflict, if you will, with any fuel deliveries versus vehicular.

CHAIRPERSON GRIFFIS: Okay, are you proposing this sort of signage on property that indicates or even arrow painting on the roadway showing direction of vehicles.

MR. WAY: That is appropriate, yes. In fact, I think although this plan, I regret, doesn't indicate it, a sign at each of the entrances of each of those driveways which is the subject of our current discussion, we would have a sign "fuel deliveries only."

My opinion is that given where the Newton Street driveway is located, the ones we enclose, of course, adjacent to the alley, the further one is -- I think folks tend to -- patrons tend to go to where the activity seems to be occurring and given the upgraded appearance of the canopy and the nice graphics, it's pretty likely that someone would choose that driveway.

CHAIRPERSON GRIFFIS: I see. Unless they

were on Newton, in which case they'd pick that one.

MR. WAY: Possibly, yes. They could make that acute right hand turn and enter from Rhode Island.

CHAIRPERSON GRIFFIS: Okay, I think that's pretty clear.

Any other questions of the Board?

Very well, Mr. Ray, anything else?

VICE CHAIR MILLER: I just have a clarification question. If you look back at the order that was issued on April 7, 1999, it says it's to establish a gas station, gas service station. And in your testimony you say it's to re-establish. Was that the first time it was established?

MR. RAY: No, actually, this is a very interesting application and frankly it's very interesting in terms of the discussion we had this morning, is that as Mr. Way pointed out, there's a gas station there for a very long time and it was closed down.

Mr. Mamo actually is re-opening the gas station inthe same building that always existed there, same footprint. He simply renovated the building. It was always there.

However, we were required to come to BZA

because one, he's putting up a much larger canopy there. Back in those days many of these gas stations didn't even have a canopy. You're out in the rain. So there's a huge canopy there now. And he's also increased in number of outlets. Sometimes folks say well, we're going to put six pumps, well, if you're talking about six pumps 20 years ago, six pumps and now you may be talking about 12 outlets because these pumps didn't have outlets on both sides which they didn't have years ago.

So because of those things that's why we had to go come to BZA. But this was an existing gas station that had been there. It was the same building that was always there for the gas station. He just renovated that.

Now the addition which we're talking about was not there.

CHAIRPERSON GRIFFIS: Mr. Ray, you said in your opening remarks that certain sections of 726 and 733, are you also in agreement that you are under 706? Right, so it goes to the C-2 zoned special exception provision is applicable. Okay.

MR. RAY: Yes, absolutely.

CHAIRPERSON GRIFFIS: So I think it is fairly straightforward in your submission as you

indicated. Also, your submission, the Office of Planning, goes into a very detailed report on it. I'm not going to go down all the sections of it. If there aren't any other Board questions at this time we can go to the ANC.

Is the ANC present today? Excellent. Do you have any cross examination of the testimony that you've heard today?

Okay, thank you.

At this time I'm going to go to the Office of Planning and then we'll get to the presentation by the ANC.

Mr. McGettigan, a very good evening to you.

MR. McGETTIGAN: Good evening, Mr. Chair, Members of the Board. For the record, my name is David McGettigan from the Office of Planning.

This application was a little light on information when we received it and I'm glad that the Applicant has been so indulgent in trying to provide additional information for us to actually see what they're proposing there.

I'll just briefly go through the concerns that I outlined in my report and not through each individual test as they're already outlined.

On the first, the reason I thought they were going to close this entrance is one, they had indicated on the plan that I had at the time that those entrances were not to be used, so I took that to mean that they were closing them. Later talking with the Applicant, they said that they didn't need those for fuel delivery.

Although the closest one to the intersection on Rhode Island on their initial submission was not shown at all, so I don't know whether they had initially planned to close that one completely or not.

If it's truly necessary for the fuel truck to get out, then those entrances should remain. I think by virtue of the angle of this particular intersection, they are not within 40 feet but that both entrances are still very close to the intersection, functionally, even though they might not meet the letter of law. So it's of concern to me whether they close those or not and that's why I brought up that situation to their attention.

Of course, the Applicant has agreed to close the entrance on Newton Street and I'm glad to see this plan shows the apron being removed and the sidewalk being restored and green space being restored

in that area. That's what I was looking for there. Their previous plan did not show that.

The brick wall was not shown and now it's there. That's required by section 733.3 and also they now show the enclosure for the dumpster which is required by 733.4.

I was concerned -- if you look at the picture of the back of that building, it's untreated cinder block, obviously in a state of -- unfinished state. The Applicant said that he would paint that to make it more attractive.

Parking lot spaces, we've seen some added now. There's 23 spaces. The stops are shown which was a concern that there's be overhang into public space or other properties, but with the bumper, the wheel stops, that alleviated some concerns in that regard. So I'm glad to see those on the plan.

And also the addition of some planting areas and three trees. I think the site initially was all completely paved so that's a welcome addition to the site and will help alleviate the starkness of the site.

Also, the presentation of the lighting is an addition. Unfortunately, the Department of Transportation didn't -- wouldn't comment without a

traffic study on this application and I requested -- it's a little bit late for them in the process to prepare a study. I assume that there had been one for the previous special exception that they could just update, but evidently there was never a traffic study done for that.

I am familiar with the gas station though and I talked with the Department of Transportation, if they had any particular concerns that they thought they might have. Most of the traffic will be pass-by traffic. This is not a destination, traffic generator. So generally, these applications, especially on major roads like that, the traffic impact is not -- is negligible. So I would be satisfied with recommending approval of this with the new plans that have been presented. But I can't speak for DDOT.

CHAIRPERSON GRIFFIS: Indeed. Good. Thank you very much, Mr. McGettigan.

So am I to take it with your comments in terms of the address of your concerns that you have a position now?

MR. McGETTIGAN: Yes. I recommend approval.

CHAIRPERSON GRIFFIS: No difficulty in

recommending approval of this?

MR. McGETTIGAN: That's correct.

CHAIRPERSON GRIFFIS: Okay, very well. Questions from the Board?

Ms. Miller?

VICE CHAIR MILLER: Do you recommend approval with any conditions or just plain approval?

MR. McGETTIGAN: Well, yeah, I did mention in my report that the existing conditions from the 1999 special exception should remain. They mitigate a lot of some of the operational concerns that the neighborhood might have with the use, particularly regarding keeping the site clean and lighting of the site and so forth. So yes, I think those conditions should remain in place as partially modified, perhaps, with the submission from the ANC.

VICE CHAIR MILLER: And was there one related to the cinder block of the proposed addition?

CHAIRPERSON GRIFFIS: Right, they would be painted to match the brick veneer?

MR. McGETTIGAN: Yes.

CHAIRPERSON GRIFFIS: I think we can adopt and take Mr. McGettigan, if you don't disagree, as proposed conditions any of those that are listed of concerns that haven't actually been addressed or

completed to date.

MR. McGETTIGAN: That's right, they're not shown on the plan, but the Board can incorporate those issues as well.

CHAIRPERSON GRIFFIS: Excellent. Okay, anything further?

Mr. Ray, any cross examination of the Office of Planning?

Very well. Let's move on. As Mr. McGettigan indicated, DDOT had not responded to the application based on the fact of not having a traffic study to respond to which would have been informative in their respects.

Does the ANC have any cross examination of the Office of Planning?

Very well, let's move ahead to you, in any case. We do have Exhibit 30 and we'll hear the presentation of your case at this point.

MR. BOWSER: I did want to address one of the concerns that the Office of Planning did have. We did do --

CHAIRPERSON GRIFFIS: Before you go much further, if you wouldn't mind just stating your name and address for the record?

MR. BOWSER: My name is Commissioner

Joseph Bowser. I'm Chairperson of ANC-5A.

CHAIRPERSON GRIFFIS: Excellent.

MR. BOWSER: One of the concerns the Office of Planning had, we had an amended voluntary agreement. He talked about a voluntary agreement and the major changes in that is in the wording. The old agreement talked about the agreement between Mr. Mamo and Karen Lancaster who was a former ANC Commissioner and changing the wording is that the agreement was between ANC-5A, rather than a particular Commissioner. So we want to -- I don't know whether you have a copy of that. If you don't, I do have some extra copies. And the reason why we didn't ask -- we did originally ask for an extension for this so we could have all the documents in order, but however, we decided to move forward and I can submit some copies.

CHAIRPERSON GRIFFIS: Yes, we need copies of it, if you want us to look at it.

MR. BOWSER: Okay.

CHAIRPERSON GRIFFIS: I'm sorry, if you could just hand those to Ms. Bailey at the very far -- while he's doing that and submitting it in, Board Members, Ms. Bailey has also brought to my attention, Exhibit 30, of course, which I've indicated is the ANC's report. It was not timely filed and therefore,

would require a waiving of our regulations on timeliness in order to accept it into the record. Let me hear any objection from the Board.

MEMBER ETHERLY: No objections, Mr. Chairman.

CHAIRPERSON GRIFFIS: Very well, any other comments? If there's no objection, we'll waive our requirements. It's obvious that we had this earlier submission, actually, requesting a postponement of this in order for the ANC to take this up. That has been met and I think it's appropriate to waive our requirements for submission.

MR. BOWSER: And the other half of that agreement is that the agreement talks about a police work station which we support for that facility in some way, but after careful deliberation of the ANC, we decided we would go for a police substation, rather than a work station because the PSA could work out of the substation.

And secondly, as part of the cross border initiative, you know, that the station is on the corridor next to -- let me get this off for a minute. Next to the Prince George's County line, so I also have that resolution that we have put in that we are working toward with the Police Department and the

Mayor and the Council Member to see if we can't work on a police substation.

And I have a copy of those -- of that resolution. Other than that ANC 5A to support the use of the station, that's my testimony.

CHAIRPERSON GRIFFIS: Excellent. Thank you very much. Don't go too far.

VICE CHAIR MILLER: I need to ask you a question.

MR. BOWSER: That's okay.

VICE CHAIR MILLER: I'm looking at Exhibit 30. It's a letter dated February 4, 2005 from ANC 5A saying that the Commissioners present vote of 11 to 0 to support the request to build additional retail space at the gas station, is there something else that goes with this? I mean you've been referring to an agreement or whatever?

MR. BOWSER: Yes.

VICE CHAIR MILLER: Is it separate from this document or was it supposed to be attached?

MR. BOWSER: The agreement should have been attached to the original document. The Office of Planning talked about the 1999 agreement, so all this agreement does is amend the agreement that I just submitted. It just merely changed some wording in it.

And you would have had this timely if we had gotten the extension, but since we didn't get the extension, we fast tracked everything.

VICE CHAIR MILLER: Okay.

CHAIRPERSON GRIFFIS: And a darn good job doing it.

VICE CHAIR MILLER: So I just got handed to me, there's a resolution?

MR. BOWSER: Yes.

VICE CHAIR MILLER: And there's an amended agreement --

MR. BOWSER: Yes, there is, yes.

VICE CHAIR MILLER: -- is that it?

MR. BOWSER: Yes.

VICE CHAIR MILLER: Okay. Thank you.

CHAIRPERSON GRIFFIS: Good. And I note in here an amended voluntary agreement which you submitted today which is dated February 3, 2005 has been signed --

MR. BOWSER: Yes.

CHAIRPERSON GRIFFIS: -- by the ANC and also by the owner. Obviously, this is an independent and enforceable document on its own.

MR. BOWSER: Right.

CHAIRPERSON GRIFFIS: Very good. I say

that in order to be absolutely clear because I think there's an awful lot that the Board supports, but there's also an awful lot that goes beyond the jurisdiction of the Board to condition. Even though, perhaps in prior orders, things were conditioned within the BZA approval. I think that this Board has taken an awful lot of look, initiative in crafting conditions that actually fall within a measureability, an accountability, an enforceability and within our jurisdiction. So, with that, I think we can review that but note that it is a binding document on its own.

Okay, is there any other question from the Board regarding the ANC?

Does the Applicant have any cross-examination of the ANC member?

How come this one's no fun? Okay, come on, let's go.

VICE CHAIR MILLER: Just because I --

CHAIRPERSON GRIFFIS: I should turn my mic off when I say those things, don't I? Okay, let's go.

VICE CHAIR MILLER: You may have been addressing this while I was, before I had this resolution, but the police substation that, that is going to be in one of the building --

MR. BOWSER: Yes, yes.

VICE CHAIR MILLER: -- new buildings

MR. BOWSER: Yes, yes.

VICE CHAIR MILLER: Okay. And this just shows that you support that?

CHAIRPERSON GRIFFIS: Is that for certain, Mr. Ray?

MR. RAY: Well, what I wanted to say is that Mr. Mamo supports having a substation there.

VICE CHAIR MILLER: Okay.

MR. RAY: However, Chief Ramsey is in opposition to the station.

CHAIRPERSON GRIFFIS: That's correct.

VICE CHAIR MILLER: Okay, that's right.

CHAIRPERSON GRIFFIS: There's an e-mail attendant to that issue --

MR. RAY: Yes.

CHAIRPERSON GRIFFIS: -- submitted. And the point being you talked about it. You had a conversation with either a substation or warming station or any of that and that e-mail, if I can summarize, says that the Police Chief wants his policemen and women out on the street. Certainly, you wouldn't preclude selling coffee or a hot dog or warming an officer that might stop by and we can make

that on the public record for all to know. But, clearly they're not trying to establish those type of institutions.

And actually, we're fairly aware of that as we have oftentimes, even in corner stores and such, that that is something that the community would really like to see. And we've seen it not be able to come to fruition, based on the policing --

MEMBER ETHERLY: Theory, is it is a theory?

CHAIRPERSON GRIFFIS: No, policing practice. Go ahead.

MR. BOWSER: A year from now that will happen.

CHAIRPERSON GRIFFIS: Good.

MR. BOWSER: That will happen, a year from now. Because part of the cross border initiative and we follow this through with the Chief and all the way down the line. It will happen.

CHAIRPERSON GRIFFIS: Excellent. We're going to mark your words at 6:44 of the evening of the 8th.

MR. BOWSER: It will happen.

CHAIRPERSON GRIFFIS: We'll come back in a year. You know, we're going to be here.

MR. BOWSER: Yes.

CHAIRPERSON GRIFFIS: Okay. Any other questions for the ANC, then? Very well, if there's nothing further, we thank you very much for being so patient today in sticking with us in order to be able to present this report and actually the excellent amended voluntary agreement. And I think everyone should be complimented on getting to the resolution on that and having this crafted.

Let me go to, I don't have any other attendant government reports, unless the applicant is aware of anything else submitted into the record, Board members we can go to testimony. Persons in support of the Application, we could hear from now. Any persons present to give testimony in support? Any persons present to give testimony in opposition to the Application? Yes, let's give them some space.

Good afternoon.

MR. POLES: Good afternoon.

CHAIRPERSON GRIFFIS: Who is going to start? Okay. I'm just going to need you to touch that button on the base of the microphone. There it is.

MR. POLES: Good afternoon. My name is Raymond Poles. I am a resident. I live at the 3100

block of Newton Street, 3143 Newton Street to be exact. I am, of course, one of the members of the community on an immediate street in opposition, not to, let me just be clear, not the complete project, but the expansion. More in less in terms of this fast food restaurant. And it has been so noted in some of the information that you already have. I won't go into all of that. With respect to prostitution, drugs, and so forth. It's of great concern in our immediate community. And when I say that, I am talking specifically about those who reside on Newton Street.

With all due respect to the ANC Commissioner, Mr. Bowser, and so forth, I still contend that that, I guess you could say, agreement among the ANC Commissioners does not represent the block. And I say that in respect that we, meaning Newton Street, the 3100 block, will be greatly impacted by the opening of that entity.

I noted that, for example, they were given information to the extent that work was supposed to have stopped, i.e., August the 20th, I believe, to that extent I'm here just to say for the record: no it did not happen like that. Work continued. I have others who are sitting at the table to support that.

I also had this concern with the manner in which parts of the project was implemented, if you will. And that is, i.e., the posting of permits and so forth. For example, in the month of August at or around the 25th, the only permits which I observed of course were those coming from 1999. Nothing that was current.

So I'm just putting these things out before you expressing my dismay in one respect. I am not against economic development by no stretch of the imagination. I think it's good for all communities. But with respect to the restaurant piece, the fast foods piece, I have big concerns with it.

CHAIRPERSON GRIFFIS: Go ahead. Thank you very much. Let me go through a couple of things, because you started out saying you're very concerned about the prostitution, I'll take loitering --

MR. POLES: Yes sir.

CHAIRPERSON GRIFFIS: -- aspect also with that. How do you see that if a fast-food establishment or other sort of retail is provided that that would support that unseemly behavior? And why would you think that it would not tend to limit that behavior, or at least move it into another area?

MR. POLES: Well, when I look at fast foods in general, and what they bring to a community,

they're not, i.e., Blimpie's, Subways, in my judgment, are not conducive to what it is that we would like to see.

For example, I would prefer, if at all, a Starbucks.

CHAIRPERSON GRIFFIS: Okay.

MR. POLES: When you bring in something like a Blimpies as a fast-food type, it too is a, if you will, an attraction for those entities that really like to hang. And in the cases of prostitutes, unfortunately, you know, do their business. You know, because you have Johns who will drive up into those particular areas, to those stores, if you will, and while they're getting their sandwich, they get the other sandwiches. And I just don't want it in my community. It's just that simple.

And we have a big problem with that as we speak, without the fast-food restaurant being located in that area. We have a little, if you will, a Chinese restaurant there. Next to the, you know, proposed gas station and fast-food place. It is one example of where we see this going on as we speak.

CHAIRPERSON GRIFFIS: Right. Yes. And it's a very serious concern. One I know we've dealt and perhaps, without getting into too much detail --

MR. POLES: Sure.

CHAIRPERSON GRIFFIS: -- perhaps we deal with it in our own neighborhoods.

MR. POLES: Yes.

CHAIRPERSON GRIFFIS: But, let me ask you directly. For this application, do you see that this, if you removed for instance all the restaurants in the entire area would the prostitution issue leave?

MR. POLES: Yes and no. And I'm giving you a very honest answer --

CHAIRPERSON GRIFFIS: Right, and it's --

MR. POLES: -- in my opinion, and the reason why I'm saying that if I may add as a caveat is simply because within let's see two blocks at the max there is a guest house at the corner of South Dakota and Rhode Island Avenue which the prostitutes use --

CHAIRPERSON GRIFFIS: Right.

MR. POLES: -- it doesn't have a name up there or anything. It's just a big standing house where, if you have a piece, you can swing on up in there, have it, lay it and get on out.

CHAIRPERSON GRIFFIS: Right.

MR. POLES: Then go on down the street and get your sandwich. Okay? And a cup of coffee.

CHAIRPERSON GRIFFIS: But if you didn't

feed them, would they still do it?

MR. POLES: Yes and no. And I'm being very --

CHAIRPERSON GRIFFIS: No, I understand,

MR. POLES: -- honest with you.

CHAIRPERSON GRIFFIS: So let me put it another way --

MR. POLES: Excuse me.

CHAIRPERSON GRIFFIS: -- if this wasn't there or wasn't even in operation. Well, let's put it this way. If, as proposed --

MR. POLES: Yes sir.

CHAIRPERSON GRIFFIS: -- this is going to be a well-lit, cleaned every day, area that will not tend to accept loitering and certainly were to prevent loitering, would you think that that wouldn't create a more receptive environment --

MR. POLES: I have a response for you, which is one that I gave at one of our community meetings.

CHAIRPERSON GRIFFIS: Good.

MR. POLES: In the absence of MPD, as we now know that they will not be forthcoming in terms of the substation, I recommended, and this is without even the food piece, but I still recommended that we

have a security person there twenty four hours a day. And one who had a gun, and not just a damn stick. I was quite, whatever you want to call about it, I was quite adamant.

CHAIRPERSON GRIFFIS: Right.

MR. POLES: But I believe if you are going to put something there, minimally we need that security person with the gun twenty four hours a day. Someone who sees if and when, you know, persons of poor character, I'll just say it for a light term, come onto the premises and want to hang and so forth, they can make them move. Literally, make them move.

CHAIRPERSON GRIFFIS: Right, right, agreed. Okay. Very good. Thank you very much.

MR. POLES: Thank you.

CHAIRPERSON GRIFFIS: Good evening to you.

MR. JONES: Good evening. My name is Arthur J. Jones. I live at 3110 Newton Street, Northeast.

I'm going to come with a different caveat than Mr. Poles here. I was here yesterday and I went through the exhibit log. And all the documents, except for one which was the stop work order, I didn't see a reply to anything that Mr. Ray sent out to the District government. He never got a reply back from

anybody that I saw in that log.

I looked through it last night and this morning and I still didn't see any reply from anyone. This is the only reply I got right here from the young man right there. This is the only one I saw on the stop work order in there. I never saw any reply from anything that he sent out to come back to him through this office.

CHAIRPERSON GRIFFIS: I'm not sure I'm following.

Who are you thinking would reply to his application submission?

MR. JONES: I'm talking about Ms. Kress. I didn't see any replies from Ms. Kress. She's the Acting BZA Commissioner, right?

CHAIRPERSON GRIFFIS: No. She's the Director of the Office of Zoning, but okay.

MR. JONES: I didn't see anything from her.

CHAIRPERSON GRIFFIS: What were you expecting to see?

MR. JONES: I wanted to see what kind of reply she would send back to him. I don't know how it was done. I didn't see any replies.

CHAIRPERSON GRIFFIS: Let me run through

because this isn't and I know your very sincere question and it raises some concern in my mind of the understanding of our process.

First of all, also, Mr. Poles brought up the aspect of the permit and stop work order. Of course, that goes beyond our jurisdiction in looking at the application that we before us which is of a specific relief to the zoning requirements. That's an enforcement of DCRA and the permit or the stop work order. It's DCRA does the enforcement of that.

So what the situation is here is that the -- well, let me make it as simple as possible. The Applicant has been required or has decided to bring an application for relief from the zoning regulations and our zoning regulations say it has to be a special exception. Don't worry about that.

So we're here before us just to look at this application. Mr. Ray, in representing the owner, puts in all the required documentation. But there's no response to any of this.

MR. JONES: I didn't see that.

CHAIRPERSON GRIFFIS: No, no. There is no response.

MR. JONES: There's no response?

CHAIRPERSON GRIFFIS: There is no vehicle

for response. There's no one waiting for response. Everything else just fills the record. The Office of Planning picks up the application, looks at it, does their analysis. And they put it all into the record. And then late on Wednesday night, there's a knock at our door and we're delivered the entire record. We're locked down in our houses and we read it until we show up Tuesday morning and we review it and we have a public hearing.

There's no -- I'm not sure where you're looking for, but there's no give and take, there's no --

MR. JONES: Let me give you a chance to understand where I'm going at.

CHAIRPERSON GRIFFIS: Good.

MR. JONES: Exhibit 10, last page, a letter from DCRA, that document? There is the document? I'd like to see the document.

CHAIRPERSON GRIFFIS: Exhibit 10?

MR. JONES: It said that the person did not sign the document. The last paragraph here.

CHAIRPERSON GRIFFIS: The last paragraph.

MR. JONES: It's called Exhibit A, attachments.

Summary and background, DCRA referral

letter.

CHAIRPERSON GRIFFIS: Oh my gosh.

MR. JONES: See it?

CHAIRPERSON GRIFFIS: Do you have Exhibit 9? Can you tell me what it is?

Mr. Ray, you submitted Exhibit A, is that correct, in your original submission in your bound copy which is titled -- how did that get stapled to the back of the mailing address.

Thank you. It's not stapled on mine. It was stapled on --

MEMBER ETHERLY: You're right, Mr. Chair, both Exhibit 9 and Exhibit 8 appear to be separate copies of what are essentially exhibits that were back of the Applicant's submission in our file, so for some reason they were just broken up separately. But what the gentleman has identified are, in fact, attachments to the Applicant's submitted statement. They're just filed separately for some reason.

MR. JONES: So do I get a chance to view that letter, the signing of that document? Or do I have to go to DCR to find that document?

CHAIRPERSON GRIFFIS: Well, the actual document is in the public record. It's in this filing by the Applicant. It's in the same place you found

that.

MR. JONES: Okay, all right, so it must have been miss-crossed.

Okay, I've got a number of concerns too. I was listening to the architect talk about this last exit here on Newton Street.

CHAIRPERSON GRIFFIS: Right, closest to the corner?

MR. JONES: Yes.

CHAIRPERSON GRIFFIS: Good.

MR. JONES: In front of the liquor store, which is the Stop and Shop, there's a sign that says no trucks.

CHAIRPERSON GRIFFIS: Where is the liquor store?

MR. JONES: Right across the street.

CHAIRPERSON GRIFFIS: Okay.

MR. JONES: It says no trucks.

CHAIRPERSON GRIFFIS: We have to put it all on the record here.

MR. JONES: It says no trucks.

CHAIRPERSON GRIFFIS: No trucks.

MR. JONES: That means no trucks can come down and go up Newton Street.

CHAIRPERSON GRIFFIS: Oh, on the street,

on Newton.

MR. JONES: You can't come up.

CHAIRPERSON GRIFFIS: No trucks.

MR. JONES: At all.

CHAIRPERSON GRIFFIS: Okay.

MR. JONES: And right here where this last opening is for this filling station, adjacent across the street from that is another opening at the liquor store and the way the cars go up and down Newton Street at 100 miles an hour, we're looking for a big accident, a very big accident.

So I'd like to request that that exit be closed off too on Newton Street.

CHAIRPERSON GRIFFIS: So having no access from Newton Street.

MR. JONES: Whatsoever.

CHAIRPERSON GRIFFIS: Doesn't that put anybody that wants to get into their garage coming down Newton Street back on Rhode Island into that traffic and then back into the station?

MR. JONES: Well, they should come into the station from Rhode Island Avenue and exit to Rhode Island Avenue.

CHAIRPERSON GRIFFIS: Okay, that's an interesting concern.

Okay, good point.

MR. JONES: Also, on that same document, where you have this right here? I know you got it on there?

CHAIRPERSON GRIFFIS: Yes.

MR. JONES: That's my house right behind that filling station.

CHAIRPERSON GRIFFIS: Let me ask you this, just to interrupt you, on Newton Street, talking about Newton Street, right across the street on Newton, not across Rhode Island --

MR. JONES: Not across Rhode Island.

CHAIRPERSON GRIFFIS: Right across, those are residential buildings?

MR. JONES: Yes, you have an apartment building right across, as well as houses going down -- what would that be -- going south.

CHAIRPERSON GRIFFIS: Down towards Clinton Street. Okay.

MR. JONES: There's houses up in there. One other thing that I found, just where this dumpster is proposed to be put at?

CHAIRPERSON GRIFFIS: Yes.

MR. JONES: On the original drawing it's supposed to be out on the Rhode Island Avenue side. I

don't know how it got over there on my side. I don't know how it got over there, but on the original drawings from 1999, I think it was supposed to be out on the Rhode Island Avenue side.

(Pause.)

CHAIRPERSON GRIFFIS: Is this the photograph of the current condition? I'm pointing to the photograph that was submitted? Okay.

Okay, so the question is wasn't this up on Rhode Island Avenue side?

MR. JONES: Yes, in 1999, it was supposed to be out on Rhode Island Avenue, not on Newton Street.

CHAIRPERSON GRIFFIS: And you see currently, as it's being proposed that that's a difficulty?

MR. JONES: That's going to be a problem.

CHAIRPERSON GRIFFIS: What's the problem?

MR. JONES: As far as the odor and the rats. It would be better placed out on Rhode Island Avenue.

MEMBER ETHERLY: Is it your sense that based on that placement that puts it closer to what would be the rear of properties that are on Newton Street, near the residences?

MR. POLES: Within 25 feet, literally.

MR. JONES: Sixteen feet.

CHAIRPERSON GRIFFIS: Those rats are going to be hopping a brand new 6-foot brick wall.

MR. JONES: Well, we have raccoons. We have everything there.

CHAIRPERSON GRIFFIS: In all seriousness, do you see that they actually have it with a brick surround and actual enclosing --

MR. JONES: It's existing now.

CHAIRPERSON GRIFFIS: It looks like that's going to be modified.

MR. JONES: They will have to take the signs down because it has to be a masonry unit. That's what it says on this -- what's his name's drawings.

CHAIRPERSON GRIFFIS: Right. On SP-1. That's a good point we'll bring up for the Applicant again as they come forward.

Okay. Anything else?

MR. JONES: No, that's the end of my testimony.

CHAIRPERSON GRIFFIS: Excellent. Thank you very much. Good testimony.

Any questions of the Board?

Very well, yes sir.

MR. BLAKE: Good evening, my name is Raymond Blake. I'm a little tired now. I've been out here all day long.

CHAIRPERSON GRIFFIS: Me too.

MR. BLAKE: And I live on Newton Street, 3116, two doors from Mr. Jones. Been on the block since 1956, so there's nobody here right now that can tell me other than the ex-ANC lady anything about that block. I came in there when I was a kid going to junior high school and I've been there ever since. I've seen them come and I've seen them go. Third longest living on that block.

But I hear nobody talking about the residents on the block. Nobody says anything about the residents. All I hear is the filling station, the canopy, the opening on the corner, what about the residents? What about the people right across the street while the light is going to be shining in their house? Nobody said anything about that and I'm glad you're going to try to get that last opening closed on Newton Street because that would present a problem.

But I don't have anything against Mr. Mamo opening a filling station. I would like to know what he's going to put in the other two buildings. I don't

know who is going to make the decision. Not that I want to make it because if I had my way, he wouldn't have put the building up. Being honest about it. Because they worked on a Sunday and they worked on Saturday and I hated it, six o'clock in the morning, all day, cutting cinder block and putting them up. I didn't like that. I said why on a Sunday? All I hear is you got to do what you got to do when you can do it.

I mean I'm retired. When do I get my break? Thirty-two years in this government and 12 in private industry, but I mean what about the neighbors? Nobody said anything. I don't want it to be another Fort Davis up on Alabama Avenue and Massachusetts which I think you all know about that. Don't need to be another Chillum. You all know about Chillum, there's a leak under the ground.

I told them do a study, do something so we don't have to worry about that. We have older people on the block, people that really don't get -- if they could get around good, they would be down here. But as you see, just the three of us.

And I just retired a year and a half ago. Just let me live it out in peace. That's all I want to do. I'm not here forever, just passing through,

but let me do mine in peace. We have drugs. We have guns. We have the whole nine yards. My next door neighbor, they found a pump shotgun in her yard, loaded. If it weren't for her son, the policeman would have shot his leg off because he didn't know how to eject the shell. Another pistol in her flower pot. I mean this is what we have to put up with. And she's up in her 70s.

And we've been fighting with the drug boys for I don't know how long. Not that we're scared of them because as you all know, it's somebody's son I know or somebody's daughter, hey, you need to tell you kid to get off the block, it's the wrong place to be, they're doing the wrong things out here. A lot of them don't pay attention. But we have it in the neighborhood and we've been fighting it for the last couple of years now.

And we have our little street coalition, a lot of people want to jump on the bandwagon, but we're not following the steps of anybody else. We're doing it the way we need to do it because we live there. We have a lot of insight for seniors. Every meeting we have there's somebody there, police department, fire department, EMS, people from Vincent Orange's office. We have somebody there to give you information that

you will need down the line. But still, I hear nobody talking about the neighborhood. And they're seniors.

I'm up there too. I got a little age on me, but they're older than I am.

CHAIRPERSON GRIFFIS: It doesn't show.

MR. BLAKE: I feel it. I've been out here all day long. My back is killing me right along in there. But you know, I don't have any problem -- I know we're going to get the filling station. I know the filling station is going to come in here.

CHAIRPERSON GRIFFIS: Right.

MR. BLAKE: But then we need a little consideration down on that block.

CHAIRPERSON GRIFFIS: Clear. Good. And excellent testimony and say you know, you're going about it, as far as I know, the right way. You've got to organize locally, everyone that cares about the block is going to put the right effort in. You've got a lot of obviously big issues as a lot of neighborhoods do from drug activity to prostitution to crime.

And your comment is very important to the Board. Where are the residents, neighbors? Where do they play a part in this? And let me tell you, that's exactly what you're doing in terms of coming down here

and providing the testimony.

We can't go out to the neighborhood. We can't go visit this spot. We are actually prohibited from doing that. We can only look at what's presented before us. So we need to hear from residents and community members that come in.

Now the testimony begins and ends with the application and the regulations of which we have to look at.

We are told very specifically the test of which we need to see whether they meet it or they don't meet it. And so what I'd like to do is just revisit some of the bigger issues that you've brought forward.

You mentioned one thing about where is the lighting and who's looking at the lighting and how it impacts the residents, but then you follow up by saying but I'm not opposed to the gas station.

If this is a critical issue, that's actually one of the most important things we do is look at that aspect. I can also tell you that most gas stations that we've reviewed and gone to the specificity, the engineering of that lighting is fairly well done in terms of directing the light on to the site.

But go ahead, let me --

MR. BLAKE: Okay, you have a good point. But this canopy the young man talked about so much?

CHAIRPERSON GRIFFIS: Yes.

MR. BLAKE: How pretty it was? It's nice, but you got inside lights and then on the outside you've got outside fluorescents. They shine straight across the street, right on every house from Mr. Johnson's up past Ms. Strickland's house there. Everything is lit up up there.

CHAIRPERSON GRIFFIS: Yes.

MR. BLAKE: I don't think they really need that in there, right in the windows.

CHAIRPERSON GRIFFIS: Okay. Okay. And what other aspects, you mentioned in terms of the construction. As far as I know in terms of the construction regulations and codes, there are certain times that construction can happen and is supposed to happen. I don't know the specifics in this case, but it's also something that even if we found out what it was we couldn't do anything about it at this point except commiserate with you that Sunday mornings are interrupted by probably one of the loudest things you hear cutting up cinder blocks. But with that, what are the other issues in terms that you find might

create detrimental impacts, negative impacts, if this is able to go forward in terms of the retail establishment?

MR. JONES: One of the things that's going to impact this filling station and whatever else it's going to be, it's going to be the prostitution and the drugs from the Maryland side and further up Rhode Island Avenue. It's all going to congregate right there at Rhode Island and Eastern. It's all going to congregate there. I can tell you that now.

CHAIRPERSON GRIFFIS: Why? Why do you think that?

MR. JONES: Because it's something new. It's something new and they're going to try it out.

CHAIRPERSON GRIFFIS: You find they're attracted to clean, well lit and populated places?

MR. JONES: It won't be that way long.

CHAIRPERSON GRIFFIS: It's going to be desolate and dark and dirty?

MR. JONES: Like everything else around.

MR. POLES: It will be desolate and dirty.

MR. JONES: Like everything else around here.

MR. POLES: If you put the fast-food place up, very serious. If you put the fast-food place

there, it's going to be desolate and dirty. The bottom line is even with the one eatery that we have in that block which I referred to earlier in my testimony, it precipitates a lot of traffic, literally, where you have -- even if they don't stay there for long periods of time, it's almost like a drive up, drive out kind of place where I can go up, get my drugs, get in my car and go. Shop and go, shop and go.

And the only reason it's like that is because that's if and when MPD is actually out there, all right? They'll make a subtle move to do the drug thing and get on out of there. Otherwise, it's park, go and sometimes park and shop, get your sandwich, get the drugs, smoke their joint and then leave.

CHAIRPERSON GRIFFIS: Right.

MR. POLES: Whatever it is they sell out there.

CHAIRPERSON GRIFFIS: Right.

MR. BLAKE: I live right behind that restaurant that Mr. Poles is talking about, directly behind it. I remember when they got busted for taking stolen food from the schools. I sat right there and watched the whole thing unfold. But the restaurant itself, I've seen some mean stuff out the back door.

I can sit at the dining room table and look right straight at the back door of the restaurant and the traffic that goes around behind that place and the things that go on back there, you wouldn't believe, you wouldn't believe.

CHAIRPERSON GRIFFIS: Actually, I probably would. But okay, let's move ahead.

Gentlemen, thank you very much. I think it's very informative.

Ms. Miller, do you have a question?

VICE CHAIR MILLER: We were handed today an amended voluntary agreement between the Applicant and the ANC and I'm wonder if it reflects any of your concerns or addresses any of your concerns?

You don't have a copy of it?

MR. POLES: Not the amended one. I don't have access to that.

VICE CHAIR MILLER: Were you at the ANC meeting?

MR. JONES: Which one?

VICE CHAIR MILLER: Which one? I don't know. The one that considered, I assume they considered the application before us.

MR. BLAKE: That was for ANC officials only, I think. ANC Commissioners only, I think. Not

that we couldn't sit in, but I didn't know anything about it.

CHAIRPERSON GRIFFIS: What, the meeting? Or the agreement?

VICE CHAIR MILLER: You need to identify yourself.

MS. THOMPSON: I'm Margaret Thompson. I was former ANC-511. And I would have to say that the meeting that the gentleman is speaking of was last Thursday. It's the meeting of the whole -- that only the Commissioners can attend. Now you can -- the community can attend, but they cannot speak. And generally, they wait for a community meeting at the end of the month when the entire area that is served attends the meeting and if something comes up, then they can voice their opinion.

Now with myself, I know nothing of this agreement. I haven't seen it. And I don't know who made it. I don't know if just the Commissioners got together and the only thing that I know of is the 1999 agreement which they also put in this new hearing number that they -- that should be before you now.

And I really would like to see the agreement and I really don't know if there has been a community meeting since the 24th of January, I

believe, so I'm not really sure if the community knows about the new agreements.

CHAIRPERSON GRIFFIS: Okay, were you part of the last agreement as an ANC member?

MS. THOMPSON: No.

CHAIRPERSON GRIFFIS: Why is that?

MS. THOMPSON: That was back in 1999.

CHAIRPERSON GRIFFIS: So you weren't an ANC member?

MS. THOMPSON: Not at that time.

CHAIRPERSON GRIFFIS: Okay. I'm sure Mr. Bowser will provide a copy for you.

MS. THOMPSON: I'd appreciate it.

CHAIRPERSON GRIFFIS: Okay. Do you have any additional testimony specifically on the application that's before us?

MS. THOMPSON: The letter that was written that the Commissioners voted 11 to 0, that was done at that meeting of the whole. It was the snowy night. I didn't go to it because I was afraid I'd fall. And no one that I know of attended the meeting and that is when the Commissioners passed the ANC approval of this application.

And one other thing I would like to ask about, take my glasses off so I can read, in this new

application 17282, it appears that it's very similar, if not almost exactly the same as the April 7, 1999 where they wanted to enlarge the filling station and establish a food store, convenience store with a deli counter was contemplated.

And that was also under the 726.12302.

CHAIRPERSON GRIFFIS: Why is that a concern?

MS. THOMPSON: Well, I was just wondering why they asked for the same identical thing again when they already had it in 1999.

CHAIRPERSON GRIFFIS: That's a good point. They'd probably bring it up and agree with you, but then they'd blame it on us for having these crazy, cumbersome regulations that seem to require everyone to show up before us.

But I think they're properly before us in terms of the -- even though it may be similar or identical, it's something that they had before, it may have expired or, in fact, this is an addition to, it's an enlargement of an existing condition which means they have to come back here. Every time a gas station, not every gas station, but in certain zoned districts, wants to add something else on, they're going to come back for special exception.

MS. THOMPSON: Now this is strictly for the additional, the new addition where they have the two stores going in?

CHAIRPERSON GRIFFIS: And the gas station.

MS. THOMPSON: But the gas station no larger now than it was in the 1999 request.

CHAIRPERSON GRIFFIS: Okay.

VICE CHAIR MILLER: I don't want to belabor this too much, but I'm just wondering, did you all have an opportunity to give input to the ANC.

MS. THOMPSON: No.

MR. POLES: No.

VICE CHAIR MILLER: You didn't get any notice of an opportunity?

MR. POLES: No ma'am.

MR. BLAKE: Cut and dry.

MEMBER ETHERLY: Mr. Chair, if I may, just very briefly because I think it was Mr. Blake who hit it right on the head that we all have indeed been here for a very long time today, waiting for the opportunity to share comments and I appreciate your comments as I'm sure my colleagues do.

What I wanted to explore just real briefly, but I think it's a very important point because you do raise it and that is concerns about

some of the ancillary impacts that expansion of the gas station function and addition of a fast food component could bring and I think it's very important under the test to talk about that.

But what I want to clarify is in my mind, there are two ways this could work. I think my colleagues and I, we all deal with the realities of living in an urban environment. I myself am a resident in Ward 6 on Capitol Hill and I deal as well with the proximity of convenience stores, small corner stores to my residence and the activity that they bring along, so there's clearly, I think, a sensitivity that --

MR. POLES: You have better police protection, I might also pursue. I'm up there on the Hill all the time and I know what's going on up there.

MEMBER ETHERLY: I won't belabor the point too far, I'll take issue in that regard.

MR. POLES: That's okay.

MEMBER ETHERLY: I'm on Capitol Hill extended. That's what the real estate agents will refer to it as, but I think you and I can understand what that would mean in terms of actual parlance.

It might still take a little longer to get police coverage to my residence. I'll bet you on that

too, but anyway, that's beside the point.

What I want to explore from zoning standpoint is with respect to the current operations there, because understand there is a commercial zone that as residential homeowners you are butting up against and we, as Board Members, hear that tension all the time. And it's a valid concern for those of us who are close to those commercial corridors and those commercial areas. We have to deal most difficultly with the impacts of that commercial activity.

As you noted, Mr. Blake, you're right there on that boundary, so you're getting the benefits of that light, you're getting the benefit of the noise, all of that traffic that's coming off Rhode Island Avenue in terms of the sights and sounds. But what I'm interested -- part of this is is there a sense on your part that with the addition of some of the items that are discussed in the agreement and your feedback as well, Ms. Thompson, is appreciated. With the addition of some of those items that are discussed in the agreement, the lighting and of course, we can talk about that in terms of how that lighting is going to impact surrounding residences, is it your sense that perhaps, possibly the additional presence or the

expanded presence could, in a way, serve as a deterrent to some of the effects you're talking about?

And it's a complicated question, so I don't want us to get too deeply into it, but I just wanted to explore that a little bit. Part of my concern is there's -- clearly it's appropriate in its matter of right to have some commercial activity on this location because it's already zoned in that regard. With the activity that's already underway, part of what I'm hearing from you is your concern that if you allow it to grow or expand, you're going to attract more trouble, okay?

So maybe part of what I'm asking you is do you think there's trouble there already because of the operation of the gas station now and do you think there's going to be more trouble because of the addition of a fast food component and a larger gas station.

Mr. Blake?

MR. BLAKE: Let me answer that. You know, any time you have something new --

MEMBER ETHERLY: It's going to attract attention.

MR. BLAKE: But even though it is a commercial area, we have a crowd out there anyway.

See, like I said, you got Mount Rainier right here at the corner and it's like maybe half a block and you have Mount Rainier. You have Bass Liquor Store. You got Party Time Liquor Store, which they're trying to shorten their hours to 12 o'clock.

And this quote unquote cross border initiative, we've been working on this thing for almost a year and a half, but from what I can understand there's a hold up in the U.S. Marshall's Office on the paperwork. But everybody wants to jump on the bandwagon now because it's cross border. But we knew what it was because we're right there on the block. We had a kid get killed right next door to my house. Another one got shot on the corner. They drug him all the way off the block and put him in another lady's yard across the street. See, we've had it with this drug thing. But a lot of people that live over in northeast, they don't get that. They don't get that.

Talking about Orange Hats, well, the Orange Hats ran them out of their neighborhood to our neighborhood. And I'm saying okay, you all are a block away. You only come up here and ask us to walk with you. You did everything down there to ship them up here.

Okay, we got the fight and we did a pretty good job. We did a pretty good job with them.

MR. JONES: Can I give you an example of what's getting ready to happen? Are you familiar with 18th and Rhode Island Avenue, Northeast?

MEMBER ETHERLY: Somewhat, sir.

MR. JONES: With 7-11 and where the Shell is?

MEMBER ETHERLY: Yes.

MR. JONES: You got all that activity there, right? From that point all the way down to our end, we're going to get that crowd because this is something new and we're going to get the crowd down here in Mount Rainier too, like you said, from the liquor stores because it's something new.

MR. BLAKE: I'm going to call this quits in a minute. In Mount Rainier, I don't know if you know from 34th Street, they're starting the art galleries down there and they're going to have lofts over top. That's going to bring in new people. What you have in that area, they're going to eventually cross the line.

The 7-11 he's telling you about is actually at 20th and Rhode Island Avenue. A friend of mine son took two in the head right there in the 7-11.

They got a substation. I'm telling you a substation is not the answer. See, took two in the head right at the door.

CHAIRPERSON GRIFFIS: What's the answer?

MR. BLAKE: That's a good question.

CHAIRPERSON GRIFFIS: Is an empty lot, undeveloped on the corner the answer?

MR. BLAKE: No. We're not worried about the empty lot. I know something will come to the lot, but we need something --

CHAIRPERSON GRIFFIS: Here's what I don't want to do. I don't want to raise expectations of you folks that are here with a huge issue. And as Mr. Etherly said, he's well aware of it. I've lived in a neighborhood for 13 years where we've dealt with it on the corners and the corner stores. We all know how it is, but I tell you, oftentimes communities that get together, they organize, the neighbors take care of neighbors, that's the important thing. But then to galvanize a round of folks on one thing as if this is either going create or this will impact or even escalate the problem, I think is not a fair assessment.

I don't see, so far, how providing something that would not be an empty lot but something

that would be a lit, and as it's being proposed, cleaned every day, monitored, not allowing loitering, as creating a detriment.

MR. BLAKE: I didn't mean to cut you off. I have no problem with that, but you don't live over there.

CHAIRPERSON GRIFFIS: I know.

MR. BLAKE: I've been there 48 years.

CHAIRPERSON GRIFFIS: But unfortunately, I'm being asked to decide in your neighborhood.

MR. BLAKE: I don't have a problem with it. I'll tell you, I didn't have a problem with the filling station, but I'm saying, whatever else come, we have to deal with it. See, nobody else in here has to deal with it but us and I'm not mad because you all got to make a decision. That's your job.

MR. JONES: Can I ask a question? You were out there at the site, right?

CHAIRPERSON GRIFFIS: Mr. McGettigan?

MR. JONES: You were out at the site, right?

MR. McGETTIGAN: No, I didn't make it to the site. Our neighborhood planner did. I was going to go on the day that we got this snowstorm, so I had to cancel it and I was unable to reschedule a visit to

get out there.

MR. JONES: So you were the only one to come close to it.

MR. McGETTIGAN: Ms. Crane made it out there, yes.

And I spoke with her about the site.

MR. JONES: Well, is it possible you can go look at the site?

MR. McGETTIGAN: Yes.

MR. JONES: I'd like not to put you in harm's way, but I'd like you to come out there early in the morning and see all that trash that's out there on Rhode Island Avenue at Sunny's Restaurant. That trash is going to be at this new filling station. I'm telling you. And I normally clean up Newton Street. They call me the trash man around there because I'm community-oriented. But right now I haven't cleaned in front of this filling station in over two months and you should see the trash that's accumulated there. That's why those rats are attracted to that trash and that's why we've got them in the community.

If you don't clean it up, we have the rats.

MR. McGETTIGAN: But this way there's a commitment on the owner's behalf to keep the site

clean and you know, perhaps you can recommend to the Board that they put a time limit on it and say three or five years to come back to the Board and get this renewed and then you can tell them what's happened in that three to five years and whether they've been keeping the site clean. That might be an acceptable solution.

CHAIRPERSON GRIFFIS: I think that brings up two interesting points and that's what we need to get to and that is where we have direct jurisdiction and control.

We have jurisdiction and control when you enter that property, that's where it is. Where it goes off the property, for simplicity, we don't have any control. So what we can control is the cleanliness. We can condition that they are required for -- however we want to do it -- it needs to be swept in the morning, swept in the evening, trash pick up three times a day, whatever it is. I'm just saying hypothetically.

Lighting, should lighting be in the rear or the alley side of that restaurant area?

MR. BLAKE: You got lights back -- you have lights back there, but lights are not going to be the answer. It's not going to be the answer, I'm

telling you.

CHAIRPERSON GRIFFIS: Okay --

MR. BLAKE: The Chinese restaurant --

CHAIRPERSON GRIFFIS: Work with me with what we can control and maybe we will make small steps and get to where it will be. These are the kind of things that I think are important to do that we could condition in terms of anything else you can think of. Obviously, a simple thing to post signs, no loitering. They don't do anything, right?

MR. BLAKE: No.

CHAIRPERSON GRIFFIS: So we want to think about creatively how we would work. You've got an amenable owner who wants to work with the situation. Think of ways that we can facilitate and conditions directly related to the application in order to implement strategies, as you guys might come up with. Does that make sense?

MR. BLAKE: Part of it, part of it.

MR. POLES: Chair Griffis, how long will the record remain open for input concerning this? Does it close tonight?

CHAIRPERSON GRIFFIS: As we're at 7:30, it's probably not necessarily going to close tonight. What are you proposing to put in the record, this

kind of aspect?

MR. POLES: Just, I guess you could say a summation of -- basically a summation of what you've heard from us for the record for consideration.

CHAIRPERSON GRIFFIS: I think that would be good. What I'd like to do is ask you to go further. What I'd like for you to do is put together proposed conditions. That means -- a good way to look at it is to look at past orders and past orders of this Board is probably of critical importance and see what we've done in terms of gas station or other aspects.

Some of the ones that are proposed in the previous application and I'm going to go through these before we close tonight, but some of them might be applicable and actually might be of interest for you and support for you. Condition 10 included so the exterior premises shall be cleaned daily, trash will be hauled away from the property --

MR. POLES: Yes, we've got all of that. We have all of that.

CHAIRPERSON GRIFFIS: If that needs to be strengthened, the wording needs to be changed or something else needs to be -- that's the kind of stuff we can use and we can actually --

MR. POLES: You would need this in the turnaround of what time frame, if I may ask, so that we can be timely?

CHAIRPERSON GRIFFIS: Unless you gentleman absolutely have to roll out of here now, all we have left is the closing remarks by the Applicant.

MR. POLES: Sure.

CHAIRPERSON GRIFFIS: And any sort of rebuttal witnesses. If you want to sit through that, then I'm going to set a schedule for decision. It's going to be pretty fast. I don't think you have more than a week to get this done.

MR. POLES: It shouldn't take us that long to move on it.

CHAIRPERSON GRIFFIS: Good. Why don't we do that then? Let's hear from the Applicant. We'll have their little closings and then we'll get to dinner, actually, hopefully, maybe see our families.

MR. POLES: All right, thank you.

MEMBER ETHERLY: And Mr. Chair, as the witnesses are stepping away from the table, thank you very much for your patience today and your time.

CHAIRPERSON GRIFFIS: Good, actually, before you go too far, I didn't obviously allow Applicant, if they had any cross examination, unless I

did ask that already or forgot, but no cross? Okay.

Did the ANC have any cross?

If you want us to hear it, you've got to be up here.

Are we going to the process, the ANC process, is that what you're going to cross on? Then let's let it be. There's not much I can do about that. The ANC has to function as it will.

Are we ready? Mr. Ray, excellent.

MR. RAY: Mr. Chairman, and Members of the Commission, I'd just like to make several observations.

In terms of the lighting, I would just remind the Commission that the lighting is actually embodied and memorialized in the BZA order, so it was part of the order that was issued by the BZA.

CHAIRPERSON GRIFFIS: The previous order?

MR. RAY: Yes, the lighting came about because the ANC in our agreement, it was part of the agreement and the BZA actually memorialized that in their order.

CHAIRPERSON GRIFFIS: Let's go to the two asterisks for clarity. Wasn't that -- as my reading of that condition is for more of the total site lighting. What you've now shown us on the post, on

the poles, that lighting, is that correct?

Or are you saying that actually the canopy and the downlighting of the pump stations were, in fact, a requirement of the Board?

MR. RAY: Mr. Chairman, the lighting is actually really set out in the order. So it's in the BZA order and it reads as follows: the exterior premises shall be fully lighted and a sufficient foot cantilever to assure proper operation of the electronic surveillance system, six lights -- it specifically states -- six lights shall be mounted on exterior surface of the buildings and additional lights shall be mounted on seven poles, each approximately 13 feet in height along the perimeter of the property.

CHAIRPERSON GRIFFIS: Right.

MR. RAY: That's right in the order.

CHAIRPERSON GRIFFIS: I didn't hear any objection to that. I heard objection to the canopy neon lighting and the canopy lighting of the pump stations.

MR. RAY: Okay. In terms of the suggestion that there be a time limit placed on this to come back to the Commission, in terms of the gas station and the mini-mart, I think we're probably okay

there. But in terms of this addition, the financing of this was based on that not being there. This issue came up last time. When you go to borrow money, very few institutions are going to lend you some money long term, realizing that five years from now it may not be there. So we will -- we are opposed to that because I don't know if Mr. Mamo can keep his financing in place for the rest of this based on a change in the conditions that we have.

We are supportive of any additional things that you want to add that will ensure the cleanliness of this site. We have no objections to that.

I would note that it is our view that rather than having a boarded-up building there, having a site that's in operation with lights should improve, rather than hurt this operation.

In terms of having a Starbucks there, Mr. Mamo would be glad to have one there if he could one there. Starbucks doesn't seem to be quite interested in coming to that area right now.

CHAIRPERSON GRIFFIS: How about a local coffee owner? I don't like Starbucks.

MR. RAY: He's willing to consider that as well, but I also want to say because it's on the record, the idea that this place will increase

prostitution, my law office for many years was at 15 and M Street and there's a Starbucks at K and 15th and I think all of us who watch the Metropolitan Police Department realize that's one of the largest prostitution areas in Washington, D.C., right at 15th and K, right near where that Starbucks is. In the summer time, you come out around 12 o'clock at night from your office there and so -- I don't think that this station is going to attract any more prostitution than a Starbucks would.

Mr. Chairman and Members of the Commission, we believe we have met our burden of proof here. We think that this is an improvement to the community. We've worked with the ANC. We've worked with the community there. In fact, we had three meetings. We had the Single Member District -- he had a meeting. We were there. I note this gentleman here was there. The ANC had a meeting and I know Ms. Margaret Thompson was there and we also had a Coalition of Concerned Citizens. We had a community meeting. This gentleman was there as well for that.

So the community has had a very good airing of this and there were large turnouts at all of these meetings that we were at.

Thank you.

CHAIRPERSON GRIFFIS: Good, thank you very much.

Ms. Miller?

VICE CHAIR MILLER: A few questions. With respect to the time restriction that Office of Planning was suggesting and you were responding to, I understand there's something about you know you wouldn't want to have a restriction on how long the building could be there so that it could be subject to being torn down.

Do you have a problem with a restriction that goes to the use of that building to see how well that's working? For instance, if it's being used for fast food and then there seem to be problems with that use.

MR. RAY: I'll let Mr. Mamo speak to that. I would just say initially that when you seek financing, you have to indicate what you're going to have there and there's no secret that that area is not going to attract a Starbucks or a white cloth type sit down restaurant. We approach this by saying we'd like to get something that the community would like, but if we can't get that there, then we have the option of having a fast food there.

If you're saying am I concerned that you

say three years and after three years you can't have a fast food there, then yes, I would have objection to that because I'm not sure we could get financing folks knowing that we cannot have that kind of operation there because that's not an area that you're going to get an downtown K Street restaurant.

VICE CHAIR MILLER: But the use that you're asking for right now is only fast food or is it fast food or something else?

MR. RAY: What Mr. Mamo has agreed to do is to really work with the community and try to find something that's acceptable to the community. I mean we have no commitment from anything.

CHAIRPERSON GRIFFIS: I think a direct answer to Ms. Miller's question, in your written response you said you're coming in for fast food special exception so that you can link to that, but anything else in terms of the retail establishment would be the matter of right in the C District that it's allowed in.

MR. RAY: Yes.

CHAIRPERSON GRIFFIS: So clearly we're looking at a retail and you're saying, you know, worse case in terms of relief, this is what it would be.

MR. RAY: Yes.

CHAIRPERSON GRIFFIS: Follow up?

VICE CHAIR MILLER: Also, there is this other order that's been in effect with various conditions and the Board is going to be considering new conditions and I was wondering if you might take a look at them and see during the next few weeks or whatever period we're going to give, which ones may be, aren't effective or which can be improved?

CHAIRPERSON GRIFFIS: Good, but we're going to ask you to put it in proposed conclusions.

MR. RAY: Okay.

CHAIRPERSON GRIFFIS: I'm not sure we're going to ask for full findings and conclusions of law, but just proposed conditions. What did I say? Proposed conditions.

MR. RAY: Mr. Chairman, are you saying -- we had anticipated since you offered the various witnesses to submit to you any other conditions they wanted that we would then get a chance to take a look at those?

CHAIRPERSON GRIFFIS: Absolutely and this whole response and I'll get to it all quickly, but what we're doing is inviting this -- just the written testimony that was in and any sort of proposed conditions they thought might mitigate their concerns.

Those would be submitted to you. You're going to get an ample chance to respond to those and also to propose any conditions that you might think applicable.

Is there any other questions for the Applicant?

VICE CHAIR MILLER: Not for the Applicant. I wanted to make a general statement to the neighbors about -- because I think that the neighbors who are here aren't that familiar with our process and the more familiar you are, the better.

I would just like to say that Office of Planning does a very good job of laying out the context and what issues we need to be considering and you need to be addressing so I would suggest if you don't have a copy of the Office of Planning's report, that you get one either from Office of Planning or Office of Zoning next door.

And the other thing I want to say is there are a lot of things that aren't within our jurisdiction. We can't do that much about prostitution or whatever, but we can do conditions that affect lighting and trash and things like that and they do have teeth, if they're violated, penalties can be assessed. They can be enforced.

CHAIRPERSON GRIFFIS: Their Certificate of Occupancy could be revoked in the worse case and they'd be shut down if they weren't compliant with our orders and conditions in that order.

Excellently said and I think it's very important to pick up before you leave today a copy.

The office is closed next door, but I'm certain we can dig up a copy before you go.

Any other questions? Very well. Mr. Ray, thank you very much. Before you go, let me run through it because we're asking you and everyone to put in proposed conditions.

I want to run down the last conditions in Application 16439 and I want to give you some direction on that.

First of all, condition 1, the Applicant shall comply with the agreement. We have found in this Board that, in fact, that's not an enforceable condition for us. As you have in a signed and a stand-alone agreement, I think it does just that, stand on its own. In consultation with the Police Department, suitable space shall be made available. We have obviously information on that and what the viability is. Certainly, we would support and applaud if you could do that, but I don't believe that that

would rise to a condition in our order.

The other noted concerns in terms of conditions, just to give you an understanding of where we are, I think it's an excellent direction to go that you would give preference to neighborhood or surrounding persons for the positions and employment. I'm not sure that's int he jurisdiction of this Board to actually go measure and enforce. And I'm not sure that that actually has -- unless you have an established program. I mean it's again an applaudable situation, but I'm not sure it rises to a condition.

Most concern of mind is condition 9 and that goes to the establishment will comply with all environmental protection requirements of the federal and Department Counsel. That's absolutely something you should do and it absolutely has nothing to do with our jurisdiction.

We can't enforce it. We can't condition it. In fact, if i was to be brought, as we have, in fact, and you wouldn't believe, but we were asked to remove a Certificate of Occupancy for one of the largest institutions in this city based on the fact that they had not complied with the EPA. We were to enforce a federal law, obviously, it steps beyond our bounds and jurisdiction and runs into a little bit of

problem.

Lastly, condition 11, the owner-operator of the establishment shall provide financial contributions in support of four to six community activities. I think that's also an applaudable effort and a direction that we would support, not something that rises to a condition that this Board would, in fact, look to measure, control or in any way implement.

That being said, I think that's fair enough direction in terms of that. We do have obviously, the concerns of the neighbors. I think we ought to be really creative and put it into mind. We see a lot of these in gas stations, corner stores, retail establishments, new residential buildings, issues of similar concern. They're not identical. It's not the exact same spot, but issues of similar concern. We all put our heads together and get something that works, maybe we'll copyright it and all get into the Hall of Fame.

But in all seriousness, let's work together and see if we can't mitigate at least the current situation and have this as the step to the future of real change that will happen on that corner and up the block to all the folks that are there now

and for the new folks that are going to be moving in.

Okay, let's set schedule. I think we can get this done on the 1st, if I'm not mistaken, of March.

And that would back us off -- we need two weeks. Do we have that much time for submission, Ms. Bailey, and a response?

MS. BAILEY: We can have the submissions next week and the following week, the responses, if that's appropriate, Mr. Chairman.

CHAIRPERSON GRIFFIS: Okay. And I believe, Mr. Poles, you indicated that you could do this in a week, so this could be in by next Wednesday, 3 o'clock, your submission?

MR. POLES: Yes, no problem. No problem at all. Where do I bring them.

CHAIRPERSON GRIFFIS: Good, we're going to give that to you. It all goes to the Office of Zoning and it's also served on the Applicant. So before you leave tonight, you're going to talk to the Applicant, Mr. Ray and ask them how they want to be served. I'm sure they're going to give you a fax number which you can get it to or maybe they'll come by and pick it up.

Okay, so your submissions is on what did we say, 16th, 3 o'clock?

MS. BAILEY: The submissions, February 15th from Mr. Poles and then the Applicant's response will be February 22nd.

CHAIRPERSON GRIFFIS: Good, Mr. Ray, any difficulty in meeting those? Excellent. Then we're all set.

Of course on the first of March that will be our public meeting. We'll pick this up. There's no additional time for testimony. It's the time where the Board has the entire record closed and we will deliberate and make a decision from the dais on this application.

Excellent.

MS. BAILEY: Mr. Chairman, can I ask a quick question?

CHAIRPERSON GRIFFIS: Of course.

MS. BAILEY: Did the Board amend the application to include relief from Section 706, I think I understand the discussion to say that the gasoline service station was not being enlarged, but was approved previously, so is the application being amended to include relief from Section 706?

CHAIRPERSON GRIFFIS: Mr. Ray? It is not.

MS. BAILEY: Thank you.

VICE CHAIR MILLER: Mr. Chairman, I would

want to make one more comment about the conditions.

CHAIRPERSON GRIFFIS: Yes.

VICE CHAIR MILLER: It might be obvious, but just in case, we're looking for not only proposed conditions, but the rationale for them, what they're supposed to mitigate. Okay, thank you.

CHAIRPERSON GRIFFIS: Excellent. Thank you all very much. Thank you extremely much for your patience and sitting around. I can't really talk to you while I'm sitting up here, but nonetheless it's already done.

With that, let's adjourn the afternoon session, Ms. Bailey, unless there's anything further for us? Excellent. We adjourned.

(Whereupon, at 7:49 p.m., the public hearing was concluded.)