GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC HEARING

+ + + + +

TUESDAY,

FEBRUARY 1, 2005

+ + + + +

The Public Hearing convened in Room 220 South, 441 4th Street, N.W., Washington, D.C. 20001, pursuant to notice at 1:00 p.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	Board Member (NCPC)

ZONING COMMISSION MEMBERS PRESENT:

JOHN G. PARSONS	Commissioner
KEVIN HILDEBRAND	Commissioner

OFFICE OF ZONING STAFF PRESENT:

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

OFFICE OF PLANNING STAFF PRESENT:

TRAVIS PARKER	Office of Planning
STEVE COCHRAN	Office of Planning

This transcript constitutes the minutes from the Public Hearing held on February 1, 2005.

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

1:26 p.m.

CHAIRPERSON GRIFFIS: Good afternoon, Ladies and Gentlemen. Let me call to order the afternoon Public Hearing of the Board of Zoning Adjustment of the District of Columbia. This is the 1st of February 2005 and I am Geoff Griffis, Chairperson.

Joining me today is Vice Chair, Ms. Miller, and also Mr. Etherly, who will join us within a matter of seconds. Representing the National Capital Planning Commission with us is Mr. Mann and representing the Zoning Commission as we start our afternoon is Mr. Hildebrand.

Copies of today's agenda are available for you. They are located on the wall where you entered the hearing room. You can see where we are on the chronology and all that we will accomplish this afternoon. There are several very important aspects in my opening remarks. Let me go through them very quickly.

First, we are being recorded, recorded in two fashions. One, the Court Reporter who is sitting to my right on the floor. 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'm going to ask that everyone turn off cell phones and beepers, so we don't disrupt any of our transmissions.

Secondly, when coming forward to speak to the Board, you will have needed to have filled out two witness cards. Witness cards are available at the table where you entered into, also the table in front of us where you will provide testimony. Those two cards go to the recorder prior to coming forward to speak to the Board.

When addressing the Board, we would ask that you just state your name and your address prior to speaking. You only need to do that once. Obviously, we can tie everything that you say on the record and credit it to you and spell your name correctly.

The order of procedures for special exceptions and variances is: First, we'll hear from the applicant and their case presentation. Second, we will hear any Government reports attendant to the application, the Office of Planning or DDOT or any other agency that submitted agency memos. Third, we will hear from the Advisory Neighborhood Commission.

Fourth, we'll hear from persons or parties in support of the application. Fifth would be persons or parties in opposition to the application and sixth, finally, we will have any rebuttal testimony or closing remarks by the applicant. That will be the entire procedure that we will get through on every case.

Cross examination during all those stages of witnesses is permitted by the applicant and 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 of witnesses.

The record will be closed at the conclusion of all those steps and the conclusion of our hearing. We keep the record open only for specific requests of information from the Board, and we will be very specific on what is to be submitted into the record and when it is to be submitted into the Office of Zoning. After that material is received, the record would then be finally closed and no other information would be accepted into the record.

It's important to understand that when we go through a hearing, we assemble a case record.

That case record is what we make our decisions on, nothing else. And so anything that you want the Board to address and deliberate on must be in that record.

Also, accordingly, the Sunshine Act requires that this Board conduct all its proceedings in the open and before the public. This Board may enter into Executive Session both during or after a hearing on the case, and we utilize Executive Sessions to review the cases and/or deliberate on cases. This would be in accordance with our rules and regulations, and it also is in accordance with the Sunshine Act.

But attendant to deliberating solely on the record, we ask that people present today not engage Board Members in private conversations today, so that we do not give the appearance of receiving information outside of that that is created in the public realm.

We will make every effort to finish our schedule by 6:00 tonight. If we get close to that hour, I will update everybody on what we will proceed and conclude with today or what we might continue to another date, but that I will take up when we get closer to that time.

At this point, I would like to say a very good afternoon to Ms. Bailey who, is sitting on my very far right with the Office of Zoning, and also Mr. Moy with the Office of Zoning on my closer right. Ms. Bailey is going to administer the oath, so I would ask that anyone that is going to provide testimony today, if you would, please, stand and give your attention to Ms. Bailey. She is going to swear you in.

MS. BAILEY: Please, raise your right hand.

(Whereupon, the witnesses were sworn.)

MS. BAILEY: Thank you.

CHAIRPERSON GRIFFIS: I thank you all very much. At this time, the Board will consider any preliminary matters. Preliminary matters are those which relate to whether a case will or should proceed today, such as requests for postponements, withdrawals or whether proper and adequate notice has been provided. These are preliminary matters.

If you have a preliminary matter for the Board's attention, I would ask that you come forward and have a seat at the table in front of us. If you believe, for some reason, you didn't understand all those things that I said, that you believe that the

Board should not proceed with a case today or you are, in fact, not able to proceed with a case, I'm going to ask that you also bring that to our attention.

Prior to going forward with those that have indicated a preliminary matter, let me ask Ms. Bailey or Mr. Moy if they are aware of any preliminary matters, at this time, for the Board.

MS. BAILEY: Mr. Chairman and to everyone, good afternoon.

CHAIRPERSON GRIFFIS: Good afternoon.

MS. BAILEY: And Staff does not have any, Mr. Chairman.

CHAIRPERSON GRIFFIS: Very well. It looks like we do have some however. So why don't I have you introduce yourself, sir?

MR. ELLIS: Good afternoon, Mr. Griffis. My name is Craig Ellis. I am counsel for Dud LLC, Application 17278. Initially, that application was for two -- there were two lots and it's a variance for 5 feet of the minimum lot width. Also, subsequently to that, that property has a paper alley, and so there was a need for a parking variance.

It has been advertised. The community

has been notified. It was actually voted on at the ANC which, unfortunately, I'm being told that you haven't gotten the ANC's letter yet and I'm calling the ANC Commissioner to see if we can get it faxed. But the community has been notified of that. I have a copy of the notice if the Board wants to put it in its file, but the community has been notified of that variance.

CHAIRPERSON GRIFFIS: Okay. So the preliminary matter is just to amend the application?

MR. ELLIS: That's correct.

CHAIRPERSON GRIFFIS: To include the parking?

MR. ELLIS: That's correct.

CHAIRPERSON GRIFFIS: Okay. I see that as a valuable aspect, obviously, that we're going to have to do. Why don't we do that when we call the case?

MR. ELLIS: Okay.

CHAIRPERSON GRIFFIS: And we can actually do it with the case in front of us, but I need to call the case anyway in order to amend its own application.

MR. ELLIS: Okay.

CHAIRPERSON GRIFFIS: So we can do that

in the chronology that we're set for. The Board was aware of this, so this isn't new news, so I think we'll be able to expedite it.

MR. ELLIS: I just wanted to notify. I didn't know if the Board was aware, but okay.

CHAIRPERSON GRIFFIS: Good.

MR. ELLIS: If the Board is aware, then fine.

CHAIRPERSON GRIFFIS: Perfect.

MR. ELLIS: Thank you.

CHAIRPERSON GRIFFIS: Thank you very much. Yes, sir?

MR. RUFFIN: Thank you very much. I'm Thomas Ruffin for Kelsey Temple Church of God In Christ, the Temple Church Building and Economic Development Corporation.

CHAIRPERSON GRIFFIS: Are you over the flu?

MR. RUFFIN: I am and I certainly want to thank the Board for granting the continuance as a result of the flu that kept me from appearing at the last hearing. If you remember, I filed a number of motions that, apparently, the Board decided beforehand. One motion was to oppose the amendment of the application.

CHAIRPERSON GRIFFIS: And that was not decided yet, but go ahead.

MR. RUFFIN: Oh, that wasn't decided?

CHAIRPERSON GRIFFIS: That's correct.

MR. RUFFIN: Okay. No problem. If you notice, the motion speaks about the application being amended such that what I had the impression of, according to the notice sent to me by Holland and Knight, was that this application would proceed for a reduction in parking and also for -- that was by way of exception under section 2108, and then also a variance for, among other things, the attendant related management of the parking space.

CHAIRPERSON GRIFFIS: Under 2115.9.

MR. RUFFIN: Yes, sir. However, the notice that was sent to me, that is as the lawyer for Kelsey Temple Church of God In Christ, the Temple Church Building and Economic Development Corporation, and that same notice that was sent to all property owners was different from the notice posted in the District of Columbia Register and also the notice that was posted on the property.

I didn't know about that until I received the response. I believe it was two days before the hearing that I missed. And the opposition or the

applicant, pardon me, the applicant corrected me. First of all, I complained that there hadn't been a notice published in the District of Columbia Register. They made it clear that it had been.

CHAIRPERSON GRIFFIS: Good. Let's cut to the quick. What is the preliminary matter?

MR. RUFFIN: And so what happens is the notice that was sent to the property owners, including my clients, spoke about two different sorts of relief. That is it talked about the reduction in parking spaces and the variance asking for attendants to deal with the parking.

CHAIRPERSON GRIFFIS: Right.

MR. RUFFIN: It did not talk about preserving anything else, and I actually spoke in those terms. And the notice that was posted both by way of publication on the property spoke of four different matters of relief. And just quickly, the notice sent to the property owners is in the record, but --

CHAIRPERSON GRIFFIS: Okay. This is what I propose.

MR. RUFFIN: Yes, sir.

CHAIRPERSON GRIFFIS: Let's take this up when we call the case, because, in fact, the

instruction as the Board continued this case goes directly to the heart of this matter.

MR. RUFFIN: Okay.

CHAIRPERSON GRIFFIS: What is the relief that is being sought and what regulations does it not comply with? Therefore, what relief of the specific regulations is it requiring? So I think we don't have necessarily the exact questions or concerns that you do, but we have similar questions and that is, in fact, what we're going to assess very quickly as we call the case.

MR. RUFFIN: Thank you very much.

CHAIRPERSON GRIFFIS: Good. And then I think I'm going to be very interested to see where you see the actual difference of the notification as published and that which was before us as the motion to amend or however they want to capture it.

MR. RUFFIN: Okay.

CHAIRPERSON GRIFFIS: So you can kind of put that together and we'll get that very quickly, lay it out and then we'll be able to assess it.

MR. RUFFIN: Thank you.

CHAIRPERSON GRIFFIS: Good. Thank you very much. With that then, if there's no other preliminary matters for the Board at this time, let's

call the first case in the afternoon then.

MS. BAILEY: Application No. 17277 of Sabrina G. Wright, pursuant to 11 DCMR section 3104.1, for a special exception to allow a rear addition to an existing single-family semi-detached dwelling under section 223, not meeting the side yard requirements, that's section 405. The property is located in the R-1-B District at premises 1916 Newton Street, N.E. The property is also known as Square 4202, Lot 118.

CHAIRPERSON GRIFFIS: A very good afternoon to you both. If you wouldn't mind, just state your name and address for the record and then I will turn it over to you. I'm sorry, you're just going to need to turn on your microphone, which is what I skipped in my openings. There is just a button at the base, right in the front of the base on top. Excellent.

MS. WRIGHT: Sabrina Wright, 1422 Duncan Street, N.E.

MR. CHATMAN: Linwood Chatman, 2822 Newton Street, N.E.

CHAIRPERSON GRIFFIS: Good. And you're both the applicants. Is that correct?

MR. CHATMAN: Yes.

MS. WRIGHT: Yes.

CHAIRPERSON GRIFFIS: Excellent. Okay. Just to update, we have new filings in this case. In fact, we were delayed a little bit, so that we could have them in hand as we came out. Are you aware of the petitions that have been submitted into the record?

We have now, gosh, how many do we have in front of us, one, two? We have a letter from ANC-5A. We have several letters of support that we'll get to, but we also have a petition in opposition. Are you aware of this, Ms. Wright?

MS. WRIGHT: Yes.

CHAIRPERSON GRIFFIS: You have that? Okay. Then we all have the same thing. Is the ANC represented today? Is the ANC with us? Nobody from 5 is here, so let's proceed. Of course, this is a 223 application. Ms. Wright, I'm going to turn it over to you for presentation.

MS. WRIGHT: Okay. What I would like to do is just go over the questions that were asked to me in the application and just give you an answer to it. Is that satisfactory?

CHAIRPERSON GRIFFIS: Okay.

MS. WRIGHT: Okay.

CHAIRPERSON GRIFFIS: Sounds good.

MS. WRIGHT: Will the proposed addition unduly affect light and air available to the neighboring properties? No, it will not. Will the proposed addition be unduly compromising the privacy and use and enjoyment of the neighboring properties? No, it will not. Will the addition together with the original building, as viewed from the street alley and other public ways, substantially visually intrude upon the character, scale and pattern of houses along the subject street frontage?

You will not be able to see the addition from the front of the house. The addition will be viewed from the back. And as far as character goes, it's exactly like the other additions that are directly across the alley on Otis Street.

CHAIRPERSON GRIFFIS: How is it similar?

MS. WRIGHT: They already are joined. They are already squared off.

CHAIRPERSON GRIFFIS: So in terms of the massing itself, it's similar to what the other adjacent properties or some of them are?

MS. WRIGHT: Yes.

CHAIRPERSON GRIFFIS: What about materials?

MS. WRIGHT: Materials, they are aluminum siding.

MR. CHATMAN: Vinyl siding.

MS. WRIGHT: Vinyl siding.

CHAIRPERSON GRIFFIS: Is that in character with the surrounding area?

MS. WRIGHT: Yes.

CHAIRPERSON GRIFFIS: Really? Oh, well. Okay. Noting the petition in opposition, of course, it was just handed to us. Well, let me ask you another question then. You indicated that it wouldn't unduly affect the privacy, use, enjoyment or light and air of the adjacent neighbors and you said it absolutely wouldn't. How do you know it wouldn't?

MS. WRIGHT: Because I'm just squaring it off. I'm not coming out any further and in between our houses in the back, we share a space, and I'm just taking up my area and he still has that space that's his area.

CHAIRPERSON GRIFFIS: Okay.

MS. WRIGHT: And also, he has windows on the actual back of his house and on the side of his house.

CHAIRPERSON GRIFFIS: Are you proposing to put windows on your addition?

MS. WRIGHT: No, I do not propose to put windows on that side.

CHAIRPERSON GRIFFIS: So you're not looking over into his, which would obviously impact the privacy?

MS. WRIGHT: No, no.

CHAIRPERSON GRIFFIS: And you're indicating he still has open space and is not going beyond the --

MS. WRIGHT: No.

CHAIRPERSON GRIFFIS: -- the existing structure dimension, so it wouldn't impact the light and air flowing in?

MS. WRIGHT: Yes.

CHAIRPERSON GRIFFIS: The back yards are what they are, correct?

MS. WRIGHT: Yes.

MR. CHATMAN: Yes.

CHAIRPERSON GRIFFIS: Okay. It's a pretty definitive statement, isn't it? They are what they are. Okay. I think I'm pretty clear on it, but let's get some questions from the Board.

MS. WRIGHT: Sure.

CHAIRPERSON GRIFFIS: If you're ready to proceed in that fashion. Good. Ms. Miller?

VICE CHAIR MILLER: Good afternoon, Ms. Wright.

MS. WRIGHT: Hi.

VICE CHAIR MILLER: Hi.

MS. WRIGHT: How are you?

VICE CHAIR MILLER: I guess the property we're talking about being possibly affected is 1918 Newton Street?

MS. WRIGHT: Yes.

VICE CHAIR MILLER: Did you show your plans to the neighbors at that address?

MS. WRIGHT: Yes, I did. I actually went to the neighbors at that address and I took my plans and I sat down and I talked with them about it, and their concerns at the time that we spoke was about the windows, being able to look right into my place, and I assured them there would be no windows on that side.

And as instructed by the Board of Zoning, I was supposed to be on the agenda for the ANC. So immediately I got in contact with the ANC to let them know what I was doing and to get on their agenda. The ANC Commissioner for my section, which is 10 I believe, he called a committee meeting on the 24th of January and even though I spoke with him on the 3rd,

the meeting wasn't until the 24th.

Only two people showed up. They voiced their concerns about the windows and the air and light, and I explained to them that, you know, there wouldn't be a problem. I wasn't putting any windows on that side. So we kind of talked about it and when we left, they were fine with it, you know. And they even told the ANC Commissioner that they would not oppose it. You know, they had --

VICE CHAIR MILLER: Those two people were not your neighbors at 1918 or were they?

MS. WRIGHT: Yes.

VICE CHAIR MILLER: They were?

MS. WRIGHT: Yes.

VICE CHAIR MILLER: So they came to the meeting and they talked to the ANC?

MS. WRIGHT: They came to the meeting and they talked to the ANC. They didn't come to the ANC meeting. They came to the --

VICE CHAIR MILLER: Committee meeting.

MS. WRIGHT: -- committee meeting on the 24th. On the 26th at the ANC meeting, no one showed up.

VICE CHAIR MILLER: No one in the community you mean?

MR. CHATMAN: Right.

VICE CHAIR MILLER: Right. Okay.

MS. WRIGHT: No one in the community. Yes, well, no one affiliated with this situation. No one showed up.

VICE CHAIR MILLER: Okay. So your testimony is that they showed up at the committee meeting. They expressed some concerns and they were resolved and they left feeling fine about the addition?

MS. WRIGHT: Yes, I thought we all left feeling fine about the addition. And then, like I said, on the 26th they weren't there and I spoke with the Commissioner. He said that he has spoken with them and they wanted to speak with Mr. Moore in reference to some taxes going up and they wanted to get back with him. So at the meeting, I spoke with him and he said that he did speak with them and they said they still had some concerns, but they weren't going to oppose it.

VICE CHAIR MILLER: And what are their names?

MS. WRIGHT: I can only look on here and tell you their names.

VICE CHAIR MILLER: The names of your

neighbors.

MS. WRIGHT: Oh, I don't know. I'm going to look on here to tell you their names.

MR. CHATMAN: One would be Rogers.

MS. WRIGHT: Is that her name?

MR. CHATMAN: Yes, I believe.

MS. WRIGHT: Rogers.

MR. CHATMAN: 18, I see 18.

MS. WRIGHT: Daniels. Daniel Runnings.

VICE CHAIR MILLER: I'm sorry, what did you say?

MS. WRIGHT: Daniel Running, that's their name. Mr. and Mrs. Running.

VICE CHAIR MILLER: Okay. Thank you. Ms. Wright, I just wanted to bring to your attention, we were given a petition today of certain neighbors that are opposed to your addition. And it appears that Daniel Running has signed that petition.

MS. WRIGHT: Yes.

VICE CHAIR MILLER: On January 30th.

MS. WRIGHT: Yes, January 30th and the meeting was January 24th where we were on the same page and also the ANC meeting was on the 26th. And also, I viewed this petition myself and I noticed some things on here which were that 1920 Newton

Street was signed twice and there is no 1911 Newton Street. There are no houses, there are no houses on the other side of the street. There's a school and a yard.

MR. CHATMAN: Playground.

MS. WRIGHT: Playground. I was really, really very shocked to see this when I came in here.

CHAIRPERSON GRIFFIS: Where are you seeing the address 1911?

MS. WRIGHT: 1911 is on the third page, second from the top.

MR. CHATMAN: Right underneath of Running.

CHAIRPERSON GRIFFIS: It looks like 1917.

MS. WRIGHT: There is no 1917.

MR. CHATMAN: No 17.

CHAIRPERSON GRIFFIS: Really?

MS. WRIGHT: Yes, I figured it was 17 or 11, and there are no odd numbers.

MR. CHATMAN: It's a school.

CHAIRPERSON GRIFFIS: Oh, gotcha.

MS. WRIGHT: Yes.

CHAIRPERSON GRIFFIS: Well, it could be --

MS. WRIGHT: I don't know all of these.

CHAIRPERSON GRIFFIS: Yes, okay.

MS. WRIGHT: I don't know all of these people. Some of them I know by face. Can you announce if there is anyone here now, can I -- I just would like to maybe see, because a lot of people I spoke to, they didn't give me a letter, but they said they didn't have a problem.

CHAIRPERSON GRIFFIS: Right.

MS. WRIGHT: You know, that they would give me a letter.

CHAIRPERSON GRIFFIS: Well, there's going to be opportunity, but it's not a bad idea for me to assess. Is there anybody here that is going to provide testimony in 17277 in this case, persons present? It doesn't look like anyone is here.

VICE CHAIR MILLER: Ms. Wright, are you aware of who circulated this petition?

MS. WRIGHT: No, I'm not. I didn't know this petition was being circulated. I didn't know this petition existed until I got here and I was given a copy of it.

VICE CHAIR MILLER: Okay. Thank you.

MR. CHATMAN: It was given to them just a second before we got it.

MS. WRIGHT: Yes, it was stamped in at

12:40, I notice at the top of here.

CHAIRPERSON GRIFFIS: And what are the addresses or the other properties that you indicate that have the same sort of massing? You said that there are several adjacent?

MS. WRIGHT: Okay. On Otis Street, all the houses on Otis Street are already squared off and there's one house down the street, I think, as a matter of fact he's on this petition. He did similar, the same thing, 1906 Newton Street.

MR. MOORE: Melvin Thomas.

MS. WRIGHT: Yes.

CHAIRPERSON GRIFFIS: Okay. Any other questions from the Board? No? Very well. Is there anything else, at this time? We obviously have time for closings, but anything else you want to present?

MS. WRIGHT: The only thing I wanted to present, which you already have, is the fact that I have the ANC agenda and the letters and the letter from ANC, but, I guess, no, and hope that you approve this addition.

CHAIRPERSON GRIFFIS: Okay. Well, I'll let you do your closing remarks.

MS. WRIGHT: Okay.

CHAIRPERSON GRIFFIS: And you can

indicate that and we'll get to the ANC. Why don't we move ahead to any Government Agency reports and the Office of Planning is the only one that I have that has submitted and a very good afternoon to you, sir.

MR. MOORE: Good afternoon, Mr. Chair and Members of the Board. I'm John Moore of the Office of Planning.

CHAIRPERSON GRIFFIS: And are you raising taxes in the neighborhood?

MR. MOORE: No, I don't think I was.

CHAIRPERSON GRIFFIS: Good. I just wanted to clarify that.

MR. MOORE: It must be another Moore that they are talking about. I'm also not moving the Capitol Hill Restoration Society into Ward 5, it's an erroneous report on page 5.

CHAIRPERSON GRIFFIS: There is a lot to be straightened out in this one. Okay.

MR. MOORE: The Office of Planning stands in support of the application and therefore on the record we have a few clarifications. If you look at the photograph submitted by the Office of Planning, the back of the document, there are some small shadows during the early morning and late afternoon hours, but that is a condition that exists already.

The shadows are not that great and if you look all the rear yards are very deep, I think about 125 feet in depth. And there are not that many trees back there, so there's not much blockage.

As the applicant has already stated, almost every house on the north side of the alley from her, that's Otis, have rear additions that are closed in, in essence, the whole back of the properties. I thought I would submit some photographs to show that, if I didn't, I mistakingly didn't do so. I also interviewed two of the neighbors. One who lives one house removed from this house at the alley and that applicant, the resident there seemed to be in support of the application and mentioned, by the way, excuse me, I don't know if I can ask a question of the applicant.

1906 is that the stone rear addition?

MS. WRIGHT: Yes.

MR. MOORE: Okay. I thought it was.

MR. CHATMAN: That's it.

MR. MOORE: As I was interviewing the community and I was told then that that house would probably oppose the application, although they had done basically the same thing. It's neither here nor there. And the other side of the block, the in-town

south side of the block, is a school and a playground. There is no resident units on this south side at all. With that being said, I'll entertain any questions you may have.

CHAIRPERSON GRIFFIS: Good. If I understand you correctly in your report, and we appreciate it, as we have come to expect, that the rear faces north and your point is that the sun doesn't reach that portion, so that this would not end up casting more?

MR. MOORE: No, no more than is already shown as you look at the photograph.

CHAIRPERSON GRIFFIS: Right.

MR. MOORE: To the left.

CHAIRPERSON GRIFFIS: Okay.

MR. MOORE: That's about max. That was taken in late afternoon.

CHAIRPERSON GRIFFIS: Indeed. Is there any other questions from the Board? Ms. Miller?

VICE CHAIR MILLER: Just looking at the concerns that were in this petition that we were handed today, one goes to obstructing the view of 1918 Newton Street. Do you have a comment on that? I know you already addressed the light.

MR. MOORE: The adjacent property owner

could easily say when you filled in your addition, you've actually created a box on my property. Where I don't think in terms of our analysis that that's sufficient to deny the application, especially given the character of the square where most of the houses owned in back of it, that is the Otis Street side, already have their additions. It is my opinion that this Board made minimal applications on that block.

The block is in transition. This applicant is moving in. I think the house is vacant right now. And as new residents move into the block looking at the small size of some of the units, of the rooms that she indicated, she can't get a bed in the room that she wants to expand. I believe you're going to get other applications before this Board on that block for that very reason.

CHAIRPERSON GRIFFIS: Mr. Etherly?

BOARD MEMBER ETHERLY: Thank you very much, Mr. Chair. Just very briefly, Mr. Moore, thank you very much for your report. With respect to the petition that we just received today, there was an indication on the petition expressing concerns regarding impact of sunlight or the loss of sunlight of the proposed addition if it were constructed on what would appear to be, if I'm not mistaken, kitchen

and the rear porch areas. Would you be in a position to comment to any extent on any concerns regarding the impact there?

MR. MOORE: To some extent. Again, if I can draw your attention to the photograph in the back of the OP report? You see where the star is on the building, that's her property. You see the rear yard of the adjoining property has a shadow on this picture.

BOARD MEMBER ETHERLY: Yes.

MR. MOORE: This is without an addition, right? So it's not going to hurt it any more.

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

CHAIRPERSON GRIFFIS: And we're looking at a dimension of about 9 feet that is filling in on that portion?

MR. MOORE: Yes.

CHAIRPERSON GRIFFIS: And the building next to it, according to that, it's actually similar in its recession, in its depth.

MR. MOORE: I would imagine they would build it at some point with the same depth of addition.

CHAIRPERSON GRIFFIS: Right. I see.

Okay. Any other questions from the Board? Thank you very much, Mr. Moore. Does the applicant have any cross examination of the Office of Planning? Do you have any questions of them?

MS. WRIGHT: No, no.

CHAIRPERSON GRIFFIS: You have their report?

MS. WRIGHT: The Office of Planning? This one? Yes, I do.

CHAIRPERSON GRIFFIS: Okay.

MS. WRIGHT: Yes.

CHAIRPERSON GRIFFIS: Good. Then let's move ahead. I don't have any other Government reports attendant to this application. We do have a filing from ANC-5A. I would ask again if the ANC is represented today in this application? Not noting any indication of such, we can take note of Exhibit 23. The last sentence indicates the Commission voted to support the above-mentioned request for a special exception to allow the rear addition to an existing single-family. Yes, Ms. Miller?

VICE CHAIR MILLER: Mr. Chairman, I believe that this report has come in late and we would need to waive our rules to accept it. And I would propose that we do that.

CHAIRPERSON GRIFFIS: Good catch.

BOARD MEMBER ETHERLY: No objection, Mr. Chair.

CHAIRPERSON GRIFFIS: Any objection to be voiced from the Board? If there is no objection, I take it as a consensus to waive our time requirements for filing and take this into the record. Any other comments on the ANC? Does the applicant have any comments on the ANC report, other than what you already stated?

MS. WRIGHT: No.

CHAIRPERSON GRIFFIS: Very well. Let's move ahead then. Is there anyone here either in support or in opposition? Persons in support or opposition of Application 17277, 1916 Newton Street, N.E., to give testimony? Anyone, persons to provide testimony? Not noting any, I believe that's what we have. Well, let's take note again as I indicated as we opened, we do have the petition in opposition. You've raised some concerns about specific signatures on that. We do have three sheets involved in that. It's Exhibit 22.

In addition to that, we have the submissions that also came in moments before we called the case, which was letters in support. I

believe all these are letters of support. Am I correct?

VICE CHAIR MILLER: Yes.

CHAIRPERSON GRIFFIS: And that's Exhibit 28, 29, 24, 25 and 26, as I have them. We have Exhibit 27 also which is a petition with one signature on it in support. Yes, Mr. Hildebrand?

COMMISSIONER HILDEBRAND: Do you need to waive the filing time for these as well since they all came in today?

CHAIRPERSON GRIFFIS: Technically --

MS. BAILEY: No, petitions, letters of support or opposition can come in at any time. Yes.

CHAIRPERSON GRIFFIS: Oh, good. Thank you.

BOARD MEMBER MANN: Ms. Wright, I have just a brief question regarding one of the names on the petition for opposition. Do you know if Mr. Running at 1918 is the owner of that property or is he a tenant at the property?

MS. WRIGHT: He is the owner, as far as I know. Yes, he is the owner.

BOARD MEMBER MANN: As far as you know he's the owner?

MS. WRIGHT: Well, no, he is the owner,

because I remember when he moved in.

BOARD MEMBER MANN: Okay.

MS. WRIGHT: He's the owner.

BOARD MEMBER MANN: Okay. Thank you.

CHAIRPERSON GRIFFIS: Good. Hopefully we got that on the record. Any other questions for the applicant, at this time? Ms. Wright, do you have any closing remarks you might have at this time?

MS. WRIGHT: Yes, the only closing remark that I would like to reinforce is that the house was built a long time ago. The kitchen is small, as Mr. Moore stated, the third bedroom is very small. I couldn't get a bed in there if I -- I mean, there is no way a bed could fit in there. And the whole purpose for my adding this addition is that so I can make that bedroom liveable and I can increase the kitchen to have some cabinet space. And the closet space, no closet space, you know. Well, you know, Ms. Miller, you're smiling. You know we need that closet space.

BOARD MEMBER ETHERLY: Let the record reflect that men sometimes, too, require a little bit of closet space.

MS. WRIGHT: Yes.

BOARD MEMBER ETHERLY: But the point is

well-taken.

MS. WRIGHT: Yes.

MR. CHATMAN: And not to mention when you're entering the years, you do need a powder room on the first floor.

MS. WRIGHT: Yes, that's the other thing. There's no powder room on the first floor.

CHAIRPERSON GRIFFIS: Very well. Thank you very much.

MS. WRIGHT: Thank you.

CHAIRPERSON GRIFFIS: If there's nothing further from the Board, questions of the applicant, I open the floor for any actions.

BOARD MEMBER ETHERLY: Mr. Chair, it would be my motion to move approval of Application No. 17277 of Sabrina G. Wright, pursuant to 11 DCMR 3104.1, for a special exception to allow a rear addition to an existing single-family semi-detached dwelling under section 223, premises 1916 Newton Street, N.E., and I would invite a second.

CHAIRPERSON GRIFFIS: Is there a second?

VICE CHAIR MILLER: Second.

CHAIRPERSON GRIFFIS: Thank you, Ms. Miller.

BOARD MEMBER ETHERLY: Thank you very

much, Mrs. Miller. Thank you very much, Mr. Chair. I think the record has been adequately laid out and fleshed out, if you will, with regard to the requirements of section 223. I would like perhaps to speak somewhat in a directed fashion to the discussion that we've had regarding the light and air, in particular, of course, receipt of the petition that came into the Office of Zoning this afternoon.

I think the Office of Planning report was very instructive and, in particular, the aerial photographs at the rear of that report, along with the testimony provided by Mr. Moore give me a comfort level that the impact we are discussing with respect to light and air of any of the adjacent or neighboring properties does not rise to the level of causing an undue impact or effect and I will pause right there and invite, of course, any comment from any of my other colleagues.

I'll also note, of course, that the ANC was in support of the application as well, and given the letters of submission that we have in place, I think any question of fact that might have been raised with regard to the impact of air and light, I think, has been satisfactorily resolved in favor of

not finding an undue impact on the light and air of the adjacent properties. Thank you, Mr. Chair.

CHAIRPERSON GRIFFIS: Good. Thank you. Others, comments?

VICE CHAIR MILLER: I would concur with the comments of Mr. Etherly and also give great weight to the Office of Planning and, in particular, Mr. Moore, I think, addressed well the concerns that were raised by the petition that was submitted just today. I also would just like to say that I have some problems with the petition in that there is no context for it, that we don't even know who submitted it and no one is here to really describe any adverse impacts. So that in combination with the very thorough job done by the Office of Planning, leads me to support the application.

CHAIRPERSON GRIFFIS: Excellent. Well said by both and I would agree in terms of the Office of Planning's report, the photographic documentation really illustrates the sun and the potential for impact in terms of that. One can obviously assess, as we're well-aware of looking at these, if not hundreds of times, even from the aerial photograph, the availability of light, the extent of the rear yards are obviously very open, the dimension of 9

feet and not more for the addition. I would agree with both that have spoken that this wouldn't tend to or impair the light and air, use or privacy of the adjacent neighbors.

We've got a motion before us. It has been seconded. I ask for all those in favor to signify by saying aye.

ALL: Aye.

CHAIRPERSON GRIFFIS: And opposed? If there is no objection, I think we can issue a summary order on this. Not hearing any voiced objection, why don't we waive our regulations and rules and issue a summary order on this account and why don't we record the vote?

MS. BAILEY: Mr. Chairman, the vote is recorded as 5-0-0 to approve the application. Mr. Etherly made the motion, Mrs. Miller seconded, Mr. Griffis, Mr. Mann and Mr. Hildebrand are in agreement.

CHAIRPERSON GRIFFIS: Excellent. Thank you very much, Ms. Bailey. Ms. Wright, enjoy, have fun building this thing and have coffee with your neighbors to smooth things out.

MS. WRIGHT: That's not a problem.

MR. CHATMAN: Will do.

MS. WRIGHT: Thank you very much.

MR. CHATMAN: Thank you.

CHAIRPERSON GRIFFIS: That's not a requirement for zoning or anything like that.

MS. WRIGHT: Thank you.

CHAIRPERSON GRIFFIS: It might be good advice. Okay. Why don't we move on calling the next case of the afternoon?

MS. BAILEY: Application No. 17278 of Dud LLC, pursuant to 11 DCMR 3103.2, for a variance from the lot width requirements under section 401.3, to allow the construction of two semi-detached single-family dwellings in the R-2 District at premises 556 and 558 48th Place, N.E., Square 5145-S, Lots 17 and 18. And to the Board Members, as Mr. Ellis indicated, he will also be requesting relief from the off-street parking requirements under subsection 2101.1.

CHAIRPERSON GRIFFIS: Correct, Ms. Bailey, we appreciate you bringing that up. We did have the indication of a preliminary notice, so why don't we get to that? There is a preliminary question from the Board in terms of the process of the changing request, so let's go to it. Ms. Miller has the direct question, at this time.

VICE CHAIR MILLER: I believe when you started to describe the preliminary matter you said that you had given notice of the new relief you were seeking, the new variance?

MR. ELLIS: That is correct.

VICE CHAIR MILLER: But the Board didn't have it yet and you could provide a copy to us?

MR. ELLIS: Actually, I put it in front of Ms. Bailey with the exhibits that we would be offering here. But the original is there and there are copies.

VICE CHAIR MILLER: Okay.

MR. ELLIS: But the notice was sent out and a notice was posted. We came in and got new postings and so what was posted and what was presented to the ANC was, indeed, the request for the variance from the minimum lot width and the parking.

CHAIRPERSON GRIFFIS: And when was it posted?

MR. ELLIS: It was posted -- there is an affidavit that's actually in the file. I don't have a copy.

CHAIRPERSON GRIFFIS: Okay.

MR. ELLIS: But it's in your file.

CHAIRPERSON GRIFFIS: So you knew that

there was additional relief at our required time for posting, so you were able to amend the posting?

MR. ELLIS: Yes, we were able to amend the posting. And just so the Board understands, if you go and you look at the map, it shows an alley. So based on when it first came to me, they showed a parking pad on the rear of the property. So we complied with the -- for the Board's edification, the posting was done on January the 13th and the affidavit is in your file.

But anyway, when I saw it, it appeared that it complied with the parking requirement. Subsequently, I had learned that the alley was a paper alley. For those of you who may be familiar, it shows the alley on the map that the City was going to put an alley in at some point, but it never got around to it. And so essentially, there is no access to the rear of the property.

CHAIRPERSON GRIFFIS: Is it utilized for driving now or it has never been utilized?

MR. ELLIS: No, it is not. It's not at all.

CHAIRPERSON GRIFFIS: Okay.

MR. ELLIS: Actually, the community is actually one of the -- at the ANC meeting, they want

assistance in working with the City on getting this alley, because it's a problem for them. I mean, there's this alley there and nobody owns it, so you know what happens there. Stuff, since it's not their property, it's the City's property, stuff sort of gets there and never goes away until they call the City out. But there is a paper alley and there is the right-of-way, but there is nothing on it.

VICE CHAIR MILLER: I just want to understand you. The January 13th posting, did that go to the original case or did that go to the additional relief?

MR. ELLIS: The additional relief.

VICE CHAIR MILLER: Okay.

CHAIRPERSON GRIFFIS: Very well. Let me just get an indication. Is there anyone here, persons here who are attendant to 17278, Application of Dud LLC, to provide testimony today either in support or in opposition? Very well. The applicant has requested that the Board amend the required relief on this in order to include relief from the parking, which would be two if I do my calculations correctly, and it has been properly noticed.

Is there any objections or concerns in that fashion from the Board? Not noting any

objections, I think it's fairly clear and certainly understandable. In fact, even your plat shows a 15 foot alley.

MR. ELLIS: Yes, it does. That's why when I first saw it and they put the thing on, I had no reason to believe that there wasn't an alley there.

CHAIRPERSON GRIFFIS: Right.

MR. ELLIS: And then when I learned that there wasn't, I said uh-oh, we got a problem. And so we went out and came back to the Board, came down and talked to zoning and we expeditiously put out an amended notice. We notified the community. We went to the community and talked to them about it.

CHAIRPERSON GRIFFIS: Okay.

MR. ELLIS: And then they told us what their desires were.

CHAIRPERSON GRIFFIS: Good.

MR. ELLIS: And here we are.

CHAIRPERSON GRIFFIS: I think this is perfectly clear. The Board has not indicated any objections to amending the application to incorporate that, so why don't we move ahead and have you present the case, which includes the parking relief requested?

MR. ELLIS: As a quick overview before I start with my client -- well, let me just go first. Here with me today is the president and chief executive of Dud LLC, Mr. C.C. Dudley, who is immediately to my right. And next to Mr. Dudley, to his right, is Mr. Duane Oates. Mr. Oates is the chief person at GSN Services who would be the builder of the project and who can tell you more about the actual mechanics of what's going into it.

Now, as you can see, we have over there in front of you, we have three boards. The center board is what -- we planned a new duplex housing unit. Those units are on 25 foot wide lots. Now, these lots preexisted the Zoning Regulations in the District of Columbia. As you can see with the application that we have, we included a copy in our initial -- your indulgence.

We included a copy of the Bates map that's there. And if you look at that Bates map, you will see that the majority of the lots in that area are 25 foot wide lots. So everything there was 25 foot, and then when the Zoning Regulations changed, these lots would all be substandard.

What happened is Mr. Dudley purchased the property immediately to the left of the property

where you see where we were going to build the two new housing units. When he purchased that property, that owner in the estate sold him both lots, 17 and 18. So those lots, this was not where he purchased one lot and subdivided it. He purchased two separate lots. Am I confusing anybody?

VICE CHAIR MILLER: Yes.

MR. ELLIS: Okay, Ms. Miller.

CHAIRPERSON GRIFFIS: Just keep going.

MR. ELLIS: Those two lots --

CHAIRPERSON GRIFFIS: I'm going to show her exactly what you're talking about right now.

MR. ELLIS: Okay. The two lots next to the subject property are separate lots. Okay.

CHAIRPERSON GRIFFIS: So five lots in ownership right now?

MR. ELLIS: No, no, he bought three, the one house. Those are three separate houses.

CHAIRPERSON GRIFFIS: Okay. So he only bought one of the attached houses?

MR. ELLIS: And then the two lots next to it.

CHAIRPERSON GRIFFIS: So.

MR. ELLIS: I can't -- speak up, because you don't have --

VICE CHAIR MILLER: Right.

MR. ELLIS: He will point.

VICE CHAIR MILLER: Can you point to which ones he owned when --

MR. ELLIS: I will let him point since I can't.

VICE CHAIR MILLER: Okay.

MR. ELLIS: No, you can't talk off speaker. He acquired, show them, that's the house that he acquired. And then next to that there were two lots. Okay. If you look at the pictures that were provided to you, if you look at this picture that was provided to you, you will see two postings on there. Those are two lots that are there. Each of those lots are 25 feet wide. Okay?

VICE CHAIR MILLER: So he owns those two lots since when?

MR. ELLIS: He bought them --

MR. DUDLEY: In December, I mean, January of last year.

MR. ELLIS: -- January of last year. Okay? Okay. So with those two lots, again very briefly, if you look at this picture that we provided to you that was just passed out, if you look at the picture, you will see that the way the property goes

is it goes a triplex, then a duplex, then it would have been a triplex, and then you got these two 25 foot wide lots, which would have been a duplex there. The duplex just never got built, and so all he is doing is coming in saying I want to build the duplex that just never got built. Okay?

That is what happened. The lots that you will see with the single-family, again going back to this picture here, you will see where it has the two lots. Again, if you go back to the Bates map that I talked about earlier, if you look at that lot, the lots next to where the single-family homes are, those are larger than normal lots that are in that community.

So to be clear, Mr. Dudley did not buy this property and subdivide it into substandard lots. He bought them and they were already substandard lots.

CHAIRPERSON GRIFFIS: You know, you lay out the context and, clearly, it looked like this was supposed to be built on exactly what the character of the neighborhood is, and our problem is we're confined to the current Zoning Regulations.

MR. ELLIS: That's correct.

CHAIRPERSON GRIFFIS: Which often fly in

the face of common sense. But, nonetheless, that's what we're faced with. So what we need to go to, you have indicated he has not subdivided.

MR. ELLIS: Right.

CHAIRPERSON GRIFFIS: Is that something in the regulations that you find is pertinent to allowing it?

MR. ELLIS: No. To be clear, there is an old case, which I don't have here, that said if you subdivide, if you make your need for a variance, you're not entitled to it. That's not something he did.

CHAIRPERSON GRIFFIS: Okay. So it's not a self-created hardship. I think that's --

MR. ELLIS: It's not a self-created hardship, correct.

CHAIRPERSON GRIFFIS: That's perfectly clear for the Board.

MR. ELLIS: And so the hardship is that the lots themselves are substandard. So therefore, we need the variance there.

CHAIRPERSON GRIFFIS: Right.

MR. ELLIS: And in terms of the parking in that situation, the parking was as a result of -- again, there is a paper alley. There is no way to

get to the rear of the property.

CHAIRPERSON GRIFFIS: Okay. Let's not worry about parking at this point.

MR. ELLIS: Okay.

CHAIRPERSON GRIFFIS: Let's get over this minimum lot dimensions, because I'm having a hard time seeing how you get out of the requirement of 401.2. 401.2 says "Except as provided in 401.3," which I will get to in a minute, "In the case of an unimproved lot in single ownership on November 1, 1957, it has a lot or width of a lot less than specified for the District in which it is located and does not adjoin another unimproved lot of the same ownership, a structure may be erected on the lot if both the lot and the width of the lot are at least 80 percent of the lot area and width of the lot specified under 401.3." There are a lot of lots there.

MR. ELLIS: I understand that.

CHAIRPERSON GRIFFIS: But the issue and the threshold to get over is the regulations are requiring us to look at this under it's either the adjoining lots are in separate ownership, which means you purchased and want to build on an existing nonconforming single lot, or they are actually in

common ownership, the two of them, and the regulations, as I'm seeing it and reading it, seem to be saying well, what is stopping you from building one conforming structure on the two lots?

MR. ELLIS: Well, the problem that I have with that is I believe the way the regulations were done was like when an individual -- when the properties were done and Zoning Regs came in, you applied that. You looked at who owned the property. Subsequently, Mr. Dudley buys this property in 2004 and he happens to buy the two properties next door.

Now, if Mr. Dudley had bought one this year and then one the next year, that wouldn't be a problem. He just happened to get them because of the nature of an estate getting them together and, I mean, I don't think you're looking at when they -- you look at the time of the Zoning Regs, not as they acquired them today.

So if you look at it that way, it would make it such that nobody would acquire. If you're going to have a piece of unimproved property, nobody would have acquired the piece of unimproved property next to it.

CHAIRPERSON GRIFFIS: Right.

MR. ELLIS: Because you are stuck with

that precise situation.

CHAIRPERSON GRIFFIS: Right. I may not disagree with you. However, I still don't see the relief that the regulations allow you.

MR. ELLIS: Okay.

CHAIRPERSON GRIFFIS: I mean, this section may not make sense and we may wonder why it was ever written, especially the way it was written, but we won't get into that, but still you have to show me

how --

MR. ELLIS: Well, the section is interpretation and the Board has the ability to interpret it, interpret a particular --

CHAIRPERSON GRIFFIS: But you're asking us to say look, it doesn't make sense not to interpret. I mean, I think, if we go to interpretation of the regulations, I don't think we move that far from the letter of its reading.

I mean, it's fairly clear. If it was in single ownership prior to 1957, then you can construct. If it wasn't after 1957, which obviously was going to when the regulations were put in, and it's in single ownership of both of them, that it actually is not allowed to be. It is not matter-of-

right in terms of its minimum lot dimension.

MR. ELLIS: I'm sorry, Mr. Griffis, I missed you somewhere. If I'm hearing you correct, if you read that regulation, that regulation bars what he wants to do, because he is in common ownership of both lots.

CHAIRPERSON GRIFFIS: That's right.

MR. ELLIS: That's what you just said.

CHAIRPERSON GRIFFIS: Right.

MR. ELLIS: As I believe. Okay. What I'm saying to you, I think, is that reg should apply if there was single ownership in 1958 when the regs came in, because, essentially, any time someone comes into two pieces of unimproved property next door, that reg says that they literally have to combine them if the properties are substandard size.

CHAIRPERSON GRIFFIS: That's right.

MR. ELLIS: And then so it means that, essentially, anybody who acquires one piece of property, they must then develop that one and then wait before they buy the next one and then come to this Board. I mean, that --

CHAIRPERSON GRIFFIS: Conceivably a process.

MR. ELLIS: That sets up a very anomalous

result there. I mean, it says to you okay, you go out here and you acquire this piece of property.

CHAIRPERSON GRIFFIS: I understand.

MR. ELLIS: But don't be stupid enough to buy the next one.

CHAIRPERSON GRIFFIS: I understand.

MR. ELLIS: Because you go to the Board, develop it and wait around, have them hold it.

CHAIRPERSON GRIFFIS: Okay.

MR. ELLIS: And then say okay --

CHAIRPERSON GRIFFIS: I know and believe me, I'm not agreeing with you, but I think that's well-stated. But what you're asking me to do is because there is an absurdity in your opinion, that we should grant a variance from it, but I know you know we don't have the jurisdiction to do it based on that argument.

MR. ELLIS: Well, you're right, but what I'm saying is, again, it's a reg. 402 is a reg. Regs are subject to how the Board interprets them and how they are applied.

CHAIRPERSON GRIFFIS: Okay.

MR. ELLIS: It's not as if someone has given you a dictate and, I mean, I think you and I can agree on that. That is an interpretation that

has to be made by the Board. A little reading, but the Board can make an interpretation how its regs are to be read.

CHAIRPERSON GRIFFIS: We can interpret the intent and the meaning.

MR. ELLIS: Yes.

CHAIRPERSON GRIFFIS: Of 401.2.

MR. ELLIS: That's correct.

CHAIRPERSON GRIFFIS: But I'll open it up to the Board Members. I don't think my reading of 401.2 is incorrect.

VICE CHAIR MILLER: I don't think it's incorrect either, except what I'm hearing or how I perceive this is the applicant is not saying that they are entitled to the exception under 401.2 and they are not, because the property wasn't in common ownership in 1957 or whatever. What he is saying is that's why they have to get a variance from us and now, you have to address why you should get the variance.

CHAIRPERSON GRIFFIS: Okay.

VICE CHAIR MILLER: But it also sounds to me like the applicant bought these two pieces of property knowing that they were substandard, so you have to address that hurdle.

MR. ELLIS: Actually, the applicant bought the properties, because what had happened was to buy it in an estate, he had to take the whole kit and caboodle. He had to get the one property that was already built. He had to take the -- and then he ended up with the two lots.

CHAIRPERSON GRIFFIS: So in fact, that goes to the first prong of the test of uniqueness or special circumstance, the fact that this was part of a purchase of one in an estate to acquire the other two, which was coming in a bundle. So now, we have a uniqueness aspect to the case presentation.

MR. ELLIS: Right.

CHAIRPERSON GRIFFIS: And then the practical difficulty is?

MR. ELLIS: That the lots, they are separate lots and each of those lots standing alone need a variance, because they are 25 foot wide lots.

CHAIRPERSON GRIFFIS: Okay. Existing nonconforming. Okay. And then lastly, question?

VICE CHAIR MILLER: Yes, I still don't see what the practical difficulty is.

MR. ELLIS: The practical difficulty, again your indulgence, oh, if it was right in front of me it would have smacked me. I'll go back to a

case called Russell v. District of Columbia. I only have three copies up there, but specifically in Item 9, I have outlined, I have underlined it on one.

The practical difficulty is when you have a lot that was made before the Zoning Regulations, it's automatically -- that's substandard, it's already a practical difficulty just an inherence of it being established by that. There is case law to that effect, you know, in the District of Columbia.

CHAIRPERSON GRIFFIS: Good. Yes, I think that's persuasive. Ms. Miller?

VICE CHAIR MILLER: Could we just back up one more second. The manner in which the lots were acquired, I mean, no one forced him to acquire both lots.

MR. ELLIS: Yes, it was. He had --

VICE CHAIR MILLER: He inherited the lots or what?

MR. ELLIS: No, no, he bought the property out of an estate.

VICE CHAIR MILLER: He chose to buy this property.

MR. ELLIS: Property.

VICE CHAIR MILLER: Out of an estate.

MR. ELLIS: But he chose to buy one

property and he had to buy the other two.

CHAIRPERSON GRIFFIS: Well, let's address that, because I think Ms. Miller's questioning isn't a self-created hardship? But the self-creation would be for this individual or any individual. I mean, that's what I see, that the estate offered this as a bundle and that's what was done.

Either this group brought it or someone else would bring the application, so it's not as if a subdivision or an action by this applicant created the nonconformity, but the uniqueness, I mean, whether it's persuasive or not, the uniqueness was that this came as one element. It was not divided and marketed as two different --

MR. ELLIS: Right.

CHAIRPERSON GRIFFIS: -- sites and you were aggressive enough to get both of them. It came together.

MR. DUDLEY: Exactly.

CHAIRPERSON GRIFFIS: Okay? Anything else?

MR. ELLIS: Nothing unless you have any more questions.

CHAIRPERSON GRIFFIS: We might, but let's --

MR. ELLIS: Oh, I do have.

CHAIRPERSON GRIFFIS: Good.

MR. ELLIS: I went before the ANC. We had to go before them twice. The ANC Commissioner said to me as late as last night at 10:30 that she had sent to the Board the report, but she sent it late, she said. You know, and they had agreed when we met with the ANC. To show you -- oh, we had not gotten to the parking.

They wanted us to, even when we build because we showed a parking pad there, and they want us to assist them. They want us to put the parking pad to the rear of the house even though there is a paper alley and we agreed to do that, because what they are trying to do is get that alley put in.

CHAIRPERSON GRIFFIS: Okay.

MR. ELLIS: So they want to make sure that if the Board approves the houses and they are built, that if the paper alley ends up no longer being paper, that there is, indeed, a parking pad back there and we agreed to put that. And there was also an agreement with the community that the houses would be built consistent with the other houses in that community and you again have the pictures before you.

We agreed to have three sides, two sides, because there's -- yes, two sides of the property brick. In the rear we could have siding or whatever else that we wanted to put on. So we have agreed to that and the ANC, they voted to approve it, but again --

CHAIRPERSON GRIFFIS: They haven't.

MR. ELLIS: -- it hasn't gotten here. The Commissioner just called me on the phone. I didn't take it, but I was going to have her fax it to the office.

CHAIRPERSON GRIFFIS: Okay.

MR. ELLIS: If she had it.

CHAIRPERSON GRIFFIS: Well, if it comes in, I'm sure it will make it out here.

MR. ELLIS: No, I didn't get a chance since I was before the Board.

CHAIRPERSON GRIFFIS: Oh, I see.

MR. ELLIS: It was ringing while I was talking to you.

CHAIRPERSON GRIFFIS: Understood. Okay. Before we move on then to the Office of Planning's report, which I assume you have, is that correct?

MR. ELLIS: Actually, the Office of Planning did not send it to me, but I was made aware

of it by Ms. Bailey and then a copy was sent to my office, which I don't have. It came into my office late.

CHAIRPERSON GRIFFIS: Do you need one in front of you right now?

MR. ELLIS: If I'm going to speak to Mr. Parker, if I could.

CHAIRPERSON GRIFFIS: Do we have an extra up here? We'll get you a copy just to have it in front of you. But you have brought up an interesting point initially in this and looking at all the other iterations that might happen or could happen.

Am I correct in understanding what you are saying, that if one of the adjacent lots was under a separate ownership or a separate entity, that it would be able to be developed?

MR. ELLIS: It would be able to be developed with zoning relief, with zoning relief. I mean, it would be able to be developed because, again, it would be a substandard lot. Going back to the Russell case, which I sent up to you, it's already too small.

CHAIRPERSON GRIFFIS: So in your understanding, it would be two variance cases, because each would need to come in for a variance

from the minimum lot dimensions?

MR. ELLIS: Right, and the parking.

CHAIRPERSON GRIFFIS: And the parking. Interesting. Okay.

MR. ELLIS: And there would be, essentially, if you look at the regs on parking and lot width, there would be no reason for this Board to deny it. There would be -- I mean, that would be such an appealable issue, because there would be no basis for this Board to really deny it, because these lots were both established prior to 1958 and they were in the same size as they were developing back then.

And since there would be no alley, there would be no place for you to put parking in the rear, because the City hasn't put the alley in, the Board would be remiss if it didn't grant it or if you just walk in with two owners.

CHAIRPERSON GRIFFIS: Understood. Okay. All right. Ms. Miller?

VICE CHAIR MILLER: I mean, I'm looking at the Russell case. Isn't it true though that the facts that are here, that there are two substandard lots that are adjacent to each other, allows you to develop the property, whereas you might not have been

able to on one substandard lot?

MR. ELLIS: If the client goes out -- I mean, you read as well as I do. My client can go out, combine those lots and make one lot, but what was contemplated in that neighborhood, again if you look at it, was three, two, three, two. They are trying to keep everything in the consistency with the community, what's there, and they got the house, the way they have planned it, to look like the ones that are next to it.

And yes, my client could join it and do something there and he wouldn't need -- he could put a curb cut. That was one of the things that the community thought about. And when we met with the community, they didn't want a curb cut to put a garage back behind, because what does that do? That cuts back on the parking on the street, because the curb cut comes in and you know you got to be so many feet off of the driveway.

CHAIRPERSON GRIFFIS: Right. It takes away street parking if they provide rear parking.

MR. ELLIS: It takes away street parking. And so what happens is the community was very -- they didn't want us to do anything that required them to get a curb cut, you know, not required us, but we

would end up resulting in getting a curb cut in there.

CHAIRPERSON GRIFFIS: Right.

MR. ELLIS: So essentially, yes, he could do that, but what I'm saying is had he gone in and bought this as one big lot and subdivided it, I would have told my client don't even come to the Board, because that is a hardship of your own making. But in reality, these are just two separate lots that he picked up and they will be developed separately.

And I mean, if somebody did it pre '58, you know, and they are sitting on that lot, again, I wouldn't be arguing with you. But he was just sort of -- he wanted a piece of property. The house actually is developed that's there, and to get it he ended up with these two lots.

CHAIRPERSON GRIFFIS: But isn't the test actually to show what the practical difficulty in complying with the existing zoning is?

MR. ELLIS: By lot, lot by lot.

CHAIRPERSON GRIFFIS: Right. So in the sense of if separate entities came in, their practical difficulty is increased or the argument is, conceivably, more persuasive, because they don't have any possibility of expanding to make it a conforming

lot dimension. However, if you had both, you have the ability of creating a conforming lot.

MR. ELLIS: We do have that. Yes, you do. You're correct, but it's on a lot by lot basis though. And what you're saying is that by virtue of him owning that second one, he reaches over and has to combine that lot and make that. And what it is is requiring him to make another lot, go down and deal with the City to make a lot on something that was already subdivided by the City years and years and years ago.

CHAIRPERSON GRIFFIS: Right.

MR. ELLIS: And he's leaving it. He's not changing and he's not coming in trying to make anything inconsistent with what's in the community.

CHAIRPERSON GRIFFIS: Right. I understand that.

MR. ELLIS: All he's trying to do is carry out what was planned to be there.

CHAIRPERSON GRIFFIS: Right. Conceivably, you have a strong third prong test that you're not breaking the character.

MR. ELLIS: No.

CHAIRPERSON GRIFFIS: But you may not necessarily be conforming with the Zone Plan or Map.

I mean, I hope you understand. I mean, I think the Board fully understands and appreciates the situation here and the difficulty is we keep looking at 401. Mr. Etherly, did you have a comment?

BOARD MEMBER ETHERLY: No.

CHAIRPERSON GRIFFIS: Any other comments, Mr. Mann?

BOARD MEMBER MANN: When you're talking about the three, two, three, two rhythm of the homes on the street, are you talking about from kind of architectural and massing perspective or sort of from a programming perspective of the number of units that were meant to be available on this street?

MR. ELLIS: Architectural, from stylization. If you look at the picture I have here.

BOARD MEMBER MANN: Right.

MR. ELLIS: If you go to the complete left of it, it was a triplex, then a duplex, then a triplex, a duplex, a triplex and then the next thing would have been a duplex.

BOARD MEMBER MANN: So you're saying that this three, two, three, two rhythm is an appearance issue?

MR. ELLIS: Yes.

BOARD MEMBER MANN: Okay. Is it possible

to build one single building on those two lots that gives the appearance of a duplex, the architectural appearance, so that as driving down the street, it might look similar to the other duplexes on the block?

MR. ELLIS: It would be a house that would be really out of scale when you do it like that, when you're building it, because the way those houses are, it would be a 40 foot wide house, at least 40 feet. It would be out of scale even with the single-family houses that are running next to it.

The house would be out of scale in that neighborhood. You would end up with a house that does not appear even in any way, shape or form like the other houses. It would be completely out of scale. As you can see, the duplex that's sitting there, look at that as one building by itself and look at it with the house, the single-family detached house that is to the right.

That would be out of scale with the other house. That would be a house that would be practically -- it would be very difficult to sell, because it would be as expensive, it would be more expensive than any of the single-family detached houses there in that neighborhood.

And if you scale it down to that size, that lot is bigger than the other lots, so that house, whatever you do, even if we comply, you end up with an ugly situation. To comply with, we end up with a house that's either small to make it comply with the single-family and then it's on this wide lot.

We make a big house and then how do you sell it? It's bigger than any of the other houses to either side. It's like this behemoth that's sitting there and everybody is going like what in the heck were they thinking about? They built this big house that's there. Nothing looks right.

CHAIRPERSON GRIFFIS: Actually, what is the dimension of the adjacent property, not the attached, but the detached single-family?

MR. ELLIS: I would have to defer to Mr. Oates.

CHAIRPERSON GRIFFIS: If you have it. If not, I can try and find it.

MR. ELLIS: It's on the Bates. I'm sorry.

MR. OATES: It's on the Bates map.

MR. ELLIS: I'm informed that it's on the Bates map.

CHAIRPERSON GRIFFIS: I didn't see it on the site plans that were in.

MR. OATES: Oh, the house.

MR. ELLIS: The house.

MR. OATES: I thought you were talking about the lot. I'm not sure what the house dimensions are.

CHAIRPERSON GRIFFIS: It looks to me --

MR. ELLIS: No, let me -- that house there was drawn to scale, correct?

CHAIRPERSON GRIFFIS: Well, outside of the structure, what is the size of the lot?

MR. ELLIS: Oh, the lot is on the Bates map.

MR. OATES: It's on the Bates map.

CHAIRPERSON GRIFFIS: It is?

MR. ELLIS: Yes.

CHAIRPERSON GRIFFIS: What is the lot number?

MR. ELLIS: The lot number, if you look at it, it's next to 17. It looks like it was drawn through it.

CHAIRPERSON GRIFFIS: It appears to me it's maybe close to 50. Would that make sense?

MR. ELLIS: Yes. Well, somewhere in the

rear it's -- yes, because it's 4874 in the rear.

CHAIRPERSON GRIFFIS: What are you looking at?

MR. ELLIS: The Bates map.

CHAIRPERSON GRIFFIS: Do you have it?

MR. ELLIS: Yes, you have it in your application.

CHAIRPERSON GRIFFIS: Yes, I know. I mean, I should turn my mike off when I say that and ask them if they have it right in front of them. Excellent. Thank you. Yes, it's reading 54.2 in the front. Thank you, Ms. Bailey.

MR. ELLIS: Yes, but if you look at the scale, that house is drawn to scale.

CHAIRPERSON GRIFFIS: I understand. I understand the scale of the houses, but of course we are here for the lot dimension.

MR. ELLIS: Yes.

CHAIRPERSON GRIFFIS: Okay. I think I'm clear. Any other questions from the Board at this time. Are you ready to proceed with the Office of Planning's report?

MR. PARKER: I am, yes.

CHAIRPERSON GRIFFIS: Let's go ahead then. A very good afternoon to you.

MR. PARKER: Good afternoon, Mr. Chairman, Members of the Board. My name is Travis Parker with the Office of Planning. Forgive me if I cough. I'm coming down with something. Excuse me.

CHAIRPERSON GRIFFIS: No need to share.

MR. PARKER: Let me preface my remarks by saying that the Office of Planning believes that this applicant could meet the third test. We would like to see something happen on this lot. This is a vacant lot in an established residential neighborhood. It would be good for the neighborhood and the character of the neighborhood to have something developed.

The problem that the Office of Planning has run into is the same one that has been discussed here already, is involved with section 401.2. As I think the Board is aware, but may not have been made sufficiently clear, if these two lots were in separate ownership when the Zoning Code went into effect and had been transferred separately and remained in separate ownership to today, section 401.2 specifically allows the owners of those properties to come in, build a detached home without any zoning relief as a matter-of-right.

Since that is not the case and these have

been in common ownership and are still in common ownership, section 401.2 doesn't apply, which requires the applicant to seek variance relief from section 401.3.

As of the application that was submitted, the Office of Planning is not convinced that the first two tests have been met sufficiently. Some arguments have been made today that are more persuasive than the original arguments, and the Board will have to decide whether those meet the requirements of the tests.

The one question, I think, that is important to focus on though is the practical difficulty of following the restrictions of the Zoning Code and combining these lots into one lot and building a single-family home to match the ones to the north. It appears that at least one of those lots to the north has done that in the past. I think Lot 41, at the time of the Zoning Ordinance, was two lots and has been combined to form one.

CHAIRPERSON GRIFFIS: And in fact, it looks right from the Bates map to make your point that perhaps Lot 17 or the adjacent lot did just that. Is it 16? I'm sorry.

MR. PARKER: I haven't been able to find

any evidence that what I show as Lot 800, the immediately adjacent lot, has been combined. I think that that was 54.2 at the time, may have been combined before 1958.

CHAIRPERSON GRIFFIS: Right.

MR. PARKER: I cannot prove it either way.

CHAIRPERSON GRIFFIS: Okay.

MR. PARKER: But I believe Lot 41 next to that had been combined. Either way, you have one street characteristic to the north. You have one street characteristic to the south. This is right in between and would be in scale and in character with either one of those, and the Board will have to make the decision whether the tests have been met.

CHAIRPERSON GRIFFIS: Good. We appreciate that and we appreciate an excellent report. Just lastly though, you would have found that it would if approved or it should not be approved, because it would, in fact, be detrimental to the Zone Map and Plan. Is that correct?

MR. PARKER: If the first two tests are not met.

CHAIRPERSON GRIFFIS: Right.

MR. PARKER: Then that would invalidate

401.2, the arguments that have been made today. If the Board decides that the first two tests have been met, then there would be no harm to the integrity of the Zone Plan.

CHAIRPERSON GRIFFIS: I see. Okay. Any questions from the Board? Does the applicant have any? Oh, Ms. Miller?

VICE CHAIR MILLER: I just have one question based on representations by the applicant today. Do you have any knowledge or information that to build a single-family home on the two lots would be prohibitively expensive to sell that house in the neighborhood?

MR. PARKER: I can't answer that question. I don't have any information.

VICE CHAIR MILLER: Okay. I don't think we have anything in the record on that. Thank you.

CHAIRPERSON GRIFFIS: Good. Does the applicant have any cross examination of the Office of Planning?

MR. ELLIS: No, I don't.

CHAIRPERSON GRIFFIS: Very well. Let's move ahead and this is not in a historic district. That's correct?

MR. ELLIS: That's correct.

CHAIRPERSON GRIFFIS: Okay. And the ANC-7C, is the ANC represented today? You had indicated, obviously, that you did a full presentation. It was your understanding at the end of that, there was a motion that was to recommend approval of this application?

MR. ELLIS: That is correct, and it had required us to do an agreement.

CHAIRPERSON GRIFFIS: For the brick facade?

MR. ELLIS: The brick facade, and they wanted us to -- one part I told them was illegal. They wanted us to make sure if we could not rent it, that we wouldn't -- if we couldn't sell it, that we wouldn't rent it to section 8 and I told them that was illegal, but that --

CHAIRPERSON GRIFFIS: Yes, I don't think we want to pick that one up today.

MR. ELLIS: No, no. But the only thing was that it would be brick facade on the front and sides. The rear could be siding. And the other thing that they wanted was that the parking pad be built to the rear of the property.

CHAIRPERSON GRIFFIS: Right.

MR. ELLIS: So when --

CHAIRPERSON GRIFFIS: So you would actually provide a parking pad.

MR. ELLIS: Pad.

CHAIRPERSON GRIFFIS: Which actually forces the City to start looking at actually building an alley back there, which would be obviously important to all the other adjacent neighbors.

MR. ELLIS: And we also agreed that we would, in any way that they deemed possible, you know, necessary, assist them with the City in terms of helping them get that alley, because this picture that OP has provided doesn't show, based on what they are representing to me, that there is a lot of trash and other things that are behind that area, on the City right-of-way, in that alley, that they said that they need to get it moved.

CHAIRPERSON GRIFFIS: It seems like there is a bit of a drive area. Maybe it's just the photograph and what I'm seeing, but is it absolutely impossible to drive on that dirt road?

MR. DUDLEY: It's not totally impossible to drive in there, but you can't maneuver back there.

CHAIRPERSON GRIFFIS: Right. I see.

COMMISSIONER HILDEBRAND: Is it paved in any way?

MR. ELLIS: No, it's not paved. It is not paved.

COMMISSIONER HILDEBRAND: Because in the photograph it almost looks like it's a gravel road or asphalt. It's appearing to be gray.

MR. ELLIS: No, it's neither, it's neither.

COMMISSIONER HILDEBRAND: It's neither.

CHAIRPERSON GRIFFIS: It's just ground-in dirt.

MR. ELLIS: It's ground. I mean, you know, if you go back there, you better have a Hummer, high clearance, that's all.

CHAIRPERSON GRIFFIS: Yes. Okay. Let's move ahead then and I would ask if anyone is present to give testimony, persons present for Application 17278, either in support or in opposition, you can come forward at this time. Not noting anyone rushing to the table, I believe that no one is here to present testimony as a person. I think we can turn it to you, Mr. Ellis, to give any closing and summation remarks at this time.

MR. ELLIS: Just briefly. As I said, this applicant purchased the property at an estate sale. It was already subdivided in two separate

lots. He is trying to keep the character of the street in the way it was initially intended. He is not trying to change it. I believe that the uniqueness was the way in which -- that he came about the property, because when he went there, he was only intending to buy one piece of property and he was required to buy those two lots.

He is trying to develop it in a way that the community and the ANC -- as I stated to you before, the community did not want whatever we did. They did not want us to put a curb cut in there because, as you can see, right in front of the property is a school and there is no parking on the side of the street where the school is.

And a curb cut, as what was done at the far end of the property if you're looking at the ANC report on page 2, down towards the end of the street there was a curb cut that was put in there, and that curb cut in there has caused them some parking problems in that area. And so the community did not want any curb cuts in any way, shape or form.

So my client is trying to appease the community in providing them, you know, the consistency with the houses that are being built in the community. They want it to look like the other

houses. As you can see, the plan that we presented to you looks like the other houses. We have exceeded to their requests and we would just ask that you approve this application.

CHAIRPERSON GRIFFIS: Good. Thank you very much, and I think you have added an awful lot to the record in this case, and I think one of the strong statements that the Office of Planning made a little bit off the direct subject of the application is that I don't think that any Board Member thinks that it's better off to have this as empty lots than developed lots. And I think what is being proposed there looks within character and, clearly, in terms of the materiality with the ANC.

However, we do have to go to directly our regulations and the requirements of the test to be made for the variance. And so this is what I would like to propose. One, I would like to keep the record open for the ANC report and have that put in. I would like to set this for decision making at our next public meeting, which would be the 1st of March. And we would also keep the record open for, Mr. Ellis, any submissions that you have that reiterates the test, the uniqueness, the practical difficulty.

I think we had limited discussion on the

parking, because the parking seems to be fairly clear and straightforward, but certainly you can address that if you feel it's required. We won't take it as any indication if you don't, one way or the other, but it really goes to the aspect of having the two in single ownership lots of nonconforming dimensions.

And then is there anything? Is there any objection from Board Members in doing that? Okay. Mr. Ellis, questions of process. Is it clear what we're requesting to be submitted?

MR. ELLIS: Yes.

CHAIRPERSON GRIFFIS: Okay. And there's no difficulty in making that time? That seems to be an ample amount of time?

MR. ELLIS: Your March meeting is when?

CHAIRPERSON GRIFFIS: It's the 1st.

MR. ELLIS: It's March 1st?

CHAIRPERSON GRIFFIS: Yes, exactly.

MR. ELLIS: It has to be in when?

CHAIRPERSON GRIFFIS: We'll go to the schedule now in terms of the dates of when that needs to be submitted by. Ms. Bailey?

MS. BAILEY: Would February 15th be a problem for you, Mr. Ellis?

MR. ELLIS: No.

MS. BAILEY: Mr. Chairman, sorry. Since there is no parties to be served, maybe even as far as the 22nd of February.

CHAIRPERSON GRIFFIS: Right, I think that's more appropriate.

MS. BAILEY: Okay. So, Mr. Ellis, February 22nd by close of business.

MR. ELLIS: 27th or 22nd?

MS. BAILEY: 22nd.

MR. ELLIS: Okay. That's fine.

MS. BAILEY: February 22nd.

MR. ELLIS: That's fine.

CHAIRPERSON GRIFFIS: Just to clarify in terms of process. Of course, the ANC is a party in this case, so you just need to serve anything you put in to the ANC also.

MR. ELLIS: Always.

CHAIRPERSON GRIFFIS: So you just copy them.

MR. ELLIS: Yes.

CHAIRPERSON GRIFFIS: As they didn't come in opposition, I don't think we would need to keep the record open for their responses but, obviously, if they wanted to respond, we would accept it into the record. But in terms of our schedule, I think

that's plenty enough time. You can, of course, get it into the record prior to that, but that would be the deadline of which we have established for decision on the 1st.

Good. If there is nothing else attendant to this application, if there's any other questions I could answer, Mr. Ellis?

MR. ELLIS: No.

CHAIRPERSON GRIFFIS: Very well. We thank you very much for spending the time and effort in really putting this together before us. Let us take five. Well, what do we have next? We're going to just take a five minute recess and we'll return for 17279.

(Whereupon, at 2:51 p.m. a recess until 3:04 p.m.)

CHAIRPERSON GRIFFIS: Very well. Let's reconvene and call the next case in the afternoon.

MS. BAILEY: Application No. 17279 of Stephanie Peters and Charles Fishman, pursuant to 11 DCMR section 3103.2, for a variance from the floor area ratio requirements under section 402, and pursuant to 11 DCMR section 3104.1, for a special exception to allow a two-story rear addition to an existing single-family row dwelling under section

223, not meeting the lot occupancy requirement, that's section 403, and rear yard requirements, section 404. The property is located in the R-5-B District at premises 2604 Mozart Place, N.W., Square 2579, Lot 19.

CHAIRPERSON GRIFFIS: Good. Thank you, Ms. Bailey. All right. Is the ANC represented today in this case, ANC-1C? The ANC is not present. Is there anyone else here to provide testimony, persons, in 17279, if you could raise your hand? Not noting anyone else present, let's move ahead. A very good afternoon to you. If you wouldn't mind introducing yourself for the record.

MR. FISHMAN: Mr. Chairman --

CHAIRPERSON GRIFFIS: I'm sorry, you just need to turn your microphone on. There is a button on the base in the front.

MR. FISHMAN: Here we go.

CHAIRPERSON GRIFFIS: Excellent.

MR. FISHMAN: I should know this. I'm in the music business. Mr. Chairman, Members of the Commission, first of all, my wife has asked me to apologize for her inability to be here as she is home taking care of her 6 week-old son.

CHAIRPERSON GRIFFIS: Good.

Congratulations and we don't require the entire family to be present. So are you ready to proceed?

MR. FISHMAN: Yes, but she's much better at this. I'm in music. She's in law. In any event, we reside -- I have lived in the Adams Morgan neighborhood for 20 years and I have owned the property at 2604 Mozart Place since 1988. It's now in my wife's name and we have, especially with the addition of a child, decided that we need to get some more space.

Now, one thing I would like to clarify in this application, because my wife has really been doing most of this with Mr. Neyman, who is our architect, it said to allow a rear addition to an existing single-family row dwelling. We actually have a porch. We have two porches on the rear of our home. They are screened-in porches. There are porches on the two homes that are adjacent to us.

At this time, the porches have sort of gotten a little weak, let's say, but we feel that for the child and for family needs, we need to expand. So rather than build something completely new, you know, where there was no structure, there actually is a structure that we're just trying to build upon and make the necessary expansion.

CHAIRPERSON GRIFFIS: Are you going to be on the footprint of the existing porches?

MR. FISHMAN: Yes.

CHAIRPERSON GRIFFIS: Okay.

MR. FISHMAN: And we have appeared before the ANC and we have submitted a letter of support from the ANC. We have also received last week a letter from Ellen M. McCarthy from the Planning Board in which she has recommended to the Commission that this be accepted and anything else other than that, I have to rely on the expert.

CHAIRPERSON GRIFFIS: Good. Then we don't have to -- go ahead.

MR. FISHMAN: Yes. I was just going to add one thing. Our homes, there are four homes on this block, and our homes abut in the rear an alley. And specifically in front of our home is the side wall of a house and all of that, our houses and the two houses, are fenced in but on the other side of the alley is the side of another residence and that's all brick building, so there is nothing that we're really looking out on.

CHAIRPERSON GRIFFIS: Understood. You do have alley access in the rear of your property. Is that correct?

MR. FISHMAN: Yes, sir.

CHAIRPERSON GRIFFIS: But what you're saying is across the alley, there is a portion that actually fronts on Fuller Street, but the side of which is aligned with the alley, which is, oh, gosh - -

MR. FISHMAN: Brick.

CHAIRPERSON GRIFFIS: I'm getting tired. Perpendicular to your rear yard.

MR. FISHMAN: That's correct, yes.

CHAIRPERSON GRIFFIS: Okay. Let's go through then the 223. Of course, this is an addition to a one-family dwelling as the Zoning Regulations looks at it. That's what it's, in fact, classified as. Of course, in section 223, you are allowed under a special exception to be afforded relief to allow this. 223.2 lays out this cannot be done if it impairs the light and air available to the neighboring properties. Does this impair the light and air to the neighboring properties?

MR. NEYMAN: No, it does not.

CHAIRPERSON GRIFFIS: And why so?

MR. NEYMAN: It is much the same. It occupies much the same mass as the existing two-story screened porch similar to the neighbors to either

side.

CHAIRPERSON GRIFFIS: And in terms of the light and air available or rather, the use and privacy of the adjoining properties? This is not showing any fenestration on the property line or the --

MR. NEYMAN: Correct, no fenestration on either property line. There will be a fire graded wall of some sort.

CHAIRPERSON GRIFFIS: Okay.

MR. NEYMAN: On either side.

CHAIRPERSON GRIFFIS: And has anything, in talking to the neighborhood or any sort of conversations with this, has there been any indication of issues of concern that the Board should be made aware of?

MR. FISHMAN: No, sir. We have also submitted, and I believe it's in the record, a letter of the owner of our -- who lives immediately adjacent to us at 2602 in support of the variance application. The other two buildings are actually a part of the Samaritan Inn Organization and they are transition houses for gentlemen who are getting out of various programs or out of prison, and they have been my neighbors ever since. In fact, they were there

before I was there.

CHAIRPERSON GRIFFIS: Indeed. And the letter of support is from Dan and Anna Calhoun. Is that correct?

MR. FISHMAN: Kahoe.

CHAIRPERSON GRIFFIS: Kahoe?

MR. FISHMAN: Right.

CHAIRPERSON GRIFFIS: I'm terrible on names in the afternoon.

MR. FISHMAN: I'm terrible with names.

CHAIRPERSON GRIFFIS: It is Exhibit No. 22 in the record.

MR. FISHMAN: Right, and we enjoy excellent relations, you know, with the transient houses.

CHAIRPERSON GRIFFIS: Excellent. I note that the material in the rear is proposed to be stucco. Is that correct?

MR. NEYMAN: As far as we know, at this time, yes.

CHAIRPERSON GRIFFIS: What might it be then?

MR. NEYMAN: It might be stucco or masonry.

CHAIRPERSON GRIFFIS: Oh, okay.

MR. NEYMAN: Most likely stucco.

CHAIRPERSON GRIFFIS: So we're looking at something that will be of a masonry vernacular, which is in keeping with the existing structure and the character around the area?

MR. NEYMAN: Masonry or cement.

CHAIRPERSON GRIFFIS: Okay.

MR. NEYMAN: I believe so.

CHAIRPERSON GRIFFIS: I don't have any other questions at this time. Do the Board Members have any questions?

COMMISSIONER HILDEBRAND: Just curious. You're narrowing in on your courtyard. You're changing that dimension from 3.9 to 2 feet. Could you talk a bit more why that's necessary in your view?

MR. NEYMAN: The original idea in creating the room addition, we were limited to 9 feet by virtue of the lot occupancy. And of course, the hope was to make the room as usable as possible, which meant expanding in that direction. However, we have reconsidered that and even though that approach has been recommended by the Office of Planning, we may not build it that way and just keep it in the confines of the existing.

MR. FISHMAN: He's talking about the width?

MR. NEYMAN: Yes, yes.

CHAIRPERSON GRIFFIS: The existing porch, does it align or does it --

MR. NEYMAN: It is, it aligns.

CHAIRPERSON GRIFFIS: So it -- okay.

MR. FISHMAN: And will remain that way.

CHAIRPERSON GRIFFIS: Well, then I'm confused. The drawings aren't showing that it's staying there.

MR. NEYMAN: The drawings do not show it that way.

CHAIRPERSON GRIFFIS: I see.

MR. NEYMAN: In communication with the agencies in the City, since then we have gone back and forth on this issue and had additional time to discuss it with the family and think it through, and it is no longer important to extend it into that area. I think we have had a change of mind about it overall. Part of the concern is keeping that 3.9 foot courtyard open for access to that area.

CHAIRPERSON GRIFFIS: Right. So the dimension is about --

MR. NEYMAN: To clean or for emergency or

whatever.

CHAIRPERSON GRIFFIS: -- 3.9 feet?

MR. NEYMAN: That's right, yes.

CHAIRPERSON GRIFFIS: Okay. And I will tell you the concern that I have in looking at this is, of course, the special exception part of the 223 incorporates 2001.3, which is additions to nonconforming as long it doesn't increase the nonconformity. And it seems that what you're doing actually, and proposed in the drawings and the record that I'm looking at, is increasing the nonconformity.

MR. NEYMAN: Yes.

CHAIRPERSON GRIFFIS: Meaning moving that area away, diminishing it from 3.9 to 2 feet.

MR. NEYMAN: Oh, what section was that?

CHAIRPERSON GRIFFIS: 2001.

MR. NEYMAN: Was that the section number or the date?

CHAIRPERSON GRIFFIS: That's the section number.

MR. NEYMAN: Section 2001?

CHAIRPERSON GRIFFIS: Yes.

MR. NEYMAN: Okay.

CHAIRPERSON GRIFFIS: See, I read all that off with great authority, but now I will check

it for you exactly.

MR. FISHMAN: I would like to point out, too, that both of the porches on the adjoining homes or on the homes that are adjoining our property extend out beyond ours.

COMMISSIONER HILDEBRAND: Towards the alley.

MR. FISHMAN: Towards the alley. That's what we're concerned about right now. The initial thought about widening it has been since dropped even though it had been recommended or approved for recommendation. So we're just going back from the house. It will stay in conformity.

CHAIRPERSON GRIFFIS: Right. And I don't think the Board -- I haven't noted any comments or concerns in terms of its increased dimension towards the rear.

MR. FISHMAN: Oh.

CHAIRPERSON GRIFFIS: It's the increase in dimension and encroaching on one of the aspects of the nonconformities, and it is 2001, a section in 2001.3, which I indicated, in which enlargements or additions may be made to the structure provided, 2001.3(b)(2), neither increase or extend any existing nonconforming aspects of the structure increase.

And under 223 what we have always looked at is -- although, I wonder if 223, maybe we can get the Office of Planning to comment on that when they go through their report, is this not granting the relief from that aspect and could it not then encroach on the 2 feet? But what I understand you saying is that that additional bump onto the side is not of concern.

MR. FISHMAN: No, we have dropped it. So it's already dropped. We're not going to do that.

CHAIRPERSON GRIFFIS: Then I'm spinning wheels here. Then all we're going to need is the documentation into the record. Do you have drawings that represent that at this time?

MR. NEYMAN: No.

CHAIRPERSON GRIFFIS: Okay.

MR. NEYMAN: But we'll be happy to send them over.

CHAIRPERSON GRIFFIS: Okay. Good.

MR. NEYMAN: By whatever --

MR. FISHMAN: Did you make it that way? Did you make it that way?

CHAIRPERSON GRIFFIS: Okay.

MR. NEYMAN: We have. Yes, yes, we did originally, part of the original application.

MR. FISHMAN: All right.

MR. NEYMAN: We're going to have it, yes.

CHAIRPERSON GRIFFIS: And then the dimension as it extends to the rear is 9 feet, 3 and a 1/4 inch. Is that correct?

MR. NEYMAN: Something like that, right.

CHAIRPERSON GRIFFIS: Okay. Well, no, I mean, I need to be fairly specific.

MR. NEYMAN: Okay. Exactly.

CHAIRPERSON GRIFFIS: But you tell me. I mean, that's what's showing on your A1.1.

MR. NEYMAN: Well, exactly as it's shown, in doing that we achieved a 70 percent lot occupancy, which we are --

CHAIRPERSON GRIFFIS: Okay.

MR. NEYMAN: -- required to do by 223.

CHAIRPERSON GRIFFIS: So, in fact, the dimension is going to get to 70 percent lot occupancy?

MR. NEYMAN: That's correct.

CHAIRPERSON GRIFFIS: So it may not, in fact, be that accurate to the 1/4 inch?

MR. NEYMAN: Well, we can draw very accurately.

CHAIRPERSON GRIFFIS: I understand.

MR. NEYMAN: When we build, it's somewhat less.

CHAIRPERSON GRIFFIS: Indeed. Anything else at this time? Obviously, we will give you an opportunity to close.

MR. NEYMAN: Well, I presume you are aware of the revision to this application where we --

CHAIRPERSON GRIFFIS: Removed the FAR.

MR. NEYMAN: The floor area ratio, yes.

CHAIRPERSON GRIFFIS: Right.

MR. NEYMAN: And that's why you didn't bring that up. Right.

CHAIRPERSON GRIFFIS: Yes, that's right. Actually, it was announced and we proceeding in the special exception.

MR. NEYMAN: Okay.

CHAIRPERSON GRIFFIS: Good. I think that's excellent then. If there's nothing further, at this time, why don't we move to the agency reports and go to the Office of Planning's report?

MR. MORDFIN: Good afternoon, Chairman and Members of the Board. I am Stephen Mordfin with the Office of Planning, and this application is in conformance with the provisions of section 223 in that row dwellings are permitted as a matter-of-right

within the R-5-B Zone District.

Light and air will not be unduly affected as the proposed addition will be located 22 feet from the property to the rear and it will be located in, approximately, the same location as an existing two-story screened-in porch. Privacy of use and enjoyment of neighboring properties will not be unduly compromised as there will be no windows on the sides and the addition will be 22 feet from the nearest property to the rear.

The addition will be visible from the alley only, will be similar in scale to existing rear porches and is designed to be residential in appearance. The proposed lot occupancy is 70 percent and this application will not introduce the introduction or expansion of a nonconforming use. Therefore, the Office of Planning recommends approval of the application.

CHAIRPERSON GRIFFIS: Good. Thank you very much. And it is a very good report, especially the site plan which was helpful and the testimony that was provided today. Do you have an opinion in terms of the 2 foot dimension extension back? You've had discussions with that? Is that correct?

MR. MORDFIN: I had some discussions with

the applicant regarding narrowing the courtyard to 2 feet. In the end, the Office of Planning determined that we thought it would be acceptable if they did that. You brought up another point, I believe, what section 2001 that we had not considered in our discussions.

CHAIRPERSON GRIFFIS: Yes, although, in other words, I'm thinking that afterwards very quickly, of course, 2001 is incorporated in the 222 review. What are you pointing at?

MR. FISHMAN: Mr. Chairman?

CHAIRPERSON GRIFFIS: Yes? That could be a part. It's taken, yes.

MR. FISHMAN: We have already determined that we're not doing that.

CHAIRPERSON GRIFFIS: I know.

MR. FISHMAN: So all we're asking --

CHAIRPERSON GRIFFIS: So you wonder why we're wasting your time talking about it.

MR. FISHMAN: No, no, no, no. I just want to be very clear that we're not planning to do that at all.

CHAIRPERSON GRIFFIS: Maybe it's appropriate. Exactly.

MR. FISHMAN: I'll sign in blood if you

need me to.

CHAIRPERSON GRIFFIS: Exactly. Well, actually, that's kind of where I'm going with it. How do we document it today if we were to proceed with a Bench approval on this, which obviously helps you and it helps our schedule, rather than setting this off the month for our decision making. So we'll finish out this case and we'll figure out how we do that. Okay. Is there any other questions from the Board of the Office of Planning? Not seeing any indications, does the applicant have any cross examination of the Office of Planning? Any questions of them? That's fine.

MR. FISHMAN: If you require something faxed over to the chamber, in the meantime I can probably have that done from my office.

CHAIRPERSON GRIFFIS: Okay. We may take you up on that offer. I don't have any other Government reports attendant to this application. Again, is the ANC-1C represented today? Not noting any representative of the ANC, we do have Exhibit 21, which is, in fact, the letter from the ANC. Does any Board Member have that in front of them, which we would like to identify that. If not, of course, it does recommend approval and I do believe it meets the

great weight requirement afforded or required of the ANC, unless anyone has any other comments on that. Excellent.

Then let's move ahead and again ask for anyone present today for application something or other.

MR. FISHMAN: 17279. I'm trying to help you move it along.

CHAIRPERSON GRIFFIS: 17279, Fishman. Persons present either in support, opposition? Not noting anyone present to give testimony as persons, let's move ahead then to any closing remarks that you might have. Any summations, closings?

MR. FISHMAN: Help us out, please. We're a nice group of people. We got a little baby. No, I believe we have conformed with everything that has been expected of us and we just hope that the Board will approve our application. Thank you.

CHAIRPERSON GRIFFIS: Very well. If there's nothing further, no other questions from the Board, I think it's proper to proceed under a motion. And I would move approval of Application 17279 for the special exception under 223 and ask for a second.

BOARD MEMBER MANN: Second.

CHAIRPERSON GRIFFIS: Thank you, Mr.

Mann. This is, of course, for 2604 Mozart Place. We have had clear documentation and compliance with all of the requirements in 223. The Office of Planning, the ANC is also in support. There has been no voice of opposition in this case. The clarity of the hearing today has brought forth the fact that a courtyard areaway or side yard, as it has been described in all three iterations in this application, will not change in its dimension.

It has been testified that its a dimension of about 3.9 feet, that the lot occupancy would, of course, be designed to bring it in at or under 70 percent, as has also been documented and testified to today. And with that, we do have the note that the final documentation will be submitted into the office some time today into the record which will graphically represent that which was testified to this afternoon.

So with that I'll open it up to any other comments, deliberations from the Board. If there's no further discussion, then we do have a motion before us. It has been seconded. I would ask for all those in favor to signify by saying aye.

ALL: Aye.

CHAIRPERSON GRIFFIS: Opposed?

Abstaining?

UNIDENTIFIED SPEAKER: Mr. Chairman?

CHAIRPERSON GRIFFIS: Very well. Why don't we record the vote. Is there any concern or opposition to waiving our regulations and issuing a summary order on this case? Not noting, we can waive our regulations and issue a summary order and we'll just note the vote for the record.

MS. BAILEY: The vote is 5-0-0 to approve the application. Mr. Griffis made the motion, Mr. Mann seconded, Mr. Etherly, Mr. Hildebrand and Mrs. Miller are in support. Mr. Chairman, I just need to clarify very quickly. We removed the FAR variance under the 3103.2 and under section 223 relief is granted from lot occupancy, rear yard and nonconformity 2001.3?

CHAIRPERSON GRIFFIS: That's correct.

MS. BAILEY: Okay. Thank you, sir.

CHAIRPERSON GRIFFIS: Excellent. Thank you very much for that clarification. Yes, question?

MR. FISHMAN: Yes, sir. If someone can give me whatever language or tell me what was required and a fax number, I can have my office fax something over that either I can sign or my wife can sign and have it sent over.

CHAIRPERSON GRIFFIS: How about a drawing?

MR. NEYMAN: If it's a drawing, I would request that we could do this in the morning, because my office --

CHAIRPERSON GRIFFIS: How about you take the drawing that's in the file, you go next door, you get a straight edge and a pencil and you draw the line of the building it's going to be and sign it?

MR. NEYMAN: I would be happy to do that.

MR. FISHMAN: That's a good idea.

CHAIRPERSON GRIFFIS: Put it in the record.

MR. NEYMAN: And bring it back to Ms. Bailey?

CHAIRPERSON GRIFFIS: You can leave it right in the office next door. They will help you out.

MR. NEYMAN: All right.

CHAIRPERSON GRIFFIS: Good?

MR. NEYMAN: That would be fine.

CHAIRPERSON GRIFFIS: No fax required.

MR. FISHMAN: Thank you very much.

CHAIRPERSON GRIFFIS: Okay. Thank you both very much. We appreciate you being down here

and putting the time in to put this application before us.

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

Mr. Hildebrand, a very good afternoon to you and we'll see you shortly.

MS. BAILEY: Mr. Chairman, I will be reading this based on the alternative language. Okay.

CHAIRPERSON GRIFFIS: Let's just read -- to save some time, we'll get these people rolling here in the afternoon. They've been sitting here patiently all afternoon. Let's just read it as it was advertised originally. We all know what we're here for.

MS. BAILEY: Originally?

CHAIRPERSON GRIFFIS: Sure.

MS. BAILEY: Okay. And that's Application No. 17232, RLA, Revitalization Corporation DCUSA, pursuant to 11 DCMR Section 3104.1, for a special exception from the roof structure requirements under section 411, and pursuant to 11 DCMR Section 3103.2, for a variance from the off-street parking requirements under

subsection 2101.1, to permit a multi-use commercial establishment at premises 1400-1420 Park Road, N.W., 3100-3220 14th Street, N.W., and 1417-1437 Irving Street, N.W. The property is located in C-3-A District and it's also located in Square 2674, Lots 719, 720, 812, 832, 863, 866, 869, 870, 871 and 872.

CHAIRPERSON GRIFFIS: Thank you, Ms. Bailey.

For clarification, of course, we had indicated last when we did set this for continuation today, we had a motion before us that was moving to dismiss or not allow an amendment to the existing application.

The Board in its deliberation on that motion and let me just clarify for the record now that everybody is here, that the last -- we took up the motion and dispensed with them noting the fact that they had both been addressed. They were submitted and addressed by all those parties or at least given an opportunity.

We were not entertaining any other

additional testimony nor did we, though it was perfectly appropriate to move ahead and dispense with the motions that we did.

We left one in abeyance, as they say, to today, which went to whether an application, this application can be amended or whether it should be -- and again, I'll go to the intent of the Board of this is just to clarify the aspect. I don't see anything that was put forth in the motion that would preclude one from amending or adjusting. There would be additional requirements, of course, if the substance or a substantial amount of application change, but I want to go right into the heart of the matter and get to, as we had asked for, what was the nature of the amended relief, what we were actually going to look at, what were the regulations that the Applicant was indicating that they weren't complying with, and whether 2115.9, I believe was the section, whether that was actually the appropriate section for this zoned district to be applied for as a variance and there may be other issues attendant to that.

Is that clear with everybody? Good. Is there additional comments on that?

Ms. Ruffin, are you clear on that?

MR. COCHRAN: Chair, not directly related to this, but I would just note that the ANC Chair has to leave at 4 o'clock.

CHAIRPERSON GRIFFIS: That's the reasoning voice from above. It has been noted. Okay.

We'll take that under consideration. That's 30 minutes from now. Potentially, what I'm going to ask everybody is whether they want to take the ANC's presentation of their case out of order and go to them directly, but before we go to any of that, we need to figure out what we're here for.

Mr. Glasgow?

MR. GLASGOW: Thank you, Mr. Chairman. Just very briefly, we did have a letter that we submitted that we said that the Board could consider alternative parking relief, dealing with attended, assisted parking. And there are two ways that that

can go forward. One just by way of background, we submitted our case on a 1,000-space parking garage. We believe it's sufficient size to accommodate the proposed uses of the facility. OP and DDOT concur with that and RLARC supports.

The Applicant is ready to stand on this original request. However, some Board Members during the course of the hearing raised issues concerning other potential users in the community and the opposition questioned about potential users in the community. And also, there were questions raised about the use of the garage and how it would be managed.

The Applicant, in response, attended to address that concern. The Applicant states that the Board could deal with this through alternative relief to provide 1,244 attended, assisted spaces. The Board can address the matter of attended, assisted parking in one of two ways if it so desires.

One, the Board could, if the variance is granted, condition the variance on the provision of

attended, assisted parking for a total of 1,244 spaces, or grant a 25 percent special exception and a variance from the provisions of Section 2115.9 as was outlined in Applicant's December 22nd letter. And we offered that as one way of approaching this because we thought this may provide some consistency in the Board's view to Application 16858 which granted a 25 percent special exception reduction for the property.

CHAIRPERSON GRIFFIS: Because of its adjacency to the Metro stop?

MR. GLASGOW: That's correct. And so the Board can handle that in either of two ways. And we know that both the ANC and the Ward Council Member have taken positions supportive of the original variance and the provision of attended, assisted parking.

CHAIRPERSON GRIFFIS: Good. 2115.9, my reading, starts in the higher zoned districts?

MR. GLASGOW: That is correct. That's where we would need the variance. We would need the variance that we are not one of those listed in the

higher zoned district.

CHAIRPERSON GRIFFIS: And you think we have the authority to entertain a variance that would move one district into that which was allowed in a higher district?

MR. GLASGOW: I think you could do it either that way or there have been cases where the Board has granted relief to just allow attended, assisted parking. And we could handle it that way.

So the Board has granted variance relief to have attended, assisted parking or stacked parking in cases before, without getting into which zoning district the property was lent into. There was one at 17th and Rhode Island Avenue for -- my client was Libnick.

CHAIRPERSON GRIFFIS: Okay, if need that.

MR. GLASGOW: It's Application 16754.

CHAIRPERSON GRIFFIS: Attendant to that aspect, if we were looking at relief from -- well, in terms of the amendment that you proposed, is there additional relief required for the size of parking

for the stacking of the parked cars?

MR. GLASGOW: No, there is not because we have about 380,000 square feet of parking garage and I think if you do the 285 square feet times the 1,244 square feet, we're a few thousand square feet over that.

CHAIRPERSON GRIFFIS: What about the conforming parking space size and the drive aisles. Would that be in conflict with what's being proposed?

MR. GLASGOW: Not as I understand the regulations because there's one way of reading it. One of the provisions that it talks about where it talks about the drive aisles have to be provided, you know, no matter what and I don't know if any kind of stacked parking arrangement that the Board has -- or otherwise which has been utilized where you continue to have the drive aisles.

CHAIRPERSON GRIFFIS: Right.

MR. GLASGOW: Because that's where you are stack parking the cars.

CHAIRPERSON GRIFFIS: What you're saying

is the nature of reviewing for attendant parking or stacking parking is inclusive of looking at how it's done, meaning obviously the drive aisles wouldn't be utilized differently and the parking spaces are going to be utilized differently?

MR. GLASGOW: That's correct.

CHAIRPERSON GRIFFIS: Any other questions or clarification of the Board?

MEMBER MILLER: Yes, I have two questions just for clarification. When you make reference to Application No. 16754, and the way attendant parking was used in that case, was that pursuant to your going forward on your original variance?

MR. GLASGOW: Yes, I mean it could be used that way. We're leaving that up to the Board. Because we know that the Office of Planning has no objection to us having as a condition to the variance request, having the Board, if it so desires, impose a condition for attended, assisted parking, but the Office of Planning does have concern with respect to granting the variance from 2115.9 and then doing the

special exception. And since either way that it's handled ends up the same result as far as the Applicant is concerned, we're indifferent as to which way the Board would proceed.

MEMBER MILLER: Okay, my second question is the 246 spaces that you pick up with the attendant parking --

MR. GLASGOW: I think it's 244.

MEMBER MILLER: Two-hundred what?

MR. GLASGOW: Two forty four.

MEMBER MILLER: Two forty four, okay. But where are those spaces? Are they in drive aisles?

MR. GLASGOW: Oh yes, well, that's how -- if you do stacked -- if you're doing stacked parking that's where the spaces go. Any stacked configuration I've ever seen and if you think about it that's the only space that's not being already used for parking.

MEMBER MILLER: And the configuration doesn't change of the garage, doesn't change at all

or the drive aisles regardless of which way --

MR. GLASGOW: We have a plan that shows where those spaces would be.

MEMBER MILLER: But as far as the layout of the garage or the amount of space that's provided for drive out, that doesn't change depending on which way we go on this?

MR. GLASGOW: That is correct.

MEMBER MILLER: Thank you.

MR. GLASGOW: We kept it that way on purpose because we don't think we're going to need the stacked attendant parking but about 20 hours during the year. So you keep your configuration the way that you're going to need it 99.9 percent of the time.

CHAIRPERSON GRIFFIS: You say you have a plan that shows that. Is that different than what as submitted?

MR. GLASGOW: No, it's the same plan.

CHAIRPERSON GRIFFIS: We have that plan.

MR. GLASGOW: You have that plan.

CHAIRPERSON GRIFFIS: And it showed basically a hatch or a colored area that was showing it.

MR. GLASGOW: Yes.

CHAIRPERSON GRIFFIS: I just wanted to bring that to the attention of the Board that we've looked at that. Okay.

Let's hear from Mr. Ruffin.

MR. RUFFIN: As I said in my motion, this has been raised after the Applicant closed its case. This is very much a new idea and it's going to call for additional testimony, but I want to bring to the Board, not only that circumstance, but two other things. And maybe Mr. Glasgow was alluding to one, so I'll start with the easier one first.

That particular regulation, Section 2115, calls for an Applicant to show not only the need for the variance, if they can show that, but also to show how they will revert back to the standard parking arrangement in situations when they won't use the parking attendants.

CHAIRPERSON GRIFFIS: Right.

MR. RUFFIN: I haven't seen that in the application and then on top of it, when --

CHAIRPERSON GRIFFIS: Let me just interrupt you because Mr. Glasgow just testified --

MR. RUFFIN: That's what I'm saying --

CHAIRPERSON GRIFFIS: -- The fact that structurally what they are going to build is going to be similar, it's more programmatic.

Mr. Glasgow, is that correct?

MR. GLASGOW: That is correct. I think the plans that have been in the record for the past few weeks --

CHAIRPERSON GRIFFIS: Mr. Ruffin, do you have these plans? They were served on you?

MR. RUFFIN: I have those plans. And I think Vice Chair Miller raised a good point that I would certainly be concerned about and that is --

CHAIRPERSON GRIFFIS: She always does.

MR. RUFFIN: She certainly does, at least in my dealing with this Board. Whether the

obstructions in the byway and egress and ingress are going to be affected.

But I want to go to something else and that is this, if I'm not mistaken, as I was with one of my motions, it seems to me that in order for the Applicant to get this relief by way of variance and also to get the special exception with the reduction in parking, they have to explain to this Board how they get around Section 2118.8, because in a prior application on the same development, they had a reduction in parking space. And in Section 2118.8, they're only entitled to one reduction in parking space under Section 2108. And now they're asking for a second one. And that seems to be very much tied to the workability of this parking assistant arrangement. And if I'm mistaken --

CHAIRPERSON GRIFFIS: Before you go too far on that, I'm not clear on what you've just said.

MR. RUFFIN: In other words, if we look at Section 2118.8, it says in the case of parking reductions allowed under Sections 2102 through 2105,

2107, 2108 and 2117.9C, no more than one parking reduction shall be permitted.

CHAIRPERSON GRIFFIS: And you take that as one parking space?

MR. RUFFIN: No, no, no, not parking space. In other words, if --

CHAIRPERSON GRIFFIS: You can't add up all your parking reduction requests. You just take one.

MR. RUFFIN: Yes. And their first application before the intervention by Kelsey Temple and Temple Church Building Economic Development Corporation, they actually obtained the reduction under Section 2108 to I believe about 1315 parking spaces.

CHAIRPERSON GRIFFIS: Mr. Glasgow?

MR. GLASGOW: Sure. That's a very simple answer. This is a new case, new application. In fact, what he's arguing about at this point in time is very interesting because our original case which we said we're ready to stand on the record on, if

that's where the Board wants to go, is for a parking variance for 1,000 spaces.

This is to address an issue to provide more parking, not less parking. So I think that the argument here with respect to 2118.8 is inapposite.

CHAIRPERSON GRIFFIS: Okay. Mr. Ruffin?

MR. RUFFIN: I don't think it's inapposite. When I look at the application that the Applicant pursued before this Board in Application 16858 --

CHAIRPERSON GRIFFIS: That's where I thought you were going.

MR. RUFFIN: Right, right.

CHAIRPERSON GRIFFIS: Mr. Glasgow, he's going to the fact that you've already requested and have been granted a special exception of 25 percent reduction by the adjacency of the Metro site. How can you under 2118.8 bring another request of variance for parking?

MR. GLASGOW: It's a brand new case. It's a new project.

CHAIRPERSON GRIFFIS: You don't see anything in 2118.8 that goes to you cannot have multiple cases, but in a case you can have multiple requests.

MR. GLASGOW: Right, and we have not asked for multiple --

CHAIRPERSON GRIFFIS: Mr. Ruffin?

MR. RUFFIN: That undermines the whole meaning of the rule. First of all, it doesn't say it applies per application. It says there can be no reduction except one and to the degree that would get an application, file an application, get a reduction and then later say well, we want another reduction and then they depart and then they come back again, they actually turned this rule upside down. And it's the rule that is consistent on the property and on the Applicant, not its failure to notice how much of a reduction in parking spaces they need to ask of the Board in the first instance.

If they should have asked for a variance the first time, they should have asked.

CHAIRPERSON GRIFFIS: Is Mr. Glasgow prohibited from bringing multiple cases in parking relief?

MR. GLASGOW: I know. He's saying that if you have a project where there is relief granted by the Board and you don't go forward with that project, that project is dead. Let's say that you completely change the pro forma of the project and we have changed our pro forma.

CHAIRPERSON GRIFFIS: Well, let's not talk hypothetically. Is that the case here?

MR. GLASGOW: No, that's what's happened here.

CHAIRPERSON GRIFFIS: Okay.

MR. GLASGOW: That's what's happened here. We had a project that was 570,000 square feet, something along those lines. Now the project is about 500,000 square feet.

CHAIRPERSON GRIFFIS: But aren't you counting on the 25 percent reduction of the special exception for this application?

MR. GLASGOW: No. We asked for a parking variance.

CHAIRPERSON GRIFFIS: So all the way down a 1,000. So actually, the special exception is null and void at this point, based on if this proceeds through or you go back to the other plants.

MR. GLASGOW: Right, and I think that you had asked that early on in the original proceeding. You asked isn't that case essentially a dead case. Isn't that over? And the answer is yes.

CHAIRPERSON GRIFFIS: Good. Nothing wrong with reiterating points.

Mr. Ruffin?

MR. RUFFIN: I disagree with the analysis made by Mr. Glasgow. And I add on to this analysis. When I made the motion saying that this is a wholly new application by way of amendment, I think I'm having that borne out by the arguments made by Mr. Glasgow. He's actually saying all he needs is the variance now to 1,000 parking space.

CHAIRPERSON GRIFFIS: Right.

MR. RUFFIN: Yet, he's also asking for a reduction down to 1250. Two different forms of relief for two different purposes. And the second exception, the second form of relief which is an exception is tied to a second variance.

Now forgive me for being a little confused. But what I'm trying to say is that when the application is this variegated, it arises two different applications. It seeks in essence has been five different forms of relief at the least. There has been --

CHAIRPERSON GRIFFIS: Okay, but I think the end of the regulations, especially in 2118.8, which you've addressed, and my reading of that and understanding of this, is that it would be -- it may be in contradiction of 2118.8 if we granted all of the relief that's before us. But it's not in contradiction of 2118.8 in my reading of it that would have the variance brought forth or alternatives to the application as long as they weren't all granted. Does that make sense?

MR. RUFFIN: No, it doesn't. Because --

CHAIRPERSON GRIFFIS: Shoot.

MR. RUFFIN: It's not to say that you weren't trying heroically to be clear, Chairperson Griffis.

CHAIRPERSON GRIFFIS: I appreciate that.

MR. RUFFIN: What I'm trying to say is what is the difference between asking for the reduction under 16858, asking for it now, or in the alternative saying just under the analysis that Mr. Glasgow has provided to you that what we'll do is we'll ask for two different reduction numbers.

CHAIRPERSON GRIFFIS: See, now you're going back. You're going back to something I thought we already resolved. 16858 is a case, BZA case that you're citing, is that correct?

MR. RUFFIN: Right.

CHAIRPERSON GRIFFIS: That was for the special exception for the adjacency to the Metro site. Is that correct?

MR. RUFFIN: Yes sir.

CHAIRPERSON GRIFFIS: And that reduced the parking requirement by 25 percent.

MR. RUFFIN: Yes sir.

CHAIRPERSON GRIFFIS: It's been stated now today that that, in fact, that application is moot before us because this project is substantially different and therefore needs differing relief.

Mr. Glasgow, is that correct?

MR. GLASGOW: Yes sir. And also, I don't know how he reads the meaning of the word "reduction". Reduction means to add on, pile on how you compute your parking and say I get a reduction for this, a reduction for that. That is not what is happening here at all.

CHAIRPERSON GRIFFIS: Is your reading of 2118.8 in your legal opinion of the regulations, does it preclude somewhat of where you were going, as I understand it, that you wouldn't pick different parts of the total regulations in order to try and accumulate a parking reduction which you need to get to, so it wouldn't be pieces of reduction.

MR. GLASGOW: That's right. They're telling you you can't pile on and I'll take a reduction from here, I'll take a reduction from there. Because if you go through and start reading all those sections there are different reductions for different things.

CHAIRPERSON GRIFFIS: Right.

MR. GLASGOW: And essentially the regulations are telling you you can go ahead and pick one, one of those reductions to get your parking requirement. And in fact, our alternative request, should the Board wish to go that way is not a reduction. It permits an additional 244 parking spaces to be provided on the site. So from that standpoint, the argument just is wrong. It goes in the wrong direction because that's not what's happening.

We've asked for a parking -- we've asked from day one for a variance for a parking requirement to be reduced from 1599 spaces to 1000. We have said to the Board if it so desires, the Applicant

essentially is an accommodation to provide more parking on the site, we'll implement a stacked, attended, assisted parking arrangement to provide an additional 244 spaces. It's not a reduction.

CHAIRPERSON GRIFFIS: Indeed. I'm sorry to interrupt. Is the Board clear on this? Are there any questions?

MEMBER MILLER: I'm just not clear on one thing. It's a basic question and you can clear it up for me. The 1699 number is that without the 25 percent reduction for Metro?

MR. GLASGOW: That's correct. Yes. We are not allowed to take the 25 percent reduction from Metro because we're within 800 feet of an R-4 zone or one of those zones that stops you from taking that.

MR. COCHRAN: Mr. Chair, that's important to note because you've been referring regularly to this as a 25 percent exception for being near Metro when it was 2108, not the Metro proximity.

CHAIRPERSON GRIFFIS: Good clarification. We'll correct the record for that. I am absolutely

mistaken.

It's the adjacency to a residential zone.

MR. GLASGOW: That's right. That knocked us out from using that reduction.

CHAIRPERSON GRIFFIS: Okay.

MEMBER MILLER: So there's no reduction that's been calculated in yet, is that correct?

MR. GLASGOW: That's correct.

CHAIRPERSON GRIFFIS: For this application.

MEMBER MILLER: For this application.

MR. GLASGOW: For this application.

CHAIRPERSON GRIFFIS: Right, based on the square footage which is square footage has changed from the other application.

MR. GLASGOW: That's right.

CHAIRPERSON GRIFFIS: And the calculation of this parking requirement is 1599 or so has been stated.

Okay. Any other clarifications from the Board? Good. We've got two minutes left on this.

Mr. Ruffin, I'm going to let you speak and I'm going to let me Glasgow address and you get the last word. It's your motion.

MR. RUFFIN: I think three very important points come clear. Mr. Glasgow speaks as though the variance down to 1,000 has been granted. And it has not been. In other words, that all they have to do is provide 1,000 parking spaces. His arguments presuppose that the variance has been granted. I'm not saying you granted it or anything. Part of his argument was that we're adding on 254 parking spaces. You don't add it on when you're still at the obligation of providing nearly 2,000 parking spaces. That's where he is and that's where his client is.

Second thing, second thing. The statute, the section says no more than one reduction shall be permitted under any of these sections. It didn't say well, we're -- it didn't say what Mr. Glasgow suggested, that is, don't try to employ 2102 and 2108 to get something that you couldn't get under one, but if you used them together, you might get what you

want indirectly. It didn't say that. It said even if you used the same section twice that's illegitimate.

Number three, there is nothing in the order from the Board on Application 16858 saying that the reduction down to the 1350 or so parking spaces has lapsed. In other words, that order is still binding on the development project. If they decide that they do not want to bring in a movie theater. If they decide that they do not have the funding to build the underground parking space as they originally conceived of it in the late 1990s, that's them. They still have before them your order and that is what is part of the project. They speak as though they can discard this and your work any time they want. That's rather capricious, I think.

So what I'm saying is that however in earnest Mr. Glasgow may be pressing for his client's interest, he cannot get around Section 2118.8 which doesn't offer an exception and which doesn't offer the loose language that Mr. Glasgow offers in his

interpretation.

As a matter of fact, this rule is an interpretation of the broader regulatory mandate by which this Board governs zoning in the city. So he's loosely interpreting the language that interprets the basic rule. And I think that's inappropriate.

CHAIRPERSON GRIFFIS: Very well said and excellent points. I do conflict with one of your assertions, however, and I'll just address that now. The fact that our orders are requirements, the requirement and jurisdiction of any orders that we have is one that would that, if built, if permits were pulled would have to be built in accordance with those orders, but it is not, in fact, a direct obligation that the Applicant go out and build it. It does seem to be a waste of time if you came through and then you don't build it, but there's nothing that, in terms of enforcement, that we would go out and make sure that everyone builds everything that ever comes through here.

So holding it to that standard, I think,

is a little difficult. In fact, well, our order may have lapsed already, based on the 1600 number, the time may have already expired, so that there's actually a time involvement if no action happens, that that will, on its own expire and have, in fact, no longer have any enforceability bearing or relief.

But let's move ahead then, Mr. Glasgow, addressing those three points.

MR. GLASGOW: Sure, just very briefly. One, we haven't asked for a parking reduction allowed under any of those sections. I mean that just puts a full stop to the argument. You go through Sections 2102 through 2105, 2107, 2108 and 21.9C, we haven't asked for any of those reductions. We've come in for a parking variance to reduce the parking down to a thousand spaces.

Secondly, the order of the Board, the stamped copy I have for 16858-A is dated May 16, 2002. I believe on the provisions of the order of the Board it says that it is -- you have two years to apply for a building permit, as I recall.

CHAIRPERSON GRIFFIS: So it's expired.

MR. GLASGOW: Yes.

CHAIRPERSON GRIFFIS: It expired in May 2004.

MR. GLASGOW: Right.

CHAIRPERSON GRIFFIS: So in fact, even if you wanted that relief, you'd have to bring that exact application back.

MR. GLASGOW: I'd have to bring that case again before the Board. That is correct.

CHAIRPERSON GRIFFIS: All right.

MR. GLASGOW: So I think that those two points are dispositive of the motion.

CHAIRPERSON GRIFFIS: Indeed, last brief word, Mr. Ruffin?

MR. RUFFIN: I think that while the order may well have lapsed, and hence my characterization of its application not having lapsed is incorrect. I think that to the degree the Applicant has been dilatory in pursuing this and also to the degree that on the posed application, it obtained this relief. I

think that it still applies. It's still talking about the same development. You're talking about the same Applicant. As a matter of fact, I wouldn't be surprised if you're talking about the same representative.

The circumstances are largely the same except that the Applicant chose on its own to make the project smaller and for that reason, on its own, it asks for fewer parking spaces and so it changed its parking space request. And it's actually using to Section 2108 not only this time, but it used it in Application 16858. And so I disagree with Mr. Glasgow that it's never been used before.

CHAIRPERSON GRIFFIS: Okay, Board questions?

Mr. Glasgow, you made the statement that it's dispositive 2118.8 is not applicable because you're not applying for any relief under 05070817 and 21 --

MR. GLASGOW: We've asked for a variance. We haven't asked for multiple reductions in our

required parking.

CHAIRPERSON GRIFFIS: And that's the differentiation of the text in that section is that this is talking about reduction, taking reductions, not whether you're requesting relief from Section --

MR. GLASGOW: That's right. You can always come into the Board and make any kind of request for either variances or special exceptions as many as you want.

This is a rule of interpretation for the Zoning Administrator when you come in and say I only need to provide 1,000 parking spaces and I've taken reductions from five different sections of the regulations to get there.

CHAIRPERSON GRIFFIS: Good. Anything else?

Is everyone following that? Good. I think it's best in terms of our procedure at this point to take up the motion that's before us, Board Members.

We do have a motion from the party in

opposition and it reads as opposition to amend the RLA Revitalization Corporation application. We have obviously addressed that in written form and also now in oral testimony before the Board in terms of clarification in the citing and I think it is appropriate, based on what we've heard today and also in written form indicate that -- or rather I would move denial of the motion to amend and ask for a second.

VICE CHAIR ETHERLY: Second, Mr. Chair.

CHAIRPERSON GRIFFIS: Thank you, Mr. Etherly. I don't see anything that has been -- that has arisen in terms of the written documentation and the oral testimony today, although persuasive in many different directions, I don't think ever hit home to the definitive question of whether an Applicant was, in fact, precluded or prohibited under the regulations from amending an application.

We obviously have taken up amendments in process. It is not always the best of cases. There would be an issue if it was amended and additional

relief or different types of relief was required, that perhaps -- not perhaps, but then definitively posting a notice would be required. That, I don't think, is being decided in this motion as it may occur as we continue on and really establish directly what the relief is being sought, but at this point, I don't see anything that would move the Board to deny taking up the discussion of alternatives or amendments to the application.

Ms. Miller?

MEMBER MILLER: Sorry, Mr. Chairman, I'm a little bit confused at what documents we're addressing because there wasn't exactly a motion to amend. But there was an opposition to -- what they characterize as a motion to amend.

CHAIRPERSON GRIFFIS: And that's an excellent point. All I'm trying to do is procedurally, as we do have a motion in, it was staged as an opposition to the motion to amend. So I think the Board needs to take that up as this alternative as a motion to amend in order to dispense

with a motion in opposition that's before the Board. And I think it's just a cleaner way to do it, unless you have an alternative in which to process this.

MEMBER MILLER: Well, I just want to make sure I know what we are saying. Were you saying that the --

CHAIRPERSON GRIFFIS: What we're saying is there's nothing wrong with us having discussions right now in a form very quickly on the alternative that's been proposed by the Applicant.

MEMBER MILLER: I would agree with that.

CHAIRPERSON GRIFFIS: Phew. And I didn't even go to law school.

(Laughter.)

CHAIRPERSON GRIFFIS: Well, then there it is. We have a motion and it's been seconded.

MEMBER MILLER: But I'm not sure what the motion says. Are we saying that they can amend or they can't amend?

CHAIRPERSON GRIFFIS: It's all this opposition to --

MEMBER MILLER: Are we denying the opposition?

CHAIRPERSON GRIFFIS: Yes.

(Laughter.)

CHAIRPERSON GRIFFIS: Yes, we are denying the opposition.

MEMBER MILLER: Okay --

CHAIRPERSON GRIFFIS: To the alternative or the discussion of the alternative. It's properly before the Board to discuss and amend the application unless we've seen anything that is, in fact --

MEMBER MILLER: Okay. Well, I guess what I would -- I don't have this before me, but I guess -- what is it that the Applicant calls their submission that the opposition wants to disallow?

CHAIRPERSON GRIFFIS: We can phrase it another way, if you want. We can grant the motion to amend, but I don't -- we're not amending the application. We have a -- we've got 30 seconds on this. We can take this off the table. We have really, in terms of our direct procedure, we have no

motion before us. But the fact that the representative of the party in opposition wrote his submission as a motion, I figured it would be best to dispense with it as a motion.

We have a letter from the Applicant that was indicating here's another alternative relief to look at for the Board's edification. They say the letter and the calculations are based on what they perceived as a direction from the Board.

Is that clear?

MEMBER MILLER: Yes, well now I have the letter before me from the Applicant which makes it much clearer. They state that they are amending their application request that the Board consider --

CHAIRPERSON GRIFFIS: I know what they state.

MEMBER MILLER: So I think we should decide whether we want to grant their amendment to request that the Board consider ultimately.

CHAIRPERSON GRIFFIS: Excellent. Let's go.

MEMBER MILLER: That's what I was --

CHAIRPERSON GRIFFIS: What? That we're going to decide whether they can amend? The alternative?

We either have a motion to deny the motion in opposition or let's just go to the discussion which I want to get to now anyway. Is this alternative what the Board wants to hear and is this the way the Applicant should actually proceed?

That's the substance of it. I mean let's dispense with all this legalese stuff. It's always good to take a breath before you say that one word. But let's move on then. I have no difficulty. We're all here for the substance of this and the facts of this case and I think that's where we should go to it then.

Mr. Glasgow, you've said you are proposing an alternative for special exception to the roof structure which wouldn't change, of course. And then we're talking about under 2108 to reduce the amount of required parking and a variance from 2115.9

to permit the attended, assisted parking in a C-3-8 District. That's an alternative to a straight reduction under 2101.1. Is that correct?

MR. GLASGOW: Yes sir and we're saying there are two ways that you can deal with the attended, assisted parking. Either make it a condition of approving the variance and saying we're approving the variance that you asked for originally to a 1,000 spaces, but as a condition to that, you need to have the ability to provide attended, assisted parking to 1244 spaces.

CHAIRPERSON GRIFFIS: Right. We can get it either way we want is what you're saying?

MR. GLASGOW: Yes sir.

CHAIRPERSON GRIFFIS: You can stay with a straight variance reduction and we condition -- and then -- or we look at your alternative and actually implement it as the relief sought.

Here's my opinion on this. There's an awful lot of information on this already. I mean our files are reaching close to the 8-inch stack. I

think it is actually more clear to go to the heart of the matter and keep the application as originally advertised as a reduction of 2101.1 to a 1,000 spaces and I think all the issues are before us and they're very clear on what we're assessing and what we have to look at and decide on in terms of the variance case. If it does arise to the level that we see, as hopefully it will be addressed today, the outside demand on this public parking garage moves this to the Board's understanding that it might be overly used and we can start to condition anything that might mitigate that, if it's needed.

Board Members, comments on that? Questions to the straight variance under 2101.1?

MEMBER MANN: I think that's fine provided that we can -- if that's the course of action we choose to take and we ultimately have to condition it, that we're able to craft to conditions that achieve the objectives.

CHAIRPERSON GRIFFIS: Right. I think that's an excellent point.

Mr. Glasgow, it's your legal understanding that if it was granted a variance that attendant or valet parking would be prohibited on this parking structure?

MR. GLASGOW: No, not if the Board conditioned its order.

CHAIRPERSON GRIFFIS: But it would take a condition from the Board to allow it?

MR. GLASGOW: Yes sir.

CHAIRPERSON GRIFFIS: And did?

MR. GLASGOW: Yes.

CHAIRPERSON GRIFFIS: Any other questions, comments?

Mr. Ruffin?

MR. RUFFIN: It seems to me that there's a problem with that. While the Board probably could condition the grant of the first variance --

CHAIRPERSON GRIFFIS: Lawyers tell us we can do anything we want.

MR. RUFFIN: I'm with you, I'm with you. Unless the Court of Appeals says no, I'm really with

you. But I think what we have to be mindful of is that the condition in this case is one that can only be obtained by variance. So the same difficult measure of proof to obtain the first variance would have to be met to obtain the condition. In other words, it's not that the Board would say you know, we wouldn't grant that first variance unless you accept this condition. And it's oh, we'll accept the condition and then we're out of here.

So in other words, that could actually have a doubly complicated hearing.

CHAIRPERSON GRIFFIS: That's an excellent point and let me just address that briefly. The Board would condition an order in order to mitigate or to ensure that an adverse impact might not happen. So an adverse impact would have to be raised during the application hearing. The Board would look at it and would say well, clearly this may be a problem, but this condition will mitigate the potential of that adverse impact. So I think if we start talking about allowing or requiring any sort of valet or

stacked parking, the evidence has to be very clear and direct for us that that is an adverse impact that we're trying to mitigate.

And secondly, if we do craft this and Mr. Mann was really going directly to that, the condition is going to be read so it's clearly understood, measurable, enforceable and does mitigate that adverse impact.

Anything else?

MEMBER MILLER: I just want to add my two cents. I think that the first route is less complicated and covers all the bases and I think that we might as well stick with that. It avoids some of the uncertainties that arise when we look at that other provision that's not applicable to this zone.

And as far as a motion goes, I think that we have actually, we have granted the Applicant's request to consider the alternative parking relief. And we can leave it at that and we've dealt with it.

CHAIRPERSON GRIFFIS: Let's leave it at that.

Mr. Glasgow, last words? Anything else?

MR. GLASGOW: No sir.

CHAIRPERSON GRIFFIS: Good, let's move ahead.

Mr. Ruffin, as I understand, unless -- Mr. Glasgow, let's get this process --

MR. GLASGOW: We would like to have the ANC Commissioner to be able to testify, if that's all right at about the 4 o'clock time that Mr. Cochran had talked about.

CHAIRPERSON GRIFFIS: It's 4:05.

MR. GLASGOW: Yes sir.

CHAIRPERSON GRIFFIS: Let's look at the entire afternoon and what we have left then.

Mr. Glasgow, are you presenting any new testimony today?

MR. GLASGOW: We will certainly be submitting rebuttal testimony.

CHAIRPERSON GRIFFIS: Indeed, and we'll give you that opportunity, obviously, as you well know.

Mr. Ruffin, are you prepared to move forward with your case?

MR. RUFFIN: Yes sir.

CHAIRPERSON GRIFFIS: Good. Do you have any opposition or concern about taking out of order the ANC?

MR. RUFFIN: No, I think it would be a good idea to hear from the ANC.

CHAIRPERSON GRIFFIS: Good.

MR. RUFFIN: Because afterwards, I just want to put on the record something with regard to an earlier motion.

CHAIRPERSON GRIFFIS: Put it on the record then.

MR. RUFFIN: Afterwards, yes.

CHAIRPERSON GRIFFIS: So we're going to hear from the ANC. From the ANC, we're going to go to the Agency reports. We're obviously going to hear from Office of Planning and Department of Transportation. And then we will go to the rest of the order.

So if the ANC is ready to go, let's move ahead.

MR. JAMES: Good evening, Chair, Board Members. My name is Mack James. I'm the Chair of ANC-1A. I'm happy to be here today before you all to testify or to speak on this issue of this case 17232.

If I may, I'd like to read the resolution from the ANC first.

CHAIRPERSON GRIFFIS: Good.

MR. JAMES: Whereas, DCUSA presented its case to the ANC-1A community on attended, assisted parking, what it means and how it would benefit the public parking and whereas, the attended, assisted parking will increase the availability number of parking spaces from 1,000 on self-park basis to 1244 and that attended would be available in garage as needed to serve the demand for parking spaces for retail commercial project to be developed by DCUSA and whereas, questions were asked the developer by the Commissioners, the community and the response met with approval.

And whereas, the Commissioners agree that having additional parking spaces available through attendant is reasonable and satisfactory way to ensure that sufficient parking spaces were available in the garage to serve peak demand for the business located on the site and while still being available -- I'm sorry, able to accommodate parking demand for outside persons and whereas, the Commissioners are amenable to the Board granting either the variance with conditions or alternative relief request of a special exception for the reduction in parking with the variance to allow attended, assisted parking. Also whereas, comments from the community and the Commissioners expressed that the development be put on a fast track. So let it be resolved on January 13, 2005 for which proper notice was given and at which a quorum was present, Advisory Neighborhood Commission 1A voted 10 in favor, 0 opposed, with no abstention in support in support of the motion to recommend that the Board of Zoning Adjustment grant the above-referenced application.

CHAIRPERSON GRIFFIS: Good. Thank you very much and I would note for the record it is Exhibit No. 60.

You've heard discussion today, Mr. James and we appreciate you being down here in person to present this. You've heard discussions today about whether the alternative or an amendment or change would be pursued by the Board in terms of its review. And it looks like the Board has decided or it has decided that we're going with the original application.

I'd note that your original motion for approval of that was Exhibit No. 33, dated 10 November 2004.

MR. JAMES: Right.

CHAIRPERSON GRIFFIS: Is there anything that has changed then in terms of this application that would nullify the approval or support of the past application?

MR. JAMES: No. There's no change. As a member of this community, Mr. Chair, we would like to

see this project move forward. We understand the parking. We've met with and we've heard from both sides, and even the government. Unfortunately, we never heard from the church. I was really surprised to hear that there was opposition from the church because we have been holding meetings for quite a few years now on this project and this is the first time I heard that there was opposition from the church concerning any type of parking and there's always been notice given and we've always held ANC meetings.

CHAIRPERSON GRIFFIS: But isn't the church part of the community?

MR. JAMES: It's a part of our community, but they never came to the ANC with any type of opposition.

CHAIRPERSON GRIFFIS: I see.

MR. JAMES: Of any type. Again, the sentiment from the community has been to move the project forward in support of the project. As far as any variances or anything was submitted, always came to the ANC. The government always presented his

side, their side or any other opposition that we ever had and we've always dealt with that accordingly.

So I wanted to make sure we go on the record and say that right now as far as the ANC has always been in support and wish to move this project expeditiously, as quick as possible and get it going.

As you know, the community is fastly changing and I can just tell you, everyone is moving in and I know on my block it's changing and people are moving in, always asking me, when are the developments going to occur and when it's going to happen. They keep hearing about it, but nothing has happened yet. So it's been like over four or five years and we're still waiting.

CHAIRPERSON GRIFFIS: Indeed. Any other questions from the Board?

Mr. Glasgow, any cross?

MR. GLASGOW: No sir.

CHAIRPERSON GRIFFIS: Mr. Ruffin, any cross?

MR. RUFFIN: Just a couple of questions.

CHAIRPERSON GRIFFIS: Indeed.

MR. RUFFIN: Sir, when was the meeting of the Advisory Neighborhood Commission held?

MR. JAMES: Which one?

MR. RUFFIN: This one where this was a--

MR. JAMES: This one was held January 13th.

MR. RUFFIN: And where was it held?

MR. JAMES: Where was it held?

MR. RUFFIN: Yes sir.

MR. JAMES: It was held at the NTBA State. That's on 14th Street, 2800 14th Street, N.W.

MR. RUFFIN: Why didn't the Advisory Neighborhood Commission give the church notice of the meeting?

MR. JAMES: The notices are posted. Each Commissioner is responsible for each notice.

CHAIRPERSON GRIFFIS: How are the notices posted?

MR. JAMES: Excuse me?

CHAIRPERSON GRIFFIS: How are the notices

posted?

MR. JAMES: The notices are posted, each Commissioner in each SMD has two conspicuous places to post. We also post on the Columbia Heights website and there's also -- that's basically the postings.

MR. RUFFIN: Who is the Single Member District representative for 1400 block of Park Road where the church is located?

MR. JAMES: It used to be Elizabeth MacIntyre, as a matter of fact, who lives across the street from the church. She's always attended every meeting.

MR. RUFFIN: No, I'm saying who is the Single Member Representative right now?

MR. JAMES: Right now, it's Anne Theisen. She's here today.

MR. RUFFIN: Why didn't she give us notice?

MR. JAMES: I can't answer that question.

CHAIRPERSON GRIFFIS: You're saying that

ANC's process is not to give individual notice, is that what I understand? You post --

MR. JAMES: By the regulation, even D.C. regulation, we have two locations at each SMD to be posted. Also our meetings, our basic regular meetings are posted. I'm not sure why the church didn't know, but as far as I know the church always know when the ANC have met. We have met even at the church on occasion on this particular issue. We have had hearings.

MR. RUFFIN: Two or three more questions, very quickly.

When is your regular meeting, sir?

MR. JAMES: My regular meetings are the second Wednesday of each month.

MR. RUFFIN: And where would the notice for the meetings be posted in the Park Road area?

MR. JAMES: I'm not sure. Again, each Commissioner for each SMD has its location and they make the postings. That's the regs.

MR. RUFFIN: You say that you've had --

if you've had meetings at the church in the past, would it be -- would the Commission be interested in holding their meetings at the church or at least on a regular basis?

CHAIRPERSON GRIFFIS: We're getting a little off.

MR. RUFFIN: That's the last question. So that we can stay informed about future meetings of this nature?

CHAIRPERSON GRIFFIS: You can make all those arrangements.

MR. RUFFIN: Okay.

CHAIRPERSON GRIFFIS: Good any other cross on the testimony?

MR. RUFFIN: No, I don't have anything else.

CHAIRPERSON GRIFFIS: Ms. Miller?

MEMBER MILLER: Good afternoon, I'm just wondering about how many people would you say attended the meeting at which this vote was taken?

MR. JAMES: Oh, we had -- I would say, I

don't have the stats for me. We had at least 50 people at that meeting this past meeting that we had.

MEMBER MILLER: And how many meetings have you had on this issue?

CHAIRPERSON GRIFFIS: You mean how many times it's been on the ANC's agenda?

MEMBER MILLER: Yes.

MR. JAMES: I couldn't tell you.

MEMBER MILLER: Many?

MR. JAMES: I would say many. We have had many meetings concerning this development, yes.

MEMBER MILLER: And you've gotten lots of comments from the community?

MR. JAMES: A lot of comments from the community and basically I think we are on record as continuing this project and try to get it through and get it started and this community has been suffering for many, many years. This project was long overdue. The Mayor even himself campaigned two years ago on this site that this site would be basically up by now.

MEMBER MILLER: Is there any division within the community on this issue?

MR. JAMES: Not that I know. There's no division, no. All the battles have been fought in the trenches that need to be fought and as far as we know right now and the Council Members, every one is on board in moving the project forward.

Again, I say --

MEMBER MILLER: Except for the church.

MR. JAMES: This is the first I'm hearing that the church was in opposition in any way of any kind. Before, when the project first came and it was in the debate stages and what not, the church was always wanting parking for the church services and that was, as far as I know, always amenable and discussed it would happen and what have you. Other than that, that was it.

It was, like I say, it's been now three years later and this is the first I'm hearing any opposition.

MEMBER MILLER: Okay, so the ANC doesn't

have concern that there won't be enough parking with this project?

MR. JAMES: No.

MEMBER MILLER: Okay, thank you.

MR. JAMES: All the information that was given to us and the questions, no, we didn't find any.

MR. RUFFIN: Chairperson, let me just ask one more question, just one last question.

CHAIRPERSON GRIFFIS: Okay.

MR. RUFFIN: Sir, have you received information that the church is going to have parking at this development?

MR. JAMES: Have I received any information? No, there was nothing definitive about --

MR. RUFFIN: I'm talking about right now. I'm talking about definitive.

MR. JAMES: No. There's nothing been definitive. Nothing is definitive as far as we know. That's why we're constantly trying to get something

definitive because nothing is right now.

MR. RUFFIN: So you don't know the church doesn't have any parking as a result of this development project, won't have any as a result of this development project?

CHAIRPERSON GRIFFIS: Maybe the question is is that an issue that came up for the ANC?

MR. JAMES: No, that's never an issue that came up for the ANC. Like I said, the church never came to the ANC. This issue always came up at the hearings.

CHAIRPERSON GRIFFIS: What hearings?

MR. JAMES: At the hearings at the -- during the development.

CHAIRPERSON GRIFFIS: In front of the RLA?

MR. JAMES: In front of the RLA.

CHAIRPERSON GRIFFIS: Okay.

MR. JAMES: Those issues came up then. But never before the ANC as far as parking issues.

CHAIRPERSON GRIFFIS: I see. Good.

Thank you very much. We appreciate it. And thanks. I'm sorry we delayed you past 4 o'clock. Hopefully, you're not too late to your next engagement.

If there's nothing else regarding the ANC, let's get back into our order then and go to the --

MR. COCHRAN: Excuse me, Mr. Chair. Before Mr. James leaves, I just realized he may not have sworn an oath.

CHAIRPERSON GRIFFIS: Well, we're not going through all that again.

MR. COCHRAN: I don't know whether you have to. Can you make it retroactive?

CHAIRPERSON GRIFFIS: Mr. James, you told the truth, didn't you? Were you sworn in before you came in and gave testimony?

MR. JAMES: No.

CHAIRPERSON GRIFFIS: He wasn't sworn in. Next time, of course, we'll make note of that and I'm sorry I didn't realize that, but you've got to go. And the other point is is the fact of the

testimony, the official ANC which will be given great weight is the resolution and that's what's before us now. Any additional piece that you put in, of course, needs to be substantiated by the ANC. I didn't see anything very substantive in terms of additional information outside of that resolution. So I think we're okay on that, but it's an excellent point, Mr. Cochran. Let's move ahead. We're really going by all the legal procedures in this one.

Let's do that then. I'm sorry, I did swear people in a the beginning of the afternoon case. So in order to make sure if anyone is going to testify this afternoon that has not been sworn, if you will please stand at this point.

Has anyone not been sworn in yet this afternoon? Anyone who just hasn't been sworn in yet this afternoon?

Okay, and you're going to give your attention to Ms. Bailey on my very far right and she is going to administer the oath.

MS. BAILEY: Please raise your right

hand. Do you solemnly swear or affirm that the testimony that you will be giving this afternoon will be the truth, the whole truth and nothing but the truth?

(The witnesses were sworn.)

CHAIRPERSON GRIFFIS: Good. Thank you very much.

Mr. Cochran, thank you for bringing that to the Board's attention. Let's move ahead then to your presentation.

MR. COCHRAN: Mr. Chairman, the record will reflect that Mr. James took the oath.

CHAIRPERSON GRIFFIS: Indeed.

MR. RUFFIN: Mr. Chairman?

CHAIRPERSON GRIFFIS: Yes.

MR. RUFFIN: Very quickly, the record should reflect that with the motion that asks for your recusal because of a letter from Mr. Noble of the District Department of Transportation, there wasn't a first page, but the first page actually does address a letter to Mr. Griffis and Mr. Greenwald and

it talks about a conversation between you. Actually, Exhibit 40. And that's where I obtained it from. I obtained this from the file. So --

CHAIRPERSON GRIFFIS: Do we have that now, the full letter in?

MR. RUFFIN: And my objection, technically speaking would be from what I understood, it was decided a week ago while I was absent and you participated in the discussion, but once there's a question about whether you have been involved in an ex parte proceeding, you would have a conflict in the decision about whether you should recuse yourself. So you should have actually recused yourself from those decisions.

CHAIRPERSON GRIFFIS: An interesting point, however, as I was the person that was directly being accused of having ex parte, I clearly have to discuss the motion and address it. I would tend to agree with you that I probably should not have voted on the motion itself to dismiss and I don't know --

MR. GLASGOW: Mr. Chairman, I would

suggest then that the Board take up the motion again and act on it with the Chair absent.

CHAIRPERSON GRIFFIS: Sounds good to me.

ACTING CHAIRPERSON MILLER: Alternatively, I would think we could just remove you from the vote. I think it was a unanimous vote.

So I don't see any reason to discuss it again.

MR. GLASGOW: Ms. Miller, I'm very concerned about how we're getting set up for an appeal here by the opposition. I think it's just safer.

ACTING CHAIRPERSON MILLER: Out of an abundance of caution, why don't we take a look at it again.

(Pause.)

ACTING CHAIRPERSON MILLER: Okay, we've been asked to take up again a motion to dismiss RLA application because of ex parte communication in violation of law which is Exhibit 50. And then we have Applicant's response to motion to dismiss RLA

application because of ex parte communications in violation of law.

We're asked to pick this up again because we discussed this last week and Chairman Griffis participated in the discussion and voted on it. And he's the subject of the ex parte communication allegation.

The basis for the motion is a letter dated December 20, 2004 that's addressed to Mr. Geoff Griffis, Chairman and to Drew Greenwald Grid Properties from Douglas Noble. Basically, the allegation is that Chairman Griffis was privy to discussions, conversations that are referenced in this letter. That's my understanding of it. And last week, Chairman Griffis put on the record that he did not take part in any of these conversations and that his name is on this letter just -- sometimes people address letters to him personally when they're really going to the Office of Zoning or the BZA and he has absolutely no knowledge of any of the conversations.

I understand that there's a representative from DDOT here. I don't know that whether -- are you familiar with this letter and perhaps you can address it. I think that would be appropriate at this time since we don't have Mr. Griffis here.

MR. NOBLE: I believe it would be as well. Actually, my name is Douglas Noble. I'm the individual who wrote the letter. The letter was written in the manner that you described to Mr. Greenwald and being forwarded to Mr. Griffis. I have never met Mr. Griffis before. And in fact, he was not involved in any of the conversations. The references in effect of our conversations were in reference to conversations between DDOT, Office of Planning staff and representatives of DC Grid and Drew Properties and I testify under oath that Mr. Griffis was not involved in any manner with those conversations.

ACTING CHAIRPERSON MILLER: Thank you. Mr. Cochran, you want to add to that?

MR. COCHRAN: For the record, my name is Steven Cochran, Office of Planning. I can probably help to explain, clear up some of the confusion.

When I saw a draft of this letter from Mr. Noble, I told him that it needed to be addressed to the BZA, that that substance needed to go to the BZA, not to Mr. Greenwald. It looks like what Mr. Noble did was simply put Mr. Griffis' name on top of that without changing the content of the letter so that -- the letterhead that I had seen clearly referred to conversations that he had had with Mr. Greenwald and for me. Perhaps I should have been more explicit and say put a cover letter on top of your letter to Drew Greenwald so that it goes to the BZA, but that's what happened.

ACTING CHAIRPERSON MILLER: Thank you. Do my Board Members have any comments, questions?

At this point then I would move to deny the motion to dismiss RLA application because of ex parte communications in violation of law and ask for a second.

VICE CHAIR ETHERLY: Madame Chair, if I could perhaps, once again, I'm going to use your word overabundance of caution. Perhaps just to make it clean because we did have a motion and that stood on the record and in our prior hearing I would perhaps want to suggest that we move to reconsider that motion which would be appropriate by any one of us as we were voting in the majority on that original motion, essentially reopen it and then we undertake it without Mr. Griffis' participation. And that way it would be cleanest.

ACTING CHAIRPERSON MILLER: Okay, I'll table my motion.

VICE CHAIR ETHERLY: I would move to reconsider the motion to deny the motion of the party in opposition to dismiss the RLA application because of ex parte communications in violation of law and I invite a second.

MEMBER MANN: Second.

VICE CHAIR ETHERLY: Thank you. I think it's been adequately discussed, so I don't think

there's any need to further discuss it why we are reconsidering the motion.

ACTING CHAIRPERSON MILLER: Okay.

VICE CHAIR ETHERLY: So we would need a vote at this point.

ACTING CHAIRPERSON MILLER: To be absolutely clear, this motion is just to reconsider?

VICE CHAIR ETHERLY: Just to reconsider.

ACTING CHAIRPERSON MILLER: And then we'll have a subsequent motion?

VICE CHAIR ETHERLY: That is correct.

ACTING CHAIRPERSON MILLER: Okay. Then we have a motion, we have a second. All those in favor say aye.

(Ayes.)

ACTING CHAIRPERSON MILLER: All those opposed?

(No response.)

ACTING CHAIRPERSON MILLER: All those abstained?

(No response.)

MR. RUFFIN: Madame Chair?

ACTING CHAIRPERSON MILLER: Do you want to call the vote?

MS. BAILEY: The vote is recorded as 3:0:2. Mr. Etherly made the motion. Mr. Mann seconded. Ms. Miller is in agreement. Mr. Griffis is recused, not being present. And Mr. Hood is not present today.

ACTING CHAIRPERSON MILLER: Thank you.

VICE CHAIR ETHERLY: Thank you, Madame Chair.

ACTING CHAIRPERSON MILLER: At this point then I would like to move to deny the motion to dismiss RLA application because of ex parte communication in violation of law and I ask for a second.

VICE CHAIR ETHERLY: Second.

MEMBER MANN: Second.

VICE CHAIR ETHERLY: I'll defer to Mr. Mann.

MEMBER MANN: Seconded.

ACTING CHAIRPERSON MILLER: I would just like to say that the reason I am moving to deny is because I find no basis at all that there were an ex parte communications, no basis in fact, whatsoever, based on the representation of Mr. Noble and from DDOt and Mr. Cochran from Office of Planning.

Of course, we have the record from last week, but just even based on these representations, i find there's no basis.

MEMBER MANN: I agree. I think the letter came in just as so many do and it was addressed to Mr. Griffis purely because it was following some administrative practice of submissions in cases, not because there had been any communication with him personally.

ACTING CHAIRPERSON MILLER: Okay, then we're ready to vote. All those in favor say aye.

(Ayes.)

ACTING CHAIRPERSON MILLER: All those opposed?

(No response.)

ACTING CHAIRPERSON MILLER: All those abstaining?

(No response.)

ACTING CHAIRPERSON MILLER: Would you like to call the vote, Ms. Bailey?

MS. BAILEY: The vote is recorded as 3:0:2 to deny the motion of Kelsey Temple to dismiss the application based on ex parte communication. Ms. Miller made the motion; Mr. Mann, seconded. Mr. Etherly is in agreement. Mr. Griffis is recused, not participating in the vote. And Mr. Hood is not present today.

ACTING CHAIRPERSON MILLER: Thank you.

MR. RUFFIN: Madame Chair, before Mr. Griffis comes back, I didn't know all this history, so I had some additional information and now that I have the information -- I have this history. I have still some additional information. I just want to put it before the Board. I would expect that my next motion asking for recusal will be denied, but I had it in light without all this additional information,

but I still have some substantial information and I think it's best that I put on the record so that I protect my client's interest and move on.

There's a document that's dated March 17, 1998 that shows that Mr. Griffis was on the organizing committee and also the volunteer design working group.

ACTING CHAIRPERSON MILLER: Mr. Ruffin, I'm not sure where you're going. Are you going to file another motion?

MR. RUFFIN: I would like to do it orally, rather than hold up the Board and if I can just put it on the record and move on, I think that we can handle it very quickly.

ACTING CHAIRPERSON MILLER: Just a minute.

(Pause.)

ACTING CHAIRPERSON MILLER: Mr. Glasgow, I was wondering if you have an opinion on this?

MR. GLASGOW: I just saw the information just a minute ago. I think that if there is an issue

that's being raised with respect to some type of ex parte issue, then it ought -- he should go ahead and make his motion, introduce what it is that he has to introduce and the Board act on it.

VICE CHAIR ETHERLY: Madame Chair, are you entering any questions at this time?

ACTING CHAIRPERSON MILLER: You're saying that you don't have any objection to addressing that issue right now?

MR. GLASGOW: Well, the Board addressing the issue right now, right.

ACTING CHAIRPERSON MILLER: We'll hear it right now.

MR. GLASGOW: We'll hear it. I saw one piece of paper for a second.

ACTING CHAIRPERSON MILLER: How much time do you need to look at this piece of paper?

MR. GLASGOW: I've looked at it.

ACTING CHAIRPERSON MILLER: Okay.

MR. GLASGOW: And I've never seen it before. I think that Mr. Ruffin can explain what it

is that he's dealing with and the Board may be able to deal with it fairly promptly.

ACTING CHAIRPERSON MILLER: Do you have copies for the Board of this piece of paper that's being referred to?

MR. RUFFIN: No ma'am. I prefer to share my copy with the Board.

And I should have had copies. I apologize for that because actually I thought that the motion for recusal was more substantial. I had no idea about the background information. That is the mistake on the District Department of Transportation and Mr. Noble. I can understand that.

In light of my understanding of that first letter, I thought that this additional document which is almost seven years old showed that Mr. Griffis had been involved in the project before and should have recused himself.

I expect, having heard, what I've heard from Mr. Noble, there's probably some innocent explanation that would detach this.

ACTING CHAIRPERSON MILLER: Okay.

MR. RUFFIN: But I have the document. I came here thinking it was far more substantial and I think the best thing for my client's interest is to put it on the record, share it with the Board, just orally make the motion and move on.

ACTING CHAIRPERSON MILLER: Let me just say this.

MR. RUFFIN: Yes ma'am.

ACTING CHAIRPERSON MILLER: Number one, I think the Board should see whatever document you're talking about. Number two, if this involves a factual allegation regarding Mr. Griffis, then he should hear it because he would be the one who would be able to know whether it was true or not.

I'm going to take a few minutes break and just see if I can find him and in the meantime maybe you can ask Office of Zoning to make a copy of that piece of paper?

MR. RUFFIN: That would be fine. As a matter of fact, I can make a copy and it can be

shared with Mr. Griffis. Do you see what I'm saying? All I have is the document, so I never had Mr. Griffis' explanations and it basically just shows that he was involved in the early planning on the part of the community of this project. So it might be some substantial detachment, I don't know, but I didn't -- I had a different picture of the extent to which Mr. Griffis may or may not have been involved in the project.

VICE CHAIR ETHERLY: Madame Chair, here's where I'm at. I'm comfortable with the recess, because I think that would be helpful in terms of sorting out some issues here.

I am highly agitated to say the least, that if you had this bullet -- I won't use that word, if you had this arrow in your quiver why didn't you bring it earlier? It's somewhat distressing that this wasn't put in the basket with the original motion itself. Be that as it may, I can understand the introduction of additional information, perhaps changes the strategic thinking that you might have

had with regard to whether or not you want to go down this route.

Don't get me wrong, this Board and I'm sure I speak for my colleagues when I say we take any allegation regarding conflict of interest, ex parte, what have you, we take it very seriously and so I think this is going to be dealt with in a very serious way, but I would have preferred it to have been offered earlier.

That being said, Madame, Chair, I'm comfortable with a recess so that we can perhaps think about how we want to approach this. And if it is the decision that we deal with it orally, I would prefer, most certainly, a very clear, very focused, very to the point discussion of what your concern is.

I don't want us to get caught in a side show. I don't want us to get caught in a circus here and I'm not suggesting that that's where you're going to take us, Mr. Ruffin, but of course, we take it very seriously and I wish it would have come earlier.

I don't need you to respond to that. I'm

not saying that to in any way come down on you, but it's a very serious allegation. So I'm comfortable with a recess, Madame Chair.

ACTING CHAIRPERSON MILLER: Okay, so we're going to take a recess right now. Mr. Ruffin is going to give the document to Office of Zoning we'll take a look at it and share it with Mr. Griffis.

(Whereupon, the proceedings in the foregoing matter went off the record at 4:42 p.m. and went back on the record at 4:57 p.m.)

MEMBER MILLER: Mr. Ruffin, are you ready to proceed?

MR. RUFFIN: Yes, ma'am. During this brief recess on the part of the Board, one of the Advisory Neighborhood Commissioners, Ms. Anne Tyson, was speaking to me about the matter. She is a long-time resident of the community, and she was giving me information about the case, but she also recalled Mr. Griffis' long-time residence in the community, long enough anyway.

And also, that a considerable period ago, a long -- he served as a neutral conduit, more as a professional for the community to come together to bring -- bring together information to share with the government, and with any prospective developers about all of this. And she described Mr. Griffis as absolutely neutral in the whole process.

And as I was explaining to the Board in Mr. Griffis' absence, when I obtained the letter from the file I looked at what appeared to me to be ex parte communications. While I was sick, I -- during the time just -- while I was sick, I was unable to supplement the file with this new document.

And so only until now -- probably I should have filed it yesterday. I should have given everybody notice yesterday, but I was really tied up trying to prepare for the case.

Anyway, I had no idea that the ex parte communications could be explained as Mr. Noble did, and also as Mr. Cochran did. In light of their explanations, I suspected that there was probably

some innocent explanation for this document that's dated March 17, 1998.

In light of what Ms. Tyson told me, I am satisfied that there is an explanation, but I obtained it from her because I had nothing other than the document itself, and that's what my motion was about. In other words, it appeared that Mr. Griffis was involved in early efforts to promote the development, and she said he was not promoting it at all.

So in light of what she said, being involved in this, I -- and also, in light of her offering additional information, I find her trustworthy, and I don't really want to pursue this.

MEMBER MILLER: Okay. So my understanding is you're not going to be making a motion at this point, is that correct?

MR. RUFFIN: Not to recuse Mr. Griffis on -- on this document that I just shared with the Board. No, ma'am.

MEMBER MILLER: Okay. Then, at this

point, I'm going to give Mr. Griffis chairmanship of this proceeding back and let him address whatever he chooses to.

CHAIRPERSON GRIFFIS: Good. Thank you very much, Ms. Miller. It actually is informative. It's a little throwback to history. But what I do want to do is make absolutely clear that I -- I have no prejudice on either side in looking at this case, and I can fairly and judiciously decide this case.

But I want to be absolutely clear, so that we don't run into this again. I do live in the neighborhood. I don't live in the 200-foot radius of where I would have been notified of this application. I have not had any direct involvement with this applicant in terms of putting it together.

I live in the community. I have known of meetings. I have been at meetings that I've had to actually leave because certain things have been talked about. For the past four years it has been difficult. I have lived in the community for over 14 years. It has been difficult, as my role on this

Board, not being able to be a full participant as I would like to be in my own community affairs.

But, again, going directly to this aspect, I certainly have opinions, as we all do. But my opinions are in no way vested in some sort of bias that might preclude me from being judicial on this specific application, or, in fact, others.

The documents that you've given in, I'll address it very quickly. It actually was bringing together the community for a master plan for all of the RLA acreage up there. This was prior to the issuance of an RFP or a request for proposals from the RLA. It was what all of the developers responded to. My involvement did go to support a specific developer that responded to this proposal, but that was, again, years ago.

As this has been put together, I have had opinions, but certainly have had no official capacity or taken any sort of position on this, and, again, have kept far away from being in any sort of environment that it would, in fact, be.

You made an interesting point, and I -- I want to address that -- that I was neutral on the development of this area. And that is not correct. I was not neutral. In fact, I led this. I organized it. I was part of the volunteer design team. But I expressed my individual opinions on having development in this area. It did not go directly to what we have before us, and I hold those opinions.

In fact, I stated on the record in this case specifically that I think it would be great, and actually was dismayed that from the prior application that the square footage was reduced. But I don't think that goes to any substantive bias of whether I'm pushing for this or not for this.

And I think my -- my actions on previous -- on all cases would show that I can have personal opinions and they don't always parallel that which I have to decide with the applications that are in front of us. This morning brings rise to that specifically.

But I open myself to any sort of

questions that you might have -- Mr. Ruffin or Mr. Glasgow -- in this manner, or anybody else, frankly, that's here.

MR. RUFFIN: Both of my motions -- the first one that I don't waive that was ruled against me, ruled against my client, and the second one that we've withdrawn, were based on the documents, solely on the documents.

The only question I would have of you, Mr. Griffis, is whether you had any dealings either on this development project as we know it or with Greer Properties or any of its partners. Other than that, I know of no basis other than what I've brought to the Board's attention for thinking that you would be partial in your dealings.

In other words, I've never met you before, so I can only go on the documents.

CHAIRPERSON GRIFFIS: Indeed.

MR. RUFFIN: So unless you tell me that you've had dealings with --

CHAIRPERSON GRIFFIS: Right.

MR. RUFFIN: -- these developers or with this particular phase of the project, my --

CHAIRPERSON GRIFFIS: Well, I can tell you --

MR. RUFFIN: -- my concerns --

CHAIRPERSON GRIFFIS: -- from this application --

MR. RUFFIN: -- are withdrawn.

CHAIRPERSON GRIFFIS: -- the past application, from putting it together -- the RFP -- I did not have any conversations or coordinations with this application or this development team.

MR. RUFFIN: Okay.

CHAIRPERSON GRIFFIS: But I want to underscore -- and I'll take any other questions that we have -- I didn't go into depth of a lot of my involvement in this entire community, as I don't think we have time for all of us to talk about it. We're all District residents.

But I want to be absolutely clear. You could do an internet search on just my name, and

there are numerous amounts of public articles and documents that will come up. So I don't want to act as if I'm hiding that from anybody. My involvement was very substantial in the '90s, and since this has been reality of development it has not been.

MR. RUFFIN: When you were working before the requests for proposals were initiated, did you have any dealings with Greer or its current partners?

CHAIRPERSON GRIFFIS: Any dealings?

MR. RUFFIN: On this project.

CHAIRPERSON GRIFFIS: No.

MR. RUFFIN: Okay.

CHAIRPERSON GRIFFIS: In fact, for the record, I supported another developer in the request for proposals, of which your own documentation setting forth here -- well, I don't know if it is actually. Anyway, so no, I --

MR. RUFFIN: Okay.

CHAIRPERSON GRIFFIS: Mr. Glasgow?

MR. GLASGOW: I have no questions.

CHAIRPERSON GRIFFIS: Do you have any

difficulty with me continuing to serve on this case?

MR. GLASGOW: No, sir.

CHAIRPERSON GRIFFIS: It's okay if you don't. You can say it.

(Laughter.)

Did you want to address the Board?

MR. GLASGOW: Mr. Jasso was going to be the next governmental witness.

CHAIRPERSON GRIFFIS: Okay.

MR. RUFFIN: If Mr. Glasgow and the Board would not mind, maybe we could take a lay witness out of turn. I don't know, but I would ask.

CHAIRPERSON GRIFFIS: Are we finished with this issue? Are you finished with this issue?

MR. RUFFIN: I think we are finished.

CHAIRPERSON GRIFFIS: Okay.

MR. RUFFIN: You haven't indicated that you had --

CHAIRPERSON GRIFFIS: I'm going to ask --

MR. RUFFIN: -- any dealings with these people.

CHAIRPERSON GRIFFIS: And I appreciate that.

MR. RUFFIN: Yes, sir.

CHAIRPERSON GRIFFIS: But I'm going to ask for undue caution here.

MR. RUFFIN: Yes.

CHAIRPERSON GRIFFIS: Is anyone present in the room, or maybe watching us upstairs that can make it down here in 30 seconds, does anyone have any questions about this issue in terms of my involvement in this community? Any questions or any opposition for me continuing on this case? And if it -- okay.

Then, I'm ready to proceed, if the Board is. Ready to go? Let's do it.

Mr. Ruffin, you were bringing up an issue of out of order.

MR. RUFFIN: If the Board would be so kind, and also if Mr. Glasgow and his client would be so kind, perhaps we could get out of turn the testimony of Anne Tyson, an Advisory Neighborhood Commissioner, whose -- who would like to testify as a

resident, who is a member of the Commission but as a resident who opposed this, and also that there was some disagreement just about the process, and also what the actual community concerns are.

So that by -- by the time our case would be presented, she might be absent. I'd just like to get her on the record.

MR. GLASGOW: Mr. Chairman, we've had one of the -- you know, one of the city officials here from the Office of Deputy Mayor for Economic Development, has been waiting a period of time in order to testify in this case.

So I -- what I would like to do is have Mr. Jasso testify, and then, if the Board wants to go out of order with this other witness, fine. But I'm trying to understand, and I'll reserve any judgment with respect to how an ANC Commissioner, who was at the meeting I guess, and who would have voted for this project, now has an issue. That's --

CHAIRPERSON GRIFFIS: Okay.

MR. GLASGOW: -- going to be interesting,

but --

CHAIRPERSON GRIFFIS: Well, individuals can have issues, I'm sure. It's just how long do we have on your presentation?

MR. JASSO: I have relatively brief remarks, and then I'm available for questions.

CHAIRPERSON GRIFFIS: Excellent. Let's do that. Let's take that, and then we'll go through that. And, actually, I'm going to poll if there's any other persons present, and perhaps we just get through the person's testimony, and then we have government agencies. So let's move ahead.

MR. JASSO: Thank you. Members of the Board, Chairman, for the record, my name is Michael Jasso, Special Assistant in the Office of the Deputy Mayor for Planning and Economic Development. With respect to this project, I specifically oversee TIF financing for District-sponsored projects. I will try to keep my comments relatively short and remain available for questions.

Very quickly, by way of background, in

late 2001 the developer submitted to the District government an initial request for TIF financing in the amount of approximately $51 million. This subsidy was -- $51 million net into the project. This subsidy was intended largely to cover the capital cost of providing the off-street parking.

An analysis of the project was undertaken by the Chief Financial Officer of the District. This analysis reviewed the likely revenues that would be generated by the project, and the ability to finance the total project costs through conventional debt and equity.

Although the CFO could not certify the project at that time as eligible for the level of subsidy required, due to insufficient tax revenue generated to finance the proposed District contribution, i.e. the gross proceeds of the TIF, which was estimated by the CFO's office at about $74 million in order to net the $51 million necessary.

That analysis subsequently verified the

need for gap financing to cover the costs associated with the project, i.e. notwithstanding the fact that there weren't sufficient revenues, the analysis undertaken independently by the CFO did, in fact, verify the economics of the project were such to require TIF financing, gap financing, in order to provide the parking structure.

Therefore, in order to keep the project viable, District officials met with representatives of the developer to reconfigure the project to include a garage on two levels only containing 1,000 spaces. The use of up to $40 million of TIF for this project was certified by the CFO and approved by the District Council in July 2004.

With the District and NCRC continuing participation, two levels would be feasible, and the project can move forward. The square footage of the project before you today has, therefore, been reduced in size from the previously approved project to a size that can be adequately accommodated by the 1,000 car garage.

The requirement to provide an extra 600 parking spaces, which are not needed by the modified project, at a cost which renders the project infeasible by all our analysis, is certainly a practical difficulty to NCRC, DC USA, and the District of Columbia.

The DOT analysis and the reports submitted by the applicant's experts -- expert travel consultants support the proposition that sufficient parking is being provided for the proposed project. The Office of the Deputy Mayor is enthusiastically behind the development of this site as an urban retail center for the Columbia Heights neighborhood and the District of Columbia in general, because of the substantial positive impact that it will have in reducing sales tax revenue, presently lost to suburban jurisdictions and being paid by D.C. residents.

The Deputy Mayor's office only sees benefit through the approval of the proposed project and does not see any substantial detriment.

In view of the foregoing, the Deputy Mayor's office respectfully requests the Board of Zoning Adjustment approve the application, so that this important project, which is on the only site in Columbia Heights, arguably one of the only sites within the District of Columbia, where such a major retail center can be sized and configured can be located and moved forward.

I'm available for questions. And thank you.

CHAIRPERSON GRIFFIS: Good. Thank you very much. Are there any questions from the Board? Ms. Miller?

MEMBER MILLER: Explain what gap financing is.

MR. JASSO: Sure. On all the TIF analysis -- TIF financing is not a by-right subsidy. It's a need-based analysis. So typically what we require of developers is that they provide for us the economics of the project, the cost of the project, the sources, the likely revenue, based on some

reasonable return to the developer at a given site for what that project is.

We look at the economics -- in this case, the lease income, various other things -- that would be reasonably achieved, and based on that look at the need for public subsidy to make up that difference.

In the case here, the project was analyzed from the perspective of, given its location, given the history of retail, looking at comparative markets, etcetera, what could be the reasonable rents, etcetera, to be generated by the project. Based on that, and based on the fact that in order for parking to work, it's no surprise that most major shopping centers will need only look at -- at competition shopping centers such as Potomac Yard. Parking is either free or greatly reduced.

The economics of the garage would not be supported by the use of the garage for retail parking. Clearly, a garage could be built, which might be market-based for housing for instance as an example in the neighborhood, and produce

substantially different economics.

But for the function of providing for the retail, which was deemed to be necessary by all the retailers, in fact, the economics of the garage would not support the capital cost of building that garage, i.e., the need for the TIF financing into the project.

This was reviewed independently by the CFO. We also reviewed it independently with consultants, and all consultant analysis -- third party analysis that we've done, whether it's been through the CFO independently or through the Office of the Mayor, have come to the conclusion that there is, in fact, a reasonable, argued, demonstrated need for gap financing on the project.

The question has always been: would the tax revenues that would be generated by the project be sufficient to support what level of debt in this public financing? That, in turn, determined the capital cost that -- the capital that would be available for the parking, and driving the amount of

parking structure that could be built; hence, driving the amount of retail that could be reasonably accommodated by that parking.

MEMBER MILLER: And what happens if the cost exceeds the TIF?

MR. JASSO: On the garage. Well, a couple of things. As part of the TIF process, what we do is we enter into a developer agreement with respect -- with the developer as to the capital contribution by the District, how overruns will be handled, will those be a responsibility of the developer or the District or some combination?

Right now, it would be such that it would be the responsibility of the developer, but we're currently in those negotiations as to how those will be happening, what performance measures such as completion guarantees will be put on the project.

Obviously, in this particular case where you do not have a separate parking structure, but, in fact, this parking structure forms the basis of the foundation of the retail center, without the parking

structure you're not going to have a retail center, since they are one contiguous structure.

MEMBER MILLER: Okay. I'm going to be really direct. What if you didn't get the variance for the 1,000 spaces, and you had to go down to a third floor, which generates all these additional costs? What would happen?

MR. JASSO: I'll be real direct and short right now. Right now, all our analysis to date, and the analysis that the CFO of the city independently was willing to certify per statute and council apply says that we can't afford more than two levels.

MEMBER MILLER: So you're saying the District can't afford more than two levels.

MR. JASSO: The District cannot afford a contribution that would -- would be able to build anything more than the two structures, the two levels.

MEMBER MILLER: And what about the developer?

MR. JASSO: Well, the economics are such

that, in fact, the developer came to us for gap financing basically to -- and the analysis that was done was looked -- was based on the returns that the developer could reasonably expect or should expect, based on the capital cost of the structure and based on the leases that the developer was putting in place. There was, in fact, this gap for the parking.

I mean, you could look at it a lot of different ways, but at the end of the day it came out that there was an economic gap on the structure, on the entire center, which equated to the provision of the parking. The parking doesn't pay for itself, long and short. It's kind of --

MEMBER MILLER: But it's the obligation of the District to pay for that gap?

MR. JASSO: Well, if the District wants a retail center there, it's the obligation of the District to pay for the gap. We could clearly get development there, but the development would not be the retail as -- as configured because that retail requires, both by market realities, a certain amount

of parking, and that parking doesn't pay for itself.

MEMBER MILLER: Thank you.

MEMBER MANN: There's something that you said twice that I just -- I just don't understand. It's kind of a tough thing here. The number of parking spaces that's proposed is determined by the amount of financing that's available. Is that correct?

MR. JASSO: That's correct. I mean, as a broader measure, we first looked at the amount of taxes that are being generated, how much debt can that support.

MEMBER MANN: Okay. So that was part one. And then, part two, you said, therefore, you're scaling the size of the development based on the availability of parking spaces.

MR. JASSO: That's right, in the sense that parking -- we looked at how much parking the taxes generated, how much basically capital costs for a parking structure could support.

MEMBER MANN: Okay. So what I don't

understand is: if you're basing the development -- if you're scaling the development to the availability of the parking spaces that the financing supports, why are you asking for a variance? Because it shouldn't -- shouldn't, in fact, then the development have been either scaled down even more, so that it's only for -- so that it equates to 1,000 parking spaces? Or, conversely --

MR. JASSO: The development did come down as a review. The development shrunk in size. Now, one of the reasons -- but I guess your basic question might be: why did the development not shrink proportionally to the shrinkage in the parking?

MEMBER MANN: Yes, given what you just said, that the development was based -- was scaled to the availability.

MR. JASSO: That's correct. It's because when you shrink the retail -- and the developer can speak more succinctly to this than I can -- when we looked at what the reduction -- if we reduced the parking, and we looked at and said -- and we

basically did the analysis and said, "Okay. If you reduce the parking from what it was looking at to what we can afford, the issue is, okay, how much does that relate to in terms of the amount of retail that has to come down?"

One of the things it looks at is not all retail is equal. So the question is: what retail do you lose as part of this? And the reality is is what -- the retail you tend to lose tends to be on a per square foot basis, the less financially performing retail, simply because of the nature of the center.

So that the economics are such, in fact, that from a -- if I'm just looking at it from a financing perspective, this -- this program, from a financing perspective, is -- is actually more attractive because, in fact, the retailers that get kept are those retailers that gross on a per square foot basis at a higher level.

So that's why you don't have to necessarily in terms -- it's not necessarily a one dollar per one parking kind of -- but there is a

direct correlation between the two.

MEMBER MANN: Then, doesn't the fact that you're also perhaps seeking a condition that allows 1,244 parking spaces mean that the size of the development again would change?

MR. JASSO: The 1,240 --

MEMBER MANN: If you're scaling the parking back up, then doesn't the size of the development, therefore, scale back up?

MR. GLASGOW: Mr. Mann?

MR. RUFFIN: Objection. I don't think Mr. Glasgow should testify.

CHAIRPERSON GRIFFIS: You can't object.

MR. RUFFIN: But can he testify for Mr. Jasso?

CHAIRPERSON GRIFFIS: I don't think he's going to testify.

MR. GLASGOW: I wasn't going to testify. I mean, we can put a witness on to address that. If the Board remembers from the last hearings, we were -- we were put forward this alternative to address

the issues that Board members had, and the questioning that came -- this didn't come from Deputy Mayor's office to have the alternative.

That was -- if the Board felt that there were outside demands that necessitated the ability -- the necessity to put more parking in the structure, then we were offering an option as to how to do that.

MEMBER MANN: Okay. That's a good point regarding the potential outside demands. I still don't know if I fully understand the explanation that was given regarding how the 1,000 spaces were derived, how the size of the development was derived based on the 1,000 spaces that are available.

MR. GLASGOW: Mr. Slade can answer that. That was done -- those were negotiations between the applicant and DDOT as to demand.

CHAIRPERSON GRIFFIS: This is what I understand Mr. Mann is going to is we've been -- now been told by Mr. Jasso that there's this economic model that's actually sizing this project. And it's not necessarily correlational to if you lose 100

square foot of retail you can reduce two parking spaces is what I'm hearing in the testimony.

Mr. Mann is pushing the level of, okay, this economic model that you generate that shows how much this can support in terms of financing doesn't -- the 1,224 spaces, whatever it is, what is the threshold at which you start increasing and decreasing? Is that correct?

MEMBER MANN: That's absolutely correct.

MR. JASSO: Let me speak a little bit first -- and I'm not quite entirely sure I understand the question, but let me speak -- try to address it. First of all, the sizing of the garage from the financing perspective really comes in one, twos, or threes. It really comes on issues of levels of the garage, because those are pretty much set costs at -- per level.

What we looked at was simply based on the cost of providing the garage. The revenues were only sufficient to support two levels of parking. Now, the question of: how do you maximize those two

levels of parking? Can you squeeze in more? Can you squeeze in less? Is functioned because basically the revenue stream generated by the parking, based on the pricing structure that both we and NCRC anticipate is going to need to be in place to support the parking is de minimis.

So we're not looking at the revenue stream. It's really a -- at least initially through stabilization, through some period of time. So we know, you know, many of the parking structures in the District, with respect to retail, some of them do provide parking. And some of them have -- in terms of price parking, some of them have changed. Some of them have gone from free to charging, back to free. That's also true kind of in the suburban jurisdictions.

So we've simply looked at, from the physical cost of providing the garage, based on the revenue stream coming in, how many levels of parking could we reasonably provide. And that, in turn -- now, if we can squeeze out, you know, 1,300 spaces

rather than 1,000, you know, we're -- I don't think that's really an issue.

I think the traffic consultants, and so on, can speak better than I can as to whether we need those 1,300 versus 1,000 kind of issue. For us, it was simply the cost of delivering the structure.

MEMBER MANN: I think that's probably a sufficient explanation for now, though I'm going to have to think about this for a little bit.

CHAIRPERSON GRIFFIS: Ms. Miller?

MEMBER MILLER: I just was wondering if you could elaborate on something you made reference to that I didn't totally get, which is something like retailers gross, on a square foot basis, on a higher level as a result of -- I don't know, as the project gets smaller, you said it was somewhat to the benefit because of that. Do you know what I'm referring to? I'm just --

MR. JASSO: Yes. I'll take a stab at it.

MEMBER MILLER: Okay.

MR. JASSO: And the developer can

probably add a little bit more clarity, given that it's really much more specifically in an area that he can respond to. But in shrinking the center, the retailers that tended to fall out simply because we couldn't accommodate those were, in fact, the retailers, simply because of where they were located, etcetera, were, in fact, the retailers that were anticipated to be generating a smaller sales volume per square foot.

Hence, so you've skimmed away those that were generating less revenue from a District perspective, the tax perspective, and kept the better -- kind of the ones that -- but at the same time, since the spaces are really a function of the levels, kind of -- you are able to, from a -- strictly a tax revenue per space and cost be -- it actually -- basically, our debt service coverage ratio improved kind of through that exercise. That's all I was getting at.

CHAIRPERSON GRIFFIS: Anything else?

Is this current TIF financing, the

financing in your model, based on the current square footage that's being proposed here, or previous square footage? Or what square footage is it based on?

MR. JASSO: This TIF -- the TIF financing that was approved by -- by council, which was the $40 million -- it was actually slightly more than that, because there was $2 million for community, and so on, but the $42 million was based on I believe the project model that's in front of us right now, which anticipated just short of 500, I believe, square feet of retail.

CHAIRPERSON GRIFFIS: Okay. Let's move ahead, then. Is there any cross? Mr. Ruffin, any questions for Mr. Jasso?

MR. RUFFIN: The Mayor's office determined that the economics weren't sufficient for the construction of this garage?

MR. JASSO: To be exact, it's the Office of the Chief Financial Officer that under the statute does the analysis and makes the determination in a

certification for council.

MR. RUFFIN: Okay. So she certified that to the Council of the District of Columbia?

MR. JASSO: He certified -- the CFO certified that there were sufficient tax revenues anticipated to be generated by the project to support this level of debt.

MR. RUFFIN: And the Mayor's office or the Chief Financial Officer took into consideration that this whole project would be, in total, for about $150 million in development. Am I about right?

MR. JASSO: It takes into account the whole analysis of the project costs. That's correct.

MR. RUFFIN: Okay. And so the Chief Financial Officer for the Mayor took into consideration that the government could undertake this $42 million cost for the garage, and that that would be -- that would be a good investment in terms of the tax revenue that the government could expect. Is that what you're saying? Is that what you're saying?

MR. JASSO: The analysis -- the way the analysis works is that we -- we take a look at, one, based on the project as presented, X amount of retail, anchors, jobs, taxes, etcetera, because jobs and other things taken into account -- is the -- there's a couple of questions.

One is a finding of special merit, is there merit in the sense of jobs, economic benefit to the District. The second is an analysis of the gap financing. Is there, in fact, a need for a subsidy, looking at the economics of the project.

Then, the third, regardless of the need for the subsidy, is there sufficient revenue? Because the way TIF works is essentially it's a -- it's essentially using the taxes that the project generates. So the question is: if a project doesn't generate taxes, regardless of what the gap may be, there's no ability to finance it.

So it looks at the question of how much is needed, and then how much can the project support in -- kind of from a self-sufficiency basis.

CHAIRPERSON GRIFFIS: If I understand you, it's like taking a loan on the project.

MR. JASSO: Essentially.

CHAIRPERSON GRIFFIS: Okay.

MR. JASSO: From the District's perspective, which is looking at tax revenues.

CHAIRPERSON GRIFFIS: Okay. Let's get refocused. I think the Board's question was going much more to why are you telling this, and how does it impact the garage and the variance. So let's have cross questions that get us to the heart of that.

MR. RUFFIN: Doesn't seem like that that was a consideration. Is there any documentation that what Mr. -- what the Chairperson just said was explicitly considered by the Chief Financial Officer?

MR. JASSO: There's a full record of certification that was submitted to council as part of the council approval. Those are both in public records as well as in the respective offices of the CEO and the Deputy Mayor. But that includes the economic analysis, the certification of that

analysis.

MR. RUFFIN: But, Mr. Jasso, what I'm saying is the parking garage as currently envisioned would cost $42 million or so, am I right?

MR. JASSO: The estimate that was looked at for the parking garage as currently configured is about $40 million. That's correct.

MR. RUFFIN: If the government, for -- if the government, like me, just for some reason right now could not come up with $42 million to pay for the parking garage, it could pay -- it could only provide what it had available, am I right? Yes or no. For the parking garage.

CHAIRPERSON GRIFFIS: I don't understand the question.

MR. GLASGOW: Mr. Chairman, can we ask the relevance of that question?

MR. JASSO: In other -- the relevance is I think rather apparent. In other words, the government provided the money for its parking garage to the degree it could afford it. Is that -- that's

what you're saying, right?

MR. JASSO: Yes.

MR. GLASGOW: The government doesn't provide any money in a TIF.

MR. RUFFIN: By way of the tax increment financing revenue bonds, and by way of all of the bonds, in other words, the government measured -- according to your testimony -- what it could afford and thought it would be a feasible investment for this investment.

CHAIRPERSON GRIFFIS: The question goes to what the "it" is. That's kind of interesting, isn't it? It's not what government can afford. As I understand your testimony, it's what the project actually can finance.

MR. JASSO: That's absolutely correct.

CHAIRPERSON GRIFFIS: Okay.

MR. JASSO: And, secondly, I would also stress that when we look at the economic feasibility of the project --

CHAIRPERSON GRIFFIS: That's it. Next

question?

MR. RUFFIN: So, in other words, the developer said it didn't have enough money to build a garage. That's what it told you, right?

MR. JASSO: The request was it did not have enough -- there was not sufficient revenue in the project to build the garage with the project that was configured as a retail, anchored center.

MR. RUFFIN: So they asked the government to provide this TIF funding to help pay for the garage. Is that right?

MR. JASSO: That's correct.

MR. RUFFIN: Okay. And just, lastly, if -- if hypothetically this same garage -- this same garage would cost $42 million, but -- and the developer could not pay for it, but the development would be entirely above ground, these same considerations that you raise would apply. Isn't that true?

MR. JASSO: I'm sorry. Restate your question.

MR. RUFFIN: Let me put it this way. If the whole project involved the development of parking above ground, and the developer came to the government and said, "We needed $50 million for the development of parking above ground on this wonderful site, on this wonderful idea," the government would basically say, "We can't afford $50 million. We don't think that this project would generate $50 million. What would be -- a suitable investment would be no more than $42 million."

Is that what -- it would have applied the same way, whether it was above ground or below ground. Isn't that right?

MR. JASSO: Whether it's above ground or below ground, we would go through the same analysis to see, one, what was the need, what was the amount of revenue to be generated, and what could be supported by the government.

MR. RUFFIN: That's all I have to say. Thank you very much.

CHAIRPERSON GRIFFIS: Thank you.

Redirect?

MR. GLASGOW: No redirect.

CHAIRPERSON GRIFFIS: The agency has already left, is that correct? So they don't have any cross?

MR. GLASGOW: That's correct.

CHAIRPERSON GRIFFIS: Any final questions? Clarifications? Very well. Thank you very much. We appreciate you being here.

Have we lost the witness that was going to speak?

MR. RUFFIN: Yes. So we can go on with the applicant's other witnesses, so we can finish this matter, Mr. Chair.

CHAIRPERSON GRIFFIS: Okay. Are you anticipating any other witnesses at this time?

MR. GLASGOW: Yes. Only to the extent that the Board wants to hear at this point anything further about the stacked -- attendant, stacked parking. But that's going to be --

CHAIRPERSON GRIFFIS: Wants to? That

really puts it open there. No, I'm kidding. Of course, that's humor at 5:30 in the evening. Whether we want to or not, if we need to -- is there clarification or questions in terms of the documentation and the graphics that were submitted, understanding of how this is going to function?

Is everyone clear on the fact that if this was, as has been talked about, is attendant parking that -- and Mr. Glasgow is going to correct me if my understanding is not correct -- that you would pull up in front -- I'm going to embellish to make this a little amusing while we go ahead here -- and the folks in the long red coats and the top hats would take your car and drive it around to the -- to the parking garage.

Anyway, what you do is you would check your car in as you went down the driveway, and an attendant would take it into the structure yourself. You would not drive it down to the individual parking space, is that right?

MR. GLASGOW: It would be one of two

ways, Mr. Chairman. I could be the way that you're describing, or it could be the way that the garage in this building operates, where there are people --

CHAIRPERSON GRIFFIS: Where you just cram them in whenever you can find space?

MR. GLASGOW: Where you have attendants throughout the garage and sort of say --

CHAIRPERSON GRIFFIS: And they direct the car.

MR. GLASGOW: They direct the car and they tell you --

CHAIRPERSON GRIFFIS: But they also move them.

MR. GLASGOW: They also move them, they tell you to -- like I parked here this afternoon. They said, "Leave your key here from where you are."

CHAIRPERSON GRIFFIS: Back them up.

MR. GLASGOW: Yes.

CHAIRPERSON GRIFFIS: Okay.

MR. GLASGOW: So it could go -- it could go either way.

MEMBER MILLER: Is the attendant -- I don't know if there's a firm plan yet. It sounds like there is, and it sounds kind of iffy. But do you anticipate that there would only be attendant parking when it got to close to capacity?

MR. GLASGOW: We believe that at least our initial studies that Grove Slade did and they testified to -- Lou Slade did the last time, we've got about 20 hours during the year where we'll need the attendant-assisted parking, or where it would be utilized.

CHAIRPERSON GRIFFIS: But I think the question is a good one. It goes directly to what -- what's being proposed at this point? So, clearly, there would be two points in the year that you would have it available or --

MR. GLASGOW: Right.

CHAIRPERSON GRIFFIS: Or is it on demand or --

MR. GLASGOW: Or if it ends up being needed more frequently than that --

CHAIRPERSON GRIFFIS: Okay.

MR. GLASGOW: -- and the Board has indicated that, you know, through the approval that we would utilize it, then we would have --

CHAIRPERSON GRIFFIS: Right.

MR. GLASGOW: -- it available.

CHAIRPERSON GRIFFIS: Right. And, of course, we're not going to know unless it comes up in the case. But obviously we have the UI study -- I think that's what it was -- and some of the other studies that were submitted into the record indicating the demand and times of the year and all of that.

MR. GLASGOW: Right.

CHAIRPERSON GRIFFIS: We can obviously base any conditions on that, or our understanding of it.

MR. GLASGOW: Okay.

CHAIRPERSON GRIFFIS: I don't see any need to go further into this, unless you guys do. Okay.

What we're going to do, obviously, you have these documents also, Mr. Ruffin. It should be part of your case presentation, if you find it valuable to do so and address this particular issue, and all of the other ones.

I think we should move on to some of the substance and get into the Office of Planning's report, and also DDOT's report. Any difficulty with that at this time?

Good. Let's move ahead, then. Let's go.

MR. COCHRAN: For the record, my name is Steven Cochran, District of Columbia Office of Planning. Thank you.

This oral testimony, which is now being distributed to you in written form, supplements our written reports dated November 9, 2004, and December 20, 2004. The project -- the applicant has an exclusive rights agreement to build approximately 486,789 square feet -- square feet of a retail complex with a Target department store occupying approximately a third of the net retail space.

There will be additional retailers, smaller-scaled ones, fronting onto 14th Street or Irving Street, and larger national chains being entered from the atrium off 14th Street.

The applicant is seeking two forms of zoning relief. The first is a special exception to have multiple roof structures with three enclosures. The second is a variance, or at least before today, and/or a special exception variance combination of relief from its parking requirements.

I'd like to address the roof structure first. OP has reviewed the Section 411.11 tests for the roof structure special exception on pages 9 and 10 of its November 9, 2004, report. We believe the applicant has demonstrated that the exceptionally large footprint and unique HVAC requirements of the tenants require multiple mechanical units.

OP also believes that the applicant has demonstrated that having multiple structures with the indicated setbacks and distances from neighboring properties would actually be less intrusive than one

large roof structure.

Parking. The evaluation of the parking relief is not quite as straightforward as that for the roof structure. The retail spaces require 1,612 parking spaces. The applicant is requesting relief to provide 1,000 self-park spaces.

And, Mr. Chairman, I would like your guidance on whether you would like OP to address the option that the applicant had brought up earlier, but that it now appears that we're not considering, which was the combination of the special exception variance.

The written version of the testimony addresses it. I can skip that if you'd like.

CHAIRPERSON GRIFFIS: I think that it would be appropriate to skip it, as we have it in two written forms now.

MR. COCHRAN: Okay. So we will just be looking at the 1,000 self-park spaces, in which case we can skip over to pretty much page 4 of the written statement.

In its supplemental report of December 20, 2004, OP recommended that the Board approve the requested variance from Section 2101.1 based on supplemental information submitted by the applicant on December 7, 2004. OP continues to recommend in favor of this option.

With respect to uniqueness and practical difficulties, the Columbia Heights Urban Renewal Plan and RLA's RFP require that this site be developed as a major uptown retail center, thereby not permitting the applicant to shift its development toward office or retail uses if it appeared infeasible to provide the full amount of required retail parking.

The site has been slated as a major retail center for over 20 years. Retail uses, as you know, have a higher ratio of parking per square foot than do general office or residential uses.

As OP summarizes on page 2 of its December 20th report, the applicant's contractor and consultant, with its engineering consultant, has determined that because of the groundwater level and

the adjacency to the Metro tunnel constructing a third level of parking would present a practical difficulty to the applicant. It would not be possible to have more than 1,000 parking spaces without constructing at least a partial third level of parking, with respect to any detriment to the public good, or to the zone plan.

Between early November and late December of 2004, the applicant worked closely with OP and DDOT to address the added public realm needs that stem from the project's projected multi-modal split. That projection indicates a higher than average number of patrons using alternative transportation modes, which is -- in plain English is walking or taking transit.

While such a modal split implies a reduction in the parking needed, it also implies the need for generous sidewalks, plantings, and street furniture, to enhance the public realm and to provide for public safety in an area where there will be so many pedestrians, cyclists, and arrivals for the

transit station to the south and west of the project.

This is discussed in more detail on page 7 of OP's November 9th report.

The design changes to which the applicant, DDOT, and OP have agreed are summarized on page 3 of OP's December 20th report, and described in more detail in DDOT's letter dated December 20th. I'd be happy to review them if the Board wishes, but I note that Doug Noble, Associate Director of Transportation Services at DDOT is here to testify on that agency's behalf today.

As had been established when this Board approved a 25 percent special exception parking reduction for an earlier version of the project, in Case Number 16858, and as has been further documented in studies by Grove Slade for the present application, DC USA is a transit-oriented development project where at least 50 percent of the patrons will not be arriving by automobile. OP discusses this in some detail on page 7 of our November 9 report.

This project would provide 2.2 parking

spaces per 1,000 square feet of net retail space. This is comparable to the 2.3 parking spaces per 1,000 square feet of retail space provided by the new Gallery Place complex at Metro -- at Gallery Place Metro.

In its November 9th report on page 9, OP had noted three conditions that would bring the application into harmony with the zoning regulations, the zoning map, and the intent of the zoning regulations.

These were to demonstrate the uniqueness of the site, which OP believes the applicant has now done; to demonstrate the practical difficulty that would result from subsurface water conditions in proximity to Metro facilities, which OP believes the applicant has also now done; and to work with DDOT to ensure that the sidewalk and other public realm elements accommodate the higher than typical alternative modal split.

The applicant has now done this to both DDOT's and OP's satisfaction, as DDOT will later

testify. And, again, since we're not looking at this other option, you can skip over page -- the rest of page 7 and page 8, and move on to new matters, which is at the top of page 9.

The optional attendant parking. OP believes the applicant has demonstrated that it -- that the applicant meets the tests needed for the Board to grant the relief that would enable the applicant to construct only 1,000 parking spaces. DDOT has based its analysis on 1,000 self-park spaces.

If the Board, however, wishes to require the applicant to provide parking on certain days, OP would have no objection, provided DDOT determines that the additional parking would not have a negative impact on the public good.

The nature of the parking structure itself. Again, since the last hearing, several questions have arisen about the accessory nature of the parking structure and spaces. OP has asked the applicant to provide additional information or

highlight previously submitted material to help the Board and the Board's legal counsel in consideration of this matter.

The applicant has highlighted the City Council's TIF resolution, referring to the garage as a parking facility for the DC USA project, and has sent a letter to the BZA from the RLA RC dated January 31, 2005, that describes the nature of the garage and how RLA RC intends to manage it so that its primary users will be the customers of the DC USA retail project.

With respect to community comments, ANC-1A supported by a split decision the original application for the 38 to 39 percent reduction in parking to allow for the 1,000-space parking lot. The ANC has also given unanimous support to the other option, one version or another, that would increase the available -- "increase the available number of parking spaces from 1,000" -- that's not 10,000, that's 1,000 -- on a self-park basis to 1,244, and that attendants would be available in the garage as

needed to serve the demand for parking spaces for a retail commercial project to be developed by DC USA.

And I'd note that it doesn't actually refer to a special exception and variance. It simply refers to an option that would increase the available parking spaces to 1,244.

The councilperson for Ward 1 has also expressed strong support for the project and for the requested zoning relief.

In short, OP recommends the Board approve the special exception relief for roof structures, and we further recommend that the Board approve the variance relief for the parking requirements of Section 2101.1, as requested by the applicant in its prehearing statement dated November 2, 2004, with the following conditions.

The garage owner, successors, and assigns should structure the fee schedule and operate the garage in a manner that gives first priority to meeting the needs of the building's owners, tenants, and retail patrons; that discourages long-term and

essentially all-day commuter parking; and that precludes non-hourly leasing of individual spaces or blocks of spaces.

OP recommends the language for this condition be based on the following, which is excerpted from the land disposition agreement dated January 17, 2003. Quoting from that, "Retailers and the project's lender will require covenants that ensure that parking will always be available for customers of the project's tenants when they want it."

The parking facility will be open to the public, but its pricing structure will be used to encourage retail customers to use the garage while discouraging non-retail customers during peak retail demand periods. During the week day, commuters will be encouraged to park in the facility, and the pricing will be set to discourage commuters from staying into the later afternoon or evening hours, if there are insufficient spaces available to satisfy retail customers.

Weeknights, overnight parking will be made available to community residents, to the extent there is no interference with the parking demand for the retail customers.

Then, the next condition. If the Board wishes to require the applicant to provide tenant parking on certain days in order to increase the garage's capacity, OP would have no objection, provided that DDOT determines that the additional parking and the attendant queuing would not have a negative impact on the public good.

That concludes our testimony for today. I'm certainly happy to answer any questions.

CHAIRPERSON GRIFFIS: Good. Thank you very much.

Any questions from the Board? Ms. Miller?

MEMBER MILLER: What is the land disposition agreement?

MR. COCHRAN: This is a document that was signed between the RLA RC and the developer.

MEMBER MILLER: Okay. Is that in our record or not?

MR. COCHRAN: I think it's 130 pages long. I don't believe it's in your record.

MEMBER MILLER: Okay.

CHAIRPERSON GRIFFIS: Is it my understanding -- it's like the contract, right? If you were going to buy a piece of land and develop it, it's the contract that's signed between the two? We've heard testimony that there's an ERA and there's an LDA as part of this process. Is that the last piece of agreement between the organizations?

MR. COCHRAN: I believe that had the -- that that -- the LDA would have been the last -- one of the last agreements.

CHAIRPERSON GRIFFIS: Right. I'm sure they're small.

MR. COCHRAN: I guarantee there's got to be other --

CHAIRPERSON GRIFFIS: The point is is --

MR. COCHRAN: -- had the project not been

reconfigured.

CHAIRPERSON GRIFFIS: I see.

MR. COCHRAN: I believe that the applicant and the --

CHAIRPERSON GRIFFIS: Let me --

MR. COCHRAN: -- RLA RC are going to have to renegotiate the --

CHAIRPERSON GRIFFIS: In your understanding/analysis of this for the parking variance, parking space variance, is there any need for the Board to fully understand the LDA?

MR. COCHRAN: I don't think the Office of Planning would ever say that you shouldn't be understanding something. I don't know whether you need to or not.

CHAIRPERSON GRIFFIS: Okay. You pulled the pertinent part that you think should be part of our view of this.

MR. COCHRAN: That's right. I thought that -- that took from their own document the kind of language that we would like to see to see that the

parking serves whom we think the parking needs to serve.

CHAIRPERSON GRIFFIS: Excellent. Okay.

I'm sorry, Ms. Miller. You had other questions?

MEMBER MILLER: Well, I don't know if Mr. Noble is going to testify or whether I should address my transportation questions, parking questions, to him now.

CHAIRPERSON GRIFFIS: Well, I think he is going to present his letter, right?

MR. COCHRAN: He's not just here to be a pretty face.

MEMBER MILLER: Okay. Then I'll hold all my other questions.

CHAIRPERSON GRIFFIS: Okay. Any other questions of the Board for Mr. Cochran?

Mr. Glasgow, any cross?

MR. GLASGOW: No cross.

CHAIRPERSON GRIFFIS: Mr. Ruffin?

MR. RUFFIN: No, sir.

CHAIRPERSON GRIFFIS: Indeed. Okay. Let's move ahead, then. Thank you very much, Mr. Cochran. We do have -- as indicated, we have two reports, and then we also have now the actual written testimony. And I'm assuming that's been passed out to everybody, is that correct? Good. Okay. Let's move ahead.

MR. NOBLE: Okay. Testimony from the Department -- District Department of Transportation. For the record, my name is Douglas Noble. I'm the Chief Traffic Engineer, Associate Director of the Traffic Services Administration of the Department.

The majority of my testimony is in concurrence with the Office of Planning and is based on the December 20th letter and subsequent information in regards to the additional 244 spaces that the applicant has proposed.

This may go into some esoteric detail in terms of the use of public space around the facility, so bear with me, please.

Okay. Thank you.

Basically, the discussions between Office of Planning, DDOT, and the applicant were in regard to the specific areas of public space fronting the building to provide for pedestrian safety, pedestrian access, and appropriate traffic flow around the site.

This involved specifically that the developer would provide a six-car length of area in front of the main entrance that would be available for parking, with a minimum 14-foot, 11-inch sidewalk in front of that area from the farthest edge of the atrium structure to the curb. You know, DDOT's standard and preference is 16 feet, but we have agreed to the 14'11" in this location.

For the balance of 14th Street, the developer would provide a minimum 16-foot sidewalk -- again, as measured from the face of the building, the furthest edge of the face of the structure to the street, and, also, further north on 16th Street would agree to provide 14th Street an additional three-car area for parking north of the main entrance.

In between these areas, the curb line

would be extended to the nearest travel lane, and the exact location of this parking area would be determined between DDOT, the developer, and the existing public realm -- work that's going on in the area.

Basically, the parties agreed that parking/loading in these two locations, and potentially customer-assisted loading in the parking garage, is sufficient to allow the removal of the parking area/lay-by on the park road side of the facility, as long as, you know, a sidewalk in that area is 15 foot, 8 inches. In addition, the appropriate turning radii in and out of the parking garage entrance would be provided.

On Irving Street, a 160-foot, 8-car-long left turn lane would be provided on approach of the intersection eastbound to 14th Street. And we've agreed to provide bump-outs from the sidewalk area to extend that area around the entrance to focus on historic facades, provide an 18-foot sidewalk in those areas.

An intermediate area along the left turn lane -- the sidewalk would be 13'6" from the face -- furthest edge of the structure to --

CHAIRPERSON GRIFFIS: Before we continue on with --

MR. NOBLE: Sorry. This is like --

CHAIRPERSON GRIFFIS: -- the esoteric, as you've described --

MR. NOBLE: Yes.

CHAIRPERSON GRIFFIS: -- help the Board understand how this directly relates to the reduction of parking request that we have. It would be my --

MR. NOBLE: Okay.

CHAIRPERSON GRIFFIS: -- understanding that, as Mr. Cochran laid out, this is a transit-oriented development.

MR. NOBLE: Right. Okay.

CHAIRPERSON GRIFFIS: So all these aspects are going to facilitate that type of --

MR. NOBLE: Exactly. All of these aspects are -- specific aspects are going to the

focus on those people who are walking either to and from where they live, or are walking to and from the existing Metro station and the transit service provided along 14th Street and along Irving Street.

CHAIRPERSON GRIFFIS: Okay.

MR. NOBLE: The idea is, you know, our standards in this area are roughly 16-foot to 20-foot sidewalks to provide the safe walkways. In conversation with the developer, the specifics of this we comfortably, with some minor reductions in these widths to allow for the building footprint, we're comfortable that safety is served and that the pedestrian and transit traffic operations will be protected.

CHAIRPERSON GRIFFIS: Excellent.

MR. NOBLE: So that's a general summary of that.

CHAIRPERSON GRIFFIS: Good.

MR. NOBLE: In regard to the second matter in terms of the -- you know, the additional stacked parking that had been brought up, you know,

DDOT has no particular objections if you wish to pursue that. The earlier variance or request back -- I don't remember the exact date -- had it down to 1,300 spaces, and at that time DDOT had said 1,300 spaces and the associated traffic with the mode splits was sufficient, you know, to provide an adequate level of service around the site.

So, you know, our testimony is consistent with Office of Planning's in terms of what the request is. You know, it would be appropriate, however, that, you know, in the interest of reducing the amount of vehicle traffic that -- that the applicant not immediately introduce stacked parking. It's an expense, and, you know, it -- it generates additional vehicle trips, which we'd rather have people walking and using transit to do. So, but we have no particular objection one way or the other.

And that's the conclusion of my testimony.

CHAIRPERSON GRIFFIS: Good. Thank you very much. You made a statement that I may have

missed. You said that 1,300 spaces was adequate to deal with the demand?

MR. NOBLE: That was -- in an earlier application on this project there was a reduction down to 1,300 spaces which we had analyzed, and at that time the -- again, they're not a function of the demand of the trips generated by the facility, but a function of what the impact of those trips would be on the surrounding street grid.

CHAIRPERSON GRIFFIS: Okay.

MR. NOBLE: And we're okay with that.

CHAIRPERSON GRIFFIS: You studied this area for that type of trip generation.

MR. NOBLE: Yes.

CHAIRPERSON GRIFFIS: Do you have any comments on the applicant's traffic engineer study in terms of the demand of parking or in terms of -- because we're not going to impact necessarily on intersections all around this thing, but we're going to -- but indirectly it is based on I guess the parking.

MR. NOBLE: Yes.

CHAIRPERSON GRIFFIS: Do you have comments on that, in terms of the serviceability of this area, this retail, in terms of the parking that's being requested of 1,000?

MR. NOBLE: Yes. I did do a review of their traffic study. I found that the parking demand analysis that they did was appropriate with the assumed mode split for the transit and walking, which is what the focus of this project is. I'm comfortable with that.

You know, that study recommended a number of proposed recommendations in terms of modifying some signal timing and things like that, which overlaid with the existing Mount Pleasant/Columbia Heights transportation study and the public realm study, we can get to the same place in terms of providing the level of service and the walkability and the transit access. So --

CHAIRPERSON GRIFFIS: Okay. Excellent. Anything else?

Any questions from the Board?

MEMBER MILLER: Yes.

CHAIRPERSON GRIFFIS: Indeed.

MEMBER MILLER: I'm really interested in your opinion on this, because it seems like it's a big drop from 1,612 to 1,000. And I'm wondering, is there something wrong with our regulations, or is this facility so unique and so wrapped up with -- I don't know -- its unique qualities that -- that it -- that that's why there's such a difference here in numbers.

MR. NOBLE: I thought you were going to ask me for an opinion on how we deal with transit-oriented development in our zoning regs. But the -- the way the existing rules are explicitly written, we do not have the ability in terms of those rules to adequately address those developments which are focused on transit-oriented development, to take the most advantage out of those trips that would be made outside of the regular automobile -- driving to shop or driving to work.

And I think until we take an opportunity to take a look at that we'll have variances like this coming in.

MEMBER MILLER: Okay. And I think you also said you basically looked at their analysis and were comfortable with them. I think I saw in OP's report or somewhere that there is an assumption that 50 percent will come by means other than automobile.

How do you rely on that number? Why is that a good number?

MR. NOBLE: I rely on that number because I mentioned earlier the Columbia Heights/Mount Pleasant transportation study, and that number is consistent with the existing survey data in terms of the types of trips that people make that that study had done. So you could quibble that it will vary five percent plus or minus that.

The thing that we have found historically in terms of the different types of activity centers built around the Metro station, that the transit and the bicycle or walk to work or walk to the activity

centers, many times we have underestimated that number in both mixed use development and entertainment type developments.

My favorite example is the MCI Center. The most generous transit split for that was 60 percent. They're running around 75 percent in terms of transit usage to MCI, because people take the train or drive in, park in their garage, and they walk to the events at the arena.

And while that's an entertainment sporting destination, I would expect that you would wind up with a similar thing with Gallery Place and some of the other stuff where people are coming either by transit or by coming and -- already in the neighborhood and have parked their cars and then accessing the facility.

You have the Giant and the Tivoli Theater, and it's a great opportunity to multi-task your trip and your parking. You park once; you walk around to the other sites.

MEMBER MILLER: How do we know they won't

park here in this lot? Because of the pricing?

MR. NOBLE: Pricing. It is a public lot, so, you know, anyone can walk, you know, and park here. But pricing will help dictate how the supply is utilized based on the demand that's supplied. You can get pretty creative with parking pricing, as we're working on in some of our public stuff.

MEMBER MILLER: And can you articulate why you're comfortable with the 1,000 number?

MR. NOBLE: I mean, it -- it's consistent with the mode split, the trips, and discounting it based on that mode split versus what the parking generation number is that's generated out of the standard accepted professional manuals that we use.

MEMBER MILLER: Okay. And then, I think when you look at this you look at traffic and parking basically.

MR. NOBLE: You look at traffic, parking, transit, pedestrians.

MEMBER MILLER: Okay.

MR. NOBLE: Bicycles.

MEMBER MILLER: So from a traffic point of view, are fewer parking spaces better because that's less cars coming to the parking lot?

MR. NOBLE: Well, it's a parking supply, not an actual people -- number of people parking. But in terms of the impacts on the intersections, it would be less impact with fewer single -- you know, fewer cars that are going through the area.

MEMBER MILLER: You don't find that there is a repercussion in that they are circling the block because they can't get into the parking lot?

MR. NOBLE: We haven't seen that. Typically, the idea of parking -- applying parking spaces -- you know, enough parking supply for the development, and the type of trip-making that is happening, and that's part of the reason why if they get to that point that stacked parking is an option that they can even go to.

So, and I would only suggest that stacked parking in the times of year that they end up with more parking demand than their current structure

allows. Not doing it all the time, like the highest 20 hours of the year, 20 days of the year that they may need to do that. I don't anticipate them needing to do that in the short term.

MEMBER MILLER: I got the impression you almost were not that favorable to stacked parking because you didn't want more cars coming. Is that --

MR. NOBLE: Well, I -- I mean, I'm always interested in protecting the level of service at my intersections, you know, the city's intersections around, you know, heavily congested areas. The more cars we have on the street, the less easy it is for transit buses and other -- and pedestrians to cross the street and get through the traffic stream. So it's a balancing act.

MEMBER MILLER: Right. Okay. Thank you.

CHAIRPERSON GRIFFIS: Anything else from the Board?

Cross, Mr. Glasgow?

MR. GLASGOW: No, sir.

CHAIRPERSON GRIFFIS: Mr. Ruffin?

MR. RUFFIN: Yes, sir, briefly.

CHAIRPERSON GRIFFIS: Good.

MR. RUFFIN: Mr. Noble, you indicated that you operated on the assumption that 50 percent of the people who would visit this mall would get there by transit, rather than by automobile.

MR. NOBLE: Actually, the assumption is 35 percent transit, 15 percent walking.

MR. RUFFIN: And you --

MR. NOBLE: Not automobile uses.

MR. RUFFIN: -- said 35 percent transit, and what?

MR. NOBLE: And 15 percent walk and bike. I believe that's in the reported documents.

MR. RUFFIN: And if I'm not mistaken, you cited the Columbia Heights/Mount Pleasant transportation study. Did you say that?

MR. NOBLE: I did say that.

MR. RUFFIN: You're talking about the Cambridge Systematics?

MR. NOBLE: Sir, yes. You have it in

front of you. I do see it.

CHAIRPERSON GRIFFIS: We need to understand. Is it the Cambridge study, or is there another study that --

MR. NOBLE: There was a study done under contract to DDOT by Cambridge Systematics.

CHAIRPERSON GRIFFIS: All right. So that's -- what you called the Columbia Heights/Mount Pleasant study --

MR. NOBLE: Yes.

CHAIRPERSON GRIFFIS: -- is actually the Cambridge --

MR. NOBLE: Now, for example, the -- now, just as a note, the 35 and 15 percent was projected in Grove Slade's study, specifically. That specific number is in that study -- the 35 and the 15.

MR. RUFFIN: You're relying on Mr. Slade, not the Cambridge Systematics --

MR. NOBLE: I'm relying on Mr. Slade and --

CHAIRPERSON GRIFFIS: I'm going to set up

a little rhythm here. Mr. Ruffin is going to ask full questions.

MR. NOBLE: Yes.

CHAIRPERSON GRIFFIS: Sit for a moment.

MR. NOBLE: Okay.

CHAIRPERSON GRIFFIS: And think about what he asked, and then you're going to answer directly back to specifically what he said.

MR. NOBLE: Okay.

CHAIRPERSON GRIFFIS: We've got to slow it down a little bit, because I can't get all this.

MR. NOBLE: Okay.

CHAIRPERSON GRIFFIS: And more importantly, the transcript can't get it. So, Mr. Ruffin, state your question again. Did we resolve the first question of what report he was referring to in the Columbia Heights/Mount Pleasant realm?

MR. RUFFIN: I thought so.

CHAIRPERSON GRIFFIS: Okay.

MR. NOBLE: I think so.

CHAIRPERSON GRIFFIS: Good. Then, you

guys are clear. Let's move on.

MR. RUFFIN: Okay. So what I'm -- I was asking you, though, Mr. Noble was, is it true that you're relying in your testimony on Mr. Slade's study?

MR. NOBLE: I'm relying on a set of different items -- Mr. Slade's study, our study that was done under contract by Cambridge Systematics, my professional experience, and other traffic information that I'm aware of that has been prepared for that area.

MR. RUFFIN: Very briefly, Mr. Noble, isn't it true that on page 1-9 of the Cambridge Systematics studies it reads, "Traffic volumes on 14th Street are highest during the evening peak." Over the course of a typical week day, approximately 24,500 vehicles use this portion of 15th Street -- 14th Street.

It adds, "Irving Street carries approximately 10,300 vehicles -- vehicular trips on an average week day, and traffic volumes are highest

during the evening peak period."

Are you familiar with that?

MR. NOBLE: I am familiar with it. I don't have that study in front of me to refer to. I mean, it might be -- does anyone else have an extra copy of it? I don't happen to have my copy with me.

CHAIRPERSON GRIFFIS: Right. We'll get you a copy. Do you have specific questions on those figures? Excellent.

MR. RUFFIN: Just very --

CHAIRPERSON GRIFFIS: Let's let him review it first.

MR. NOBLE: Pardon me while I get this one in front of me. I don't happen to have the transportation study. Oh, okay. Which page are you referring to?

MR. RUFFIN: 1-9, sir.

MR. NOBLE: 1-9?

MR. RUFFIN: Yes, sir.

MR. NOBLE: Okay. Okay. That's -- yes. What you stated was what it says in the study.

MR. RUFFIN: Okay. On the next page, 1-10, please -- please tell me, am I reading correctly, doesn't that study also say Columbia Heights and Mount Pleasant are challenged by the large numbers of commuters that travel through the neighborhoods? Am I reading that correctly?

MR. NOBLE: That's verbatim what that sentence says.

MR. RUFFIN: It reads further, "Although the neighborhoods develop historically around transit and the pedestrian, they are now facing a tremendous influx of vehicles on a daily basis." Did I read that correctly?

MR. NOBLE: Yes. You're -- go on ahead.

MR. RUFFIN: Okay. And it reads that much of this commuter traffic, the vehicular traffic, is on 16th Street, Georgia Avenue, and also on 14th Street, Sherman Avenue, and several of the east/west roadways, such as Columbia Road and Irving Street, on a regular basis, am I right?

MR. NOBLE: Yes.

MR. RUFFIN: The study that you referred to, it also says, "The challenges to accommodate these commuters, while addressing neighborhood concerns regarding high speeds, pedestrian safety, and heavy traffic volumes," am I right?

MR. NOBLE: That's what it says.

MR. RUFFIN: Now, this study was designed to examine -- actually it was published in January 2004, am I correct?

MR. NOBLE: Whatever the study date is. Yes, that's what -- that is the date on the cover.

MR. RUFFIN: And on page 1-9, it indicates that the study took place over a two-week period in the spring of 2003, am I right?

MR. NOBLE: Yes.

MR. RUFFIN: And then, further, on page 1-11, it talks about the large amount of computer -- pardon me, commuter vehicular travel that goes right through this community. Isn't this right?

MR. NOBLE: Yes. That's what it talks about is one of the surrounding issues that is a

concern.

MR. RUFFIN: And I'm about to close, but I just wanted to be clear. On page 1-11, it mentions that a general assessment was made of the magnitude of commuter traffic during peak hours. Do you see that at the beginning of the first full paragraph?

MR. NOBLE: Yes.

MR. RUFFIN: Further down it reads, "Maryland and Virginia plates likely represent commuters. In addition, a number of the District of Columbia registered vehicles also are likely commuters living in other neighborhoods either adjacent to or some distance from Columbia Heights and Mount Pleasant." Did I read that correctly?

MR. NOBLE: You read that correctly.

MR. RUFFIN: Then it talks about 58 percent of the -- you know, it talks about the large number of vehicles --

MR. NOBLE: Yes.

MR. RUFFIN: -- traveling through the area, right?

MR. NOBLE: Yes.

CHAIRPERSON GRIFFIS: And now the zinger question?

MR. RUFFIN: And so --

MR. NOBLE: Yes. Where is this going?

MR. RUFFIN: And so the basic thing is that --

CHAIRPERSON GRIFFIS: Pardon me. It's really inappropriate, but I want to get to the heart of the question in terms of where you're going. We -- actually, the Board has had this, and we've actually all read it, believe it or not. And he doesn't need to introduce it into evidence.

I appreciate the pointing of the specific parts, but let's get to any direct questions of the interpretation or his analysis of this information, and then how it --

MR. RUFFIN: Yes.

CHAIRPERSON GRIFFIS: -- led to his conclusions.

MR. RUFFIN: Yes, sir.

If I'm not mistaken, Mr. Noble, there's no place in -- in the Cambridge Systematics report that indicates that there is going to be 35 percent Metro, subway, bus, or other travel to this proposed mall, or anything like that. Is that right?

MR. NOBLE: Let me take the opportunity to look through other sections of this report that relate to transit walking and bicycle --

MR. RUFFIN: Please take your time.

MR. NOBLE: -- things that I don't happen to know off the top of my head.

CHAIRPERSON GRIFFIS: And while he's doing that, because he understood the question, could you just repeat it for me?

MR. RUFFIN: I asked whether I was correct in my understanding that there's no portion of the Cambridge Systematics report that indicates 35 percent of the people traveling to this proposed mall would be by -- would arrive there by transit.

CHAIRPERSON GRIFFIS: Okay. Excellent. So what you're saying is, based on all of this

analysis that -- and what you've pointed it to -- is look at all of the problems. They have documented the problems. And now you're saying, so where in this study is the analysis that -- that we can count on 35, 15, total 50 percent using public transportation or walking?

MR. RUFFIN: Yes, sir.

CHAIRPERSON GRIFFIS: Okay.

MR. NOBLE: Quick question. Chip, does your copy of this have page 1-36 in it at the tail end? This copy appears to be missing some pages.

CHAIRPERSON GRIFFIS: Well, here's the heart of the question, I think, as I understand what Mr. Ruffin is actually putting it to. The heart of the question is where he began. Where did you come up with, and why do you have reliance on, the fact that this project will be able to count on having that type of modal split? Meaning the percentages of people. What gives you the confidence that 50 percent are walking or taking public transportation? Is that a fair question?

MR. RUFFIN: Yes, sir.

CHAIRPERSON GRIFFIS: Okay.

MR. NOBLE: Well, actually, what I would suggest is we look at a number of things in the report, and actually probably the first thing to look at is the demographics that are on page 1-4 of the report. And it shows how different people get to work by the mode of transportation that they use in the report.

And you'll see items for -- this is for work trips, but, you know, walking or bicycling and transit to work are very high percentages on that page.

Now, this is talking about people who live in this area. There is also some information, though I don't have the page number specifically, about auto ownership in the immediate area. If this set of people who are walking and bicycling to work, or taking transit to work, that means that they are not using the other mode of transportation that they may not have.

We have also found in the Parking Task Force study that this portion of Columbia Heights has one of the lower auto ownership rates in the city; therefore, implying heavier transit use, implying heavier walking than other locations. So the demographic background of the area, and these percentages -- well, divvied up across the area -- lead one to believe that the need and the usage by modes other than a car is going to be very high, on the order of what --

CHAIRPERSON GRIFFIS: Isn't that on the assumption that this development serves directly that -- that population that surrounds this parcel?

MR. NOBLE: Exactly.

CHAIRPERSON GRIFFIS: Is that what you're -- that's what your reliance or confidence in that percentage of --

MR. NOBLE: Yes.

CHAIRPERSON GRIFFIS: -- public transportation?

MR. NOBLE: Yes.

CHAIRPERSON GRIFFIS: So we've talked about the retail tenant that is proposed or is part of this when it goes through. You're saying that that is just going to be utilized by those people that live a walkable distance from this?

MR. NOBLE: Those people -- that portion of the people. You know, it's all -- there are going to be people coming from further away as well. There is a catchment area for the people who want to come shop at this location.

CHAIRPERSON GRIFFIS: Okay.

MR. NOBLE: Especially for the larger retailers. But there are also a lot of neighborhood retailers associated with all the different trips on the ground floor surrounding the site.

CHAIRPERSON GRIFFIS: Okay. So we have, as I understand the question being asked of you for this percentage, that we have -- let's call it the neighborhood serving population. And out of that maybe it's higher than 50 percent. You're saying it's low car ownership.

MR. NOBLE: Right.

CHAIRPERSON GRIFFIS: It's a high pedestrian. So if you look at them as 100 percent, let's call them -- they definitely make the 50 percent, right?

MR. NOBLE: Right.

CHAIRPERSON GRIFFIS: Fifty percent -- half drive, half don't. Okay. Now, where is your analysis of those that aren't within the neighborhood, those that are -- that have to get there from outside? Where was the breakdown or your analysis of -- and confidence in that percentage of usage of non-driving transportation?

MR. NOBLE: Okay. Well, actually, you know, in some ways it ends up being a -- you know, you've got the whole population. You subtract the part that you know what they're doing, and you have the remaining population of people in terms of what they're doing. That's part of the equation.

CHAIRPERSON GRIFFIS: We've got no problem with that.

MR. NOBLE: Okay. We know what people within the study area are doing.

CHAIRPERSON GRIFFIS: Right.

MR. NOBLE: It's been fairly well documented, both the socioeconomic data, the transportation data. We know what the people are doing, who are driving through, and who are commuting, as this gentleman pointed out. And we're looking at --

CHAIRPERSON GRIFFIS: They're speeding. Oh, no, that wasn't in the study. Okay. Go ahead.

MR. NOBLE: Well, not during rushhour. It's congested. But the thing is is by no -- by taking a look at what we do specifically know, and for those areas -- which, you know, accounts for that mode split, that we can look at going back the other direction, saying, "Okay. For those populations we don't explicitly have the information for, how much detail do we need?" You know, we have a very good detail in one area.

The other thing is is it -- even if we're

talking about the mode split shifting, say to 40 percent, you're still not shifting the amount of demand for the parking spaces a significant amount relative to the supply of the parking spaces that's being proposed under either of these two scenarios.

CHAIRPERSON GRIFFIS: Okay. Any follow up?

MR. RUFFIN: No. I think your follow up was good enough, Mr. Chair.

CHAIRPERSON GRIFFIS: Okay. Ms. Miller?

MEMBER MILLER: Since we're looking at this Cambridge parking study -- I mean, Cambridge transportation study, I just want to get a clarification from you. On page 2-33 --

MR. NOBLE: Excuse me. Steve borrowed this. 2-33, yes.

MEMBER MILLER: Okay. I think parcel 27 grid properties is -- that's this development that we're talking about?

MR. NOBLE: Yes.

MEMBER MILLER: Okay. And it has a

calculated parking demand of 1,139 spaces, and was that based on the old plan? Or is this based -- is that based on this plan?

MR. NOBLE: I would -- I do not know for sure. But based on the date of this report, this was based on the information that was available at the time they did the data collection to prepare these reports. So likely it was based on the earlier information based on the dates that I have heard in terms of what -- this information that has been provided. I can get -- provide you a specific answer confirming back with staff.

MEMBER MILLER: Okay. Because, I mean, it would say that they would need 139 more spaces based on this plan --

MR. NOBLE: Yes.

MEMBER MILLER: -- here. The applicant may know as well, I don't know.

MR. GLASGOW: This was the old plan.

MR. NOBLE: I said it was based on the larger older one, so --

MEMBER MILLER: Okay. I just wanted to get that for the record. Thank you.

MR. NOBLE: Okay. Thank you.

CHAIRPERSON GRIFFIS: Very well. Lastly, looking at the applicant's submission on their revised traffic impact analysis, they make several conclusions at the end, page 21. It's attached as Exhibit G, I believe it is. Did you do an assessment for -- or did you rely -- do you have confidence in the numbers of the statement that the DC USA site would generate approximately 190 and 839 vehicle trips in the a.m. and p.m. peak hours, respectively? I'll give you a moment to get to that, but it's basically going to --

MR. COCHRAN: What page are we on, Mr. Chair?

CHAIRPERSON GRIFFIS: Page 21.

MR. COCHRAN: Thank you.

CHAIRPERSON GRIFFIS: Of the October 4, 2004. It's the sixth bullet point down there.

MR. NOBLE: Yes. It's the third from the

bottom up?

CHAIRPERSON GRIFFIS: That's correct.

MR. NOBLE: Okay. Hold on a second, please. I did have an opportunity to review -- just refreshing my memory, I did have an opportunity to review this versus, you know, the directions of approach and the trip generation rates that they use for these developments, and they are appropriate.

CHAIRPERSON GRIFFIS: Okay. So you can -- you have reliance on the -- knowing this size facility, that it would -- it could be projected. Obviously, it's not 100 percent scientific, but it is somewhat scientific in your formula.

MR. NOBLE: Yes.

CHAIRPERSON GRIFFIS: Do you have confidence in the fact of the trip generations and the difference between the morning and the evening?

MR. NOBLE: Yes.

CHAIRPERSON GRIFFIS: Okay. And then going up to the bold statement and its conclusions -- go ahead.

MR. NOBLE: I just want to make a point of clarification. These trip rates are based on the peak hour of the adjacent street traffic, so it's going to be a lot lower in the morning, because many of the stores aren't going to be open at that hour, just -- that's why the difference in the number.

CHAIRPERSON GRIFFIS: Right. I'm pretty clear on that.

MR. NOBLE: Okay.

CHAIRPERSON GRIFFIS: But it's an excellent point to bring out, because one might question it. How do you have 190 in the morning and 839 in the evening? But, obviously, it's when they're being utilized.

The fourth assertion in their conclusion is that the proposed DC USA plan is consistent with the Cambridge Systematics report, except for on-street parking in front of 14th Street main entrance has been limited to reduce the potential for street and sidewalk congestion. Are you also in agreement of that statement?

MR. NOBLE: I would suggest that this statement has been superseded by the negotiations between DC USA, Office of Planning, and DDOT, as it relates to the public realm project that resulted in the narrowing of -- you know, the adjustments to the sidewalk widths and the parking areas.

CHAIRPERSON GRIFFIS: And that's covered in your letter.

MR. NOBLE: That's covered in my letter.

CHAIRPERSON GRIFFIS: Okay. So it actually -- you could -- this is obviously a very general statement and conclusion. One could say, "As noted in your letter," and it would make that a statement --

MR. NOBLE: Yes.

CHAIRPERSON GRIFFIS: -- that you agree with.

MR. NOBLE: Yes.

CHAIRPERSON GRIFFIS: Okay. Good. I don't have anything further. Any other Board members have anything further?

Follow up questions, Mr. Glasgow? Any --

MR. GLASGOW: Just with respect to Exhibit H, on page 66, Mr. Noble, Table 24, Summary of Transit Mode Share for Retail --

MR. NOBLE: This is the WMATA ridership survey study?

MR. GLASGOW: The WMATA December '89 study, that's correct.

MR. NOBLE: Which page are you referring to?

MR. GLASGOW: 66.

MR. NOBLE: 66.

MR. GLASGOW: Has a summary of transit mode share for retail.

MR. NOBLE: Yes.

MR. GLASGOW: And you'll see the percentages used there.

MR. NOBLE: Yes.

MR. GLASGOW: And those are consistent with your findings in this project?

MR. NOBLE: Yes, they are. Just for

summary purposes for the Board, it indicates -- Table 24 indicates that the transit percentage for CBD locations is between 45 and 50 percent, and for suburban locations inside the beltway between 34 and 40.7 percent.

So the target that they're talking about is -- for the transit is, you know, they're saying 35 percent, which is for transit specifically, and 15 percent for walking. So it is consistent and actually lower than the two percentages cited here.

CHAIRPERSON GRIFFIS: That's clear. Yes. We'll point it out to you in a moment.

Okay. Anything else? Excellent. Thank you very much.

Oh, yes. Mr. Ruffin? Last question, or last questions. I'm not going to let the Board speak anymore. It's all you.

(Laughter.)

MR. RUFFIN: You're so kind. You're so kind.

On the last point that was brought up by

Mr. Noble -- Mr. Noble, you're citing to a 1989 study that was performed or commissioned by the Washington Metropolitan Area Transit Authority, am I right?

MR. NOBLE: That is the study listed under Exhibit H.

MR. RUFFIN: Okay. And --

MR. NOBLE: Yes.

MR. RUFFIN: -- are you aware that that Table 24 that you just referred to, when it talks about CBD locations, it's talking about the central business district or downtown locations?

MR. NOBLE: Yes.

MR. RUFFIN: Okay. In other words, downtown locations such as Union Station, the shops, you know, where the parking requirements are vastly different from the C-3-A District where the proposed mall would be constructed. You are aware of that, right?

MR. NOBLE: Yes.

MR. RUFFIN: Also, are you aware that it says "all retail locations"?

MR. NOBLE: Yes.

MR. RUFFIN: Okay. And it talks in terms of all retail locations having -- well, you mentioned the CBD, the downtown locations, having, for example, the percentage of subway/bus traffic to downtown locations. That would be from 45.3 percent to 55.3 percent. Am I right?

MR. NOBLE: Yes.

MR. RUFFIN: Okay. In other words, this is the amount of travel by individuals traveling to certain locations in downtown D.C., right?

MR. NOBLE: For the purpose of retail.

MR. RUFFIN: That's what this survey covers, right?

MR. NOBLE: Right. For the purpose of retail.

MR. RUFFIN: For purposes of retail. And also, when you look at that, it also talks about just -- I had to get that background. It talks about all retail locations as the last category, right?

MR. NOBLE: That number there would be

all retail locations in the entire Metropolitan Washington region.

MR. RUFFIN: Well --

MR. NOBLE: As areas served by transit.

MR. RUFFIN: As areas examined by the survey, isn't that right?

MR. NOBLE: Exactly.

MR. RUFFIN: Okay. For example, the downtown locations or central business district locations only examined four particular sites, am I right?

MR. NOBLE: During this --

MR. RUFFIN: That's what the survey says, right?

MR. NOBLE: Right.

MR. RUFFIN: And then, it says for suburban locations inside beltway. It has four additional sites.

MR. NOBLE: Yes.

MR. RUFFIN: Isn't that right? Then, it has suburban locations outside of the beltway. It

has zero sites, right?

MR. NOBLE: Yes.

MR. RUFFIN: And so all retail locations examined in this survey for people traveling for retail purposes included eight locations, right?

MR. NOBLE: Correct.

MR. RUFFIN: In other words, this survey examined travel by people either to suburban malls or shops or to downtown shops, am I right, for retail purposes?

MR. NOBLE: I don't think I would characterize the locations in that manner for the suburban locations without knowing what the specific list of those locations is.

MR. RUFFIN: Well, the --

MR. NOBLE: My understanding of this study, having known a number of the individuals who are involved with it, the suburban locations inside the beltway were locations like Ballston, for example, in Arlington, which has -- and Rosslyn in Arlington, which I would not -- certainly, Rosslyn I

would not qualify as "a suburban mall."

MR. NOBLE: Well, if you look on Table 23 on pages 64 and 65, it lists the actual locations, doesn't it, sir?

MR. NOBLE: Yes.

MR. RUFFIN: Okay. The Underground at Crystal City is one location, am I right?

MR. NOBLE: Yes.

MR. RUFFIN: That's certainly suburban when you're talking about D.C., am I right? Yes or no.

MR. NOBLE: I would say if you qualify suburban as anything outside the central business district of the District of Columbia, yes.

CHAIRPERSON GRIFFIS: I'm sorry. Let me interrupt you, because that's actually near and dear to my heart, defining what is suburban and what's urban. But isn't your direct question: where does this fit in?

MR. RUFFIN: That's exactly what --

CHAIRPERSON GRIFFIS: This parcel -- this

project, is it downtown, or is it suburban? Or how does it fit in in terms of your calculation and confidence in the percentage breakdown?

MR. NOBLE: Well, if you look at -- well, if you look at the number for the suburban locations they're talking about in the list, the percentage assumed by the study report is actually less than that average. It's 35 percent for transit, and this study report shows 38 percent, a more generous percentage than what the applicant is assuming.

MR. RUFFIN: But, Mr. Noble, the point is that this survey doesn't examine the sort of mall that would operate at 14th and Park Road, am I right? It doesn't talk about a neighborhood mall at 14th and Park Road.

MR. NOBLE: No, it does not talk specifically about that site.

MR. RUFFIN: Instead, it talks about either downtown or big mall shops in places like Crystal City, Rosslyn, or Bethesda. Am I right? That's -- if you look at the Table 23, that's exactly

what's listed.

MR. NOBLE: That is the table of locations that were listed that were surveyed. Each of these locations is, on its own, unique in terms of the shops, the businesses, the square footages, that exist at those locations. This site in Columbia Heights is unique in terms of the shops, businesses, etcetera, in that location especially taken in total with the entire development that's going on in Columbia Heights.

When one does analysis like this, and reviews analysis like this, one needs to take examples and other proximate, if not -- if not identical locations, and draw the appropriate analogies in terms of the statistical information that's provided, and perform the analysis accordingly.

MR. RUFFIN: The basic thing, though, Mr. Noble is that the DC USA Mall, as it's supposed to be called if constructed, is not either in downtown or in Ballston, Crystal City, or any location like that.

Instead, it's in Columbia Heights, a distinct community in upper northwest.

MR. NOBLE: Yes. That's a true statement.

MR. RUFFIN: And, moreover, this study, which was conducted --

CHAIRPERSON GRIFFIS: These are questions, right?

MR. RUFFIN: Yes.

CHAIRPERSON GRIFFIS: Okay.

MR. RUFFIN: This study which was conducted almost 16 years ago examined travel to either downtown locations or huge malls, which are vastly distinct from, as you said, this project on 14th Street. Am I right?

MR. NOBLE: I would not characterize the suburban locations inside the beltway as huge malls.

MR. RUFFIN: Well, they're vast locations --

MR. NOBLE: The locations that are characterized in here, the shops at Crystal City,

Bethesda, Metro Center, and Ballston Commons, at the time this study was conducted I would not characterize in that manner.

MR. RUFFIN: Last point, though, Mr. Noble, even in this Washington Metropolitan Area Transit Authority study, dated 1989, there is nowhere in the study where it says that you should, or anyone else should, assume that there would be 50 percent travel from outside of the Columbia Heights area to the Columbia Heights area by people intending to patronize this proposed mall. Isn't that true? There's no place --

MR. NOBLE: That is not true. You're confusing two statistics.

MR. RUFFIN: No, I'm just saying --

MR. NOBLE: Let me finish.

MR. RUFFIN: I'm just --

MR. NOBLE: Let me make my clarification.

MR. RUFFIN: My question, though, is this, Mr. Noble. There is no place in this Washington Metropolitan Area Transit Authority study

that says 50 percent of the people who will visit this proposed mall for purposes of retail will arrive there by way of public transportation. Isn't that true? Or bicycle or -- nothing like that.

MR. NOBLE: I would like to make a clarification to the question as asked, and then answer the question. The split that is described in the Grove Slade study is 35 percent for transit, not 50 percent. So in that context, if you reask the question, I will answer it.

MR. RUFFIN: There is no -- first of all, my question is -- the answer to my question is no. But even no your -- your question that you asked me to ask --

MR. GLASGOW: Mr. Chairman, I'd like to make sure that I object to that statement. He answered the question for the witness. So I would object to that.

CHAIRPERSON GRIFFIS: Okay. I thought it was a question back. But thanks for the clarification. Okay. Right. Let's not answer our

own questions, but have --

MR. GLASGOW: As you were asking --

MR. RUFFIN: I was asking, in the Washington Area -- Metropolitan Area Transit Authority study dated 1989. There is nothing in that study that says 35 percent of the people who will travel to the proposed mall at 14th and Park Road will do so either by subway, bus, bicycle, or any other means, isn't that true? It doesn't say anything about that, does it?

CHAIRPERSON GRIFFIS: Okay. Let him answer the question.

MR. NOBLE: The answer is yes to that question. There's nothing explicitly in this study that says anything about that project.

CHAIRPERSON GRIFFIS: Okay.

MR. RUFFIN: Thank you. Thank you.

CHAIRPERSON GRIFFIS: Good. Whew.

MEMBER MILLER: I don't know if you've answered this, because it's getting late, but I -- I think it's a really interesting table, Table 23, that

lists the other types of facilities, etcetera, and the percentages of how people get there.

And I'm sure there are similarities and differences between each of these facilities. I'm just wondering, how do you use this kind of chart in determining numbers for like this specific development?

MR. NOBLE: What we typically do is take a look at the transit usage percentage, take a look at the type of retail that's in this associated development, and true it up with what is proximate to the development that we're looking at and see what's the most appropriate thing.

This is very similar to the type of analysis that was done that supported the environmental documentation to build the New York Avenue Metro station. It is accepted practice in the field, and this document -- this WMATA document is an accepted document for using for this type of application for development around Metro stations. So it's a common accepted practice in this area for

development studies.

MEMBER MILLER: Thank you.

CHAIRPERSON GRIFFIS: Very well. Let's move on. I don't have any other questions. The Board doesn't have any questions. You're not prepared to do anything more?

Okay. Let's assess where we are. It's 6:30. That would finish the government reports. As I have indicated, all of those are submitted into the record.

Oh, yes, I guess we can take up the issue -- of course, it's in the record, it has been talked about, but let's just make note -- we have an additional letter from a councilmember in Ward 1. Actually, it was addressing the new application iteration. We also had an original letter, which was Exhibit Number 22 in the record -- Exhibit Number 58, and 22 now, from the Councilmember of Ward 1, Jim Graham.

At this point, Mr. Ruffin, we'd be prepared to move forward on your case presentation.

Let me ask you, first of all, how long you would need to present your case, and how many witnesses you'll have, and whether you want to proceed tonight.

MR. RUFFIN: I would -- I plan to present three witnesses. Two of them would actually come from the applicant, just very brief testimony, and my whole case I imagine would take about -- would take about a half hour to 45 minutes.

CHAIRPERSON GRIFFIS: Okay.

MR. RUFFIN: If the Board would want to continue to another day, I can make myself available. But I would imagine that, assuming that the cross examination would not be exceedingly long, that at the most it would take 45 minutes.

CHAIRPERSON GRIFFIS: Okay. Mr. Glasgow, any difficulty in continuing for the opposition's case presentation tonight? Time-wise.

MR. GLASGOW: Moving forward on that? No, that's fine. Mr. Greenwald did have to leave to catch a flight.

CHAIRPERSON GRIFFIS: Okay. All right.

Let's get to the point now. Mr. Ruffin, you made a question -- a statement that you're going to call some of the applicant's witnesses?

MR. RUFFIN: Actually, I wanted to call Mr. Greenwald for about three questions.

CHAIRPERSON GRIFFIS: But -- I'm sorry. But is this part of a cross examination? I don't understand.

MR. RUFFIN: It would be to put into evidence something that Mr. Greenwald would be privy to.

CHAIRPERSON GRIFFIS: Oh. You just need him to document the authenticity of --

MR. RUFFIN: The document -- yes, right.

CHAIRPERSON GRIFFIS: I don't think we need to rise to that standard of legal procedure in this. You should present your case. If the witnesses from the applicant actually are the ones that could refute it, well, frankly, it's going to be to their detriment that they can't stay.

But I don't think I'm having you call

their witnesses, because conceivably all they need to say is they don't want to be your witness. We can't subpoena them to come and testify. So it's a difficult thing to call them as witnesses, unless they are absolutely voluntary. But I think we ought to get that together. Did that make sense?

MR. RUFFIN: I'm surprised by that rule, but I'm not familiar with the Board as much as I am with some other -- the other -- some other forms. So --

CHAIRPERSON GRIFFIS: Which rule? That I can't --

MR. RUFFIN: No. I thought that I could actually call --

CHAIRPERSON GRIFFIS: Right.

MR. RUFFIN: -- them to testify, but no. Mr. Greenwald is here. If he has to go, or if he won't submit to testimony --

CHAIRPERSON GRIFFIS: What is the documentation you're putting in?

MR. RUFFIN: It is the land disposition

and development agreement between Mr. Greenwald's company and RLA revitalization company.

CHAIRPERSON GRIFFIS: What did OP say? All 130 pages of it? You just want him to authenticate the fact that that's the agreement?

MR. RUFFIN: Basically, yes, authenticate that as the agreement.

CHAIRPERSON GRIFFIS: That's fine.

MR. RUFFIN: And cite -- there's about two sentences, and that's it.

CHAIRPERSON GRIFFIS: He doesn't need to read them in. You're going to read them in.

MR. RUFFIN: I'll read them to --

CHAIRPERSON GRIFFIS: No, no, no. I don't need -- I don't think we need him, but here is the other piece. What other documentations are you proposing to put in that you wanted --

MR. RUFFIN: That's the only document. I received it from the government by way of request.

CHAIRPERSON GRIFFIS: Yes. I don't think anyone is going to refute its authenticity.

MR. RUFFIN: Okay. Well --

CHAIRPERSON GRIFFIS: You said several witnesses. What others?

MR. RUFFIN: I was going to actually put on Mr. Slade, and also our Chair of the Trustees Board. That would be it.

CHAIRPERSON GRIFFIS: Okay. That's good. You're going to put on -- I would suggest that you have one of your witnesses give rebuttal testimony to Mr. Slade's report as part of your case presentation. But I don't think you can call him, as in a cross examination posture, as a witness. Does that make sense?

MR. RUFFIN: I didn't know that rule. I didn't know about that rule before the Board. I have to admit that since that happens in court, and since that happens in the few -- in the Boards that I've been to, I thought -- I assumed that it was appropriate here. My mistake.

CHAIRPERSON GRIFFIS: Exactly. No --

MR. RUFFIN: I stand corrected.

CHAIRPERSON GRIFFIS: It's totally understandable.

MR. RUFFIN: Okay.

CHAIRPERSON GRIFFIS: And, you know, we'll work hard to get me those powers, but --

(Laughter.)

-- for the -- for this evening's procedure, I don't have them.

Do you have a question?

MR. GLASGOW: No, not at this point. We'll see how it unfolds.

MR. COCHRAN: Mr. Chairman, I just wanted to clarify one thing. Office of Planning testified that that was the LDA that was applicable during the -- for the --

CHAIRPERSON GRIFFIS: Okay. We don't need to --

MR. COCHRAN: -- before it was reduced in size.

CHAIRPERSON GRIFFIS: I'm not going to hold you to -- the point is it's a huge document.

Okay. We're going to take a recess. We're going to take 10 minutes.

MR. RUFFIN: Okay.

CHAIRPERSON GRIFFIS: You're going to get together your thoughts, and then we're going right into your case presentation. I would anticipate that we'll close out this evening with your conclusion.

MR. RUFFIN: Okay.

CHAIRPERSON GRIFFIS: Which would leave left only rebuttal witnesses and closings, which I think we can squeeze in anywhere. I'm going to check the schedule and --

MR. RUFFIN: We're going to take the rebuttal tonight?

CHAIRPERSON GRIFFIS: No. No. What I anticipate is just getting through the -- your case this evening.

MR. RUFFIN: Okay.

CHAIRPERSON GRIFFIS: Because, quite frankly, the Board has been here since 8:00 this morning.

MR. RUFFIN: Yes.

CHAIRPERSON GRIFFIS: So in an hour we will have been here 12 hours.

MR. RUFFIN: Yes.

CHAIRPERSON GRIFFIS: And our attention span is going to diminish. So in order to give you full focus on this, I think that's as far as we'd be able to go this evening. But everyone is here.

But I want to give you time to put together your case presentation now knowing that you aren't calling other witnesses.

And when we get to the fact of the LDA, this is what I'm going to specifically request -- anything you submit into this record the Board reads. Not only do we have to, we do read it. So I don't want 130 pages to have to read if it's not pertinent to your case presentation. So all you're going to need to do is highlight for us those absolute pertinent parts, and then tell us the conclusions which you are drawing based on those documents.

MR. RUFFIN: Oh, I see.

CHAIRPERSON GRIFFIS: The world is open to you at this point, only confined by the variance in parking that we're looking at. So make your assertions, have your witnesses testify to that aspect, and we can get through this very quickly.

MR. RUFFIN: Mr. Griffis?

CHAIRPERSON GRIFFIS: Sure.

MR. RUFFIN: Just for purposes of the contract between Greer Properties and RLA Revitalization Corporation, since the document is to be presented in evidence, and also since I was mistaken in thinking that I could have Mr. Greenwald testify under cross examination to focus my inquiry, can I, after sharing them with Mr. Glasgow, just read the pertinent provision which is two sentences long?

CHAIRPERSON GRIFFIS: Oh no, absolutely.

MR. RUFFIN: And it's already highlighted, and so --

CHAIRPERSON GRIFFIS: All I'm saying is what you're going to give us in hard copy and into evidence is those pieces that you want us to look at,

because I don't want -- unless you want me to read the entire document --

MR. RUFFIN: Okay, fine.

CHAIRPERSON GRIFFIS: That's all. All I'm saying is we're going to focus this straight down.

MR. RUFFIN: No problem.

CHAIRPERSON GRIFFIS: We don't need the whole document. And, obviously, we'll -- we'll know what it is because you're going to tell us what it is.

Okay. Everyone clear on where we're going? 10 minutes? Do you need more? 15 minutes? All right.

MR. RUFFIN: No problem.

CHAIRPERSON GRIFFIS: It'll be in that timeframe.

MR. RUFFIN: That's probably enough. Thank you, sir.

CHAIRPERSON GRIFFIS: Excellent.

(Whereupon, the proceedings in the foregoing matter

went off the record at 6:42 p.m. and went back on the record at 7:05 p.m.)

CHAIRPERSON GRIFFIS: Let's resume.

MR. RUFFIN: I don't know whether it's marked as an exhibit or whatever, but what I shared with the board was a copy of exhibit C, which is part of the land disposition and development agreement between RLA Revitalization Corporation and DCUSA Operating Company and the Greer Group for the sale and development of parcel 27, which we know of as the DCUSA mall project.

The whole contract; that is, the land disposition and development agreement; that is, the main portion of the agreement, is about 77 pages. That is not pertinent for the board's review.

This exhibit C that is a part of the contract is titled "Parcel 27, DCUSA Development Plan Summary." That is important. And the only part that I bring to the board's attention is on the first page, the beginning of the fourth paragraph. It reads, "There will be enclosed parking for

approximately 1,364 cars and 3 below-grade levels. The amount of parking spaces was approved by Zoning Board of Adjustment action, application number 16858, decision dated April 23, 2002."

It reads further, "The test borings indicate that soil conditions will enable the site to be excavated to this level without groundwater problems." This is the operative statement in the agreement between the parties.

And I bring that to the attention of the board because this would operate as an admission by the applicant as well as by Greer Properties, Incorporated.

Now, I let that document serve as information in and of itself. I bring a witness for our case-in-chief, the Chair of the Board of Trustees for Kelsey Temple Church of God in Christ, Ms. Dolores Ruffin.

CHAIRPERSON GRIFFIS: Excellent.

MS. RUFFIN: Good Afternoon. My name is Dolores Ruffin. I am Chair of the Trustee Board for

the Kelsey Temple Church of God in Christ. I have a statement that I will read for the record.

The Kelsey Temple Church of God in Christ is located at 1435 Park Road, Northwest. It's directly across the street from the site of the proposed DCUSA mall.

Kelsey Temple Church has existed since -- well, it's been in existence since 1923, when our former pastor and bishop started it in this area, but it's been, I guess, formed as an organization since 1926 and has been located at 1435 Park Road since 1958.

At present, Kelsey Temple Church leases the parking lot in the parcel where RLA Revitalization Corporation hopes to construct the DCUSA mall and its underground parking lot.

The church manages the parking lot as a publicly available facility where residents, business owners, local area employees, business travelers, and others may use the parking lot for an affordable daily or monthly fee. As for Kelsey Temple Church

itself, it uses the parking lot in order to provide off-street parking for its parishioners and its visitors.

Depending on the worship service or other public gathering at the church, parishioners and other visitors at the church may use from 75 to 350 parking spaces on any day of the week, including Sunday.

Also, Kelsey Temple makes the parking lot available for employees and managers working for the Temple Building and Economic Development Corporation.

The parking lot needs for this part of Columbia Heights must be examined in much broader terms than may be the needs of Kelsey Temple Church of God in Christ and its parishioners.

The Columbia Heights community has about 50,210 residents, or about 9 percent of the total District of Columbia population according to the 2000 U.S. census.

Indeed, according to a study performed by the Kelsey Temple Church parishioners, who examined

the parking needs in this community, the following information appears to be important.

The following residential premises provide the following amounts of living space and off-site street parking. Next door to the church are the Samuel Kelsey Apartments at 3322 14th Street, has 150 apartment units but 28 off-street parking spaces.

Across the street from the church at 1448 Park Road, there are 45 apartment units but no off-street parking. Up the street from the church, the Tiveley Apartments at 3237 Hyatt Place has 30 apartment units but no off-street parking.

Nearby, 3228 Hyatt Place has 21 apartment units but no off-street parking Next door to that building is 3240 Hyatt Place, which will accommodate 6 condominium apartments and 6 off-street parking spaces underground.

On the west side of the church, 1445 Park Road has 54 apartment units but no off-street parking. Next to that building, 1451 Park Road has 80 apartment units but only 18 off-street parking

spaces. And the next building, which is at 1457 Park Road, has 45 apartment units but merely one off-street parking space.

On the same side of Park Road as Kelsey Temple Church from 1471 Park Road to 1531 Park Road, there are 11 apartment buildings with a total of 83 apartment units but only 27 off-street parking spaces. On the opposite side of Park Road, from 1502 Park Road through 1512 Park Road, there are 6 residential buildings with 8 dwelling units and one off-street parking space.

At Sacred Heart Catholic Church, the parish has a three-car garage. At 1450 Irving Street, 1454 irving Street, and 1460 Irving Street, these three residential buildings have a total of 93 apartment units but no more than 25 off-street parking spaces.

In other words, the residential community immediately surrounding the site of the proposed DCUSA mall has a total of about 613 individual dwelling units but only 109 off-street parking

spaces.

Under 11 DCMR 2101.1, there should be one off-street parking space for each of two dwelling units in the area. Hence, the area should have at least 370 off-street parking spaces for residents. The community is shortchanged by 198 off-street parking spaces for residential dwelling spaces.

Moreover, according to our survey, this community includes 20 stores, including pharmacies, beauty shops, and restaurants on 14th Street from Irving Street to Monroe Street and on Park Road from 14th Street to Hyatt Place.

In addition, this business trip includes one health clinic, the Unity Health Clinic; and one bank, Riggs National Bank. This business trip includes one small church, Iglesia Apostolic Pentcostial; and two large churches, Sacred Heart Catholic Church and Kelsey Temple Church of God in Christ, which both hold about 1,200 seats apiece in their separate sanctuaries.

Under 11 DCMR 2101.1, the two churches

would have an obligation to provide about 120 off-street parking spaces at each church. As for this entire business community, including the bank, the health clinic, and 3 churches, they have a total of about 20 off-street parking spaces in this entire community; that is, unless we include the off-street parking presently available at the 1400 Park Road parcel proposed for development by DCUSA mall. That address is 1420 Park Road, Northwest.

Our study also included a look at the traffic backup on Park Road from 14th Street to 16th Street in the evenings and on weekends. And I have pictures here to enter into the record that will show that there is a constant -- oh, okay. I know what they say. There is a constant stream of traffic. You can see the cars that are just bumper to bumper like rush hour traffic in that area and on that particular block.

While I don't have it from personal knowledge, I know that the traffic backs up around 14th Street and across the street onto Kenyon, but

that particular block of 14th and 15th Streets, it's bumper to bumper in the afternoons, in particular, on Sundays.

The other thing I'd like to --

MR. GLASGOW: Did you want to introduce these into the record?

MS. RUFFIN: Yes, yes.

MR. RUFFIN: Yes.

MR. GLASGOW: All right. Mr. Chairman, I don't have any objection to them taken into the record. They're not dated, and there is no time shown on them or any of that information.

MS. RUFFIN: I'm sorry. I'm sorry.

MR. GLASGOW: And it will be taken in for what they're worth with respect to photograph showing cars on certain streets.

CHAIRPERSON GRIFFIS: Okay.

MS. RUFFIN: They were taken on December the 18th. And the development date is on the back of December 20th, 2004. I'm sorry. I did miss that piece of information.

It's the 1400 block of Park Road. It's the block between 14th Street and 16th Street on Park Road, Northwest.

CHAIRPERSON GRIFFIS: Are you clear on the fact that these are now in the record? You're not getting these back.

MS. RUFFIN: Yes.

CHAIRPERSON GRIFFIS: Okay. Mr. Glasgow, are you requiring copies of these?

MR. GLASGOW: No, sir.

CHAIRPERSON GRIFFIS: Obviously we'll put them into the record. We'll probably put them on sheets, and they can be made into copies as required.

Okay. Please continue.

MS. RUFFIN: Okay. I wanted to also refer to the Urban Land Institute report. Oh, he tells me I have to read the parking requirement for shopping centers, summary recommendations and research study report, the second edition, Urban Land Institute. And this date is 2000, the second printing in 2000. And I'm looking at section 2, page

3. And it says -- are you all with me?

CHAIRPERSON GRIFFIS: Section 2, page 3.

MS. RUFFIN: Yes.

CHAIRPERSON GRIFFIS: Go ahead.

MS. RUFFIN: Okay. It says, "On the other hand" -- and it's talking about I guess analyzing the traffic and the need. "On the other hand, the amount of parking needed at a shopping center is increased by." There are two variables here that should be pointed out: proportion of restaurant, cinema, and entertainment land use, treatment of employee parking during shopping peaks.

And also, if you go down further, it says, "The parking ratio recommendations, table 1 shows the recommended number of spaces for 1,000 square feet of gross leasable area. And it's recommending 4 spaces for every 1,000 square feet. That's from" --

CHAIRPERSON GRIFFIS: Is that attendant to the restaurant, entertainment, employee parking, 4 per 1,000?

MS. RUFFIN: That's correct, yes. Yes, it would be for that, but then it could go up from there, yes. Okay.

Did I answer his question? Oh, yes, it says that it increases because of that.

CHAIRPERSON GRIFFIS: My question only is, you indicated it's a 4 per 1,000 square feet ratio --

MS. RUFFIN: Right.

CHAIRPERSON GRIFFIS: -- that the ULI is concluding is required. And you started out saying in that portion of restaurant entertainment and how employee parking is dealt with. Is that 4 per 1,000 for the restaurant intertwinement? No. It's just for a base level of retail.

MS. RUFFIN: Yes. It's the -- right. It's the base level.

CHAIRPERSON GRIFFIS: Your point is, if I understand you correctly, if you add restaurant and entertainment, it may increase from --

MS. RUFFIN: It may go up from there,

yes.

CHAIRPERSON GRIFFIS: And obviously, depending on how you deal with employee parking, it could also increase that ratio?

MS. RUFFIN: That's my understanding, yes.

CHAIRPERSON GRIFFIS: Okay.

MS. RUFFIN: Okay. Indeed, this is a grave situation that we have before us. In fact, what I understand, the newly proposed DCUSA mall would add to this community 26 new businesses, including at least 2 large big box commercial establishments, a new Target department store, and a Washington health club.

In other words, this project seems to be designed to change our quaint neighborhood into a mini downtown with densely situated commercial establishments that would very likely displace the residents, the churches, and the small businesses presently in the neighborhood. In fact, this new project will take away our valuable off-street

parking. This would severely harm our neighborhood.

For that reason and for the purpose of saving the parking so desperately needed by our neighborhood, Kelsey Temple Church of God in Christ and the Temple Church Building Economic Development Corporation oppose this application.

Thank you very much.

CHAIRPERSON GRIFFIS: Thank you.

Shall we interrupt with questions on this witness, Mr. Ruffin, now and then go to cross-examination? And then we'll go to the --

MR. RUFFIN: I have no questions. So if either Mr. Glasgow or the Board have questions to ask of the witnesses --

CHAIRPERSON GRIFFIS: That's what I mean.

MR. RUFFIN: Go right ahead.

CHAIRPERSON GRIFFIS: Do you mind if we go into questions at this point?

MR. RUFFIN: Go.

CHAIRPERSON GRIFFIS: Okay. Let's do so. Let's start with the last piece that you made a

statement in terms of for the community, you want to save the parking.

MS. RUFFIN: Yes.

CHAIRPERSON GRIFFIS: And, therefore, the assumption in my understanding of your testimony is that if this is built, you're not saving that parking.

So help me understand. If you have, as you would describe this, a public parking surface parking lot now, which is utilized, how is what is being proposed different, although it's underground? My understanding of the testimony provided is that it also is a public parking structure.

MS. RUFFIN: It is a public parking structure, but in previous testimony, it has been made very clear that the parking would be for the people that are utilizing the mall. And that's not -- the church would not be utilizing the mall, not to say that some of our parishioners wouldn't, but that wouldn't be the purpose for people coming who are attending the church services.

Likewise, the other obstinacies in the community would be coming in to open their shops or the beauty salon, people going to that shop. And that's not in the mall. That's currently in the community.

And currently the parking that we provide is affordable to people coming into the community for those reasons. And it's been made abundantly clear here that the pricing will be set such that others will not use it.

CHAIRPERSON GRIFFIS: Okay. That's well-stated, and I think I perfectly understand your position. Based on the programming of what has been described here, you think it would, in fact, not be available for the uses you've needed to use the surface parking?

MS. RUFFIN: That's correct.

CHAIRPERSON GRIFFIS: You made a statement that this would displace residents. I think I understand you said and churches and retail.

MS. RUFFIN: And businesses, yes.

CHAIRPERSON GRIFFIS: How does this directly go to displace residents?

MS. RUFFIN: Well, if things developed such that people can't continue their normal daily activities or daily lives the way they are used to them, they would find themselves having to move out of the area.

CHAIRPERSON GRIFFIS: So it goes to your last statement of the fundamental change --

MS. RUFFIN: Right, right.

CHAIRPERSON GRIFFIS: -- in the entire area?

MS. RUFFIN: Right.

CHAIRPERSON GRIFFIS: Okay. I understand that. In your calculation back on this 4 per 1,000, did you have an opportunity to put that ratio in the square footage of what is being proposed? I guess directly saying, am I supposed to understand that, even based on -- are you making the statement, even based on the ULI study, this doesn't meet that requirement of projected retail demand for parking?

MS. RUFFIN: As I recall from the people who have been looking at this report, their conclusion was that it does not.

CHAIRPERSON GRIFFIS: And who are the people?

MS. RUFFIN: It was a group of folk that were working with our attorney and briefing us on what they were finding.

CHAIRPERSON GRIFFIS: Okay. And that is important information. Who are these people? I don't want to know their names. Are they transportation engineers or are they people that can read these documents, which are good reading late at night, when you can't fall asleep, or --

MS. RUFFIN: There was an architect working with him and also a law student.

CHAIRPERSON GRIFFIS: Okay. Actually, an assessment, to put it into perspective of what we're looking at around the area in classification, I just want to make sure because I was writing it diligently down. You indicated that there are approximately 613

residential units in the surrounding area existing.

MS. RUFFIN: Right.

CHAIRPERSON GRIFFIS: I'm assuming that's not what's proposed or under development. Is that correct?

MS. RUFFIN: That's correct.

CHAIRPERSON GRIFFIS: And the provision of only 109 off-street dedicated parking spots for those units?

MS. RUFFIN: I think, yes.

CHAIRPERSON GRIFFIS: And out of all the stores that you listed, --

MS. RUFFIN: Yes.

CHAIRPERSON GRIFFIS: -- including the two churches that --

MS. RUFFIN: Three churches.

CHAIRPERSON GRIFFIS: Right. I know you mentioned three. And 2 of them, you indicated that there were upwards of 2,400 total seats.

MS. RUFFIN: Yes, that's correct.

CHAIRPERSON GRIFFIS: The total parking

for those was actually 20. Was I correct?

MS. RUFFIN: That's correct, yes.

CHAIRPERSON GRIFFIS: Twenty total off-street parking. Is that for the retail establishments?

MS. RUFFIN: No, no, no. The 20 -- let me see. Where am I?

CHAIRPERSON GRIFFIS: You made a statement that --

MS. RUFFIN: Yes.

CHAIRPERSON GRIFFIS: Let me see if it's correct.

-- 20 off-street --

MS. RUFFIN: Twenty off-street parking spaces in --

CHAIRPERSON GRIFFIS: -- available for all of the retail and church existing.

MS. RUFFIN: Right, but -- that's correct. And that's basically looking at the space that would be available between those two churches, yes.

CHAIRPERSON GRIFFIS: Okay. How did you arrive at all of these numbers?

MS. RUFFIN: We walked around the neighborhood, went into the buildings, and saw what was there.

CHAIRPERSON GRIFFIS: So you've physically walked all of these and counted?

MS. RUFFIN: Yes, along with -- not me alone but --

CHAIRPERSON GRIFFIS: Right. Understood.

MS. RUFFIN: Yes.

CHAIRPERSON GRIFFIS: Get into the process of it. Lastly, you made a statement in your opening that the church utilizes anywhere from 75 to 350 spaces --

MS. RUFFIN: That's correct.

CHAIRPERSON GRIFFIS: -- during the week and Sunday.

MS. RUFFIN: That's correct.

CHAIRPERSON GRIFFIS: Talk a little bit more about the actual times and demand. Is that

weekday evenings? And then would you for activities that are happening within the church have roughly 75 or 100? And then Sundays, you would anticipate that's your big parking demand day, I would assume.

MS. RUFFIN: Well, it really depends. Sundays we probably will go anywhere normally 75 to 100 spaces normally on a Sunday. But if there is some type of service, special service, it could very well go up.

The timing could be we start our morning prayer at 9:00 o'clock. If we have an afternoon service, it generally starts around 3:00 or 4:00 o'clock. And so the need for the church on Sunday is all day. And it could vary.

Also, any time you have a funeral, we don't know whether that is going to be Monday. It's generally not on a Sunday.

CHAIRPERSON GRIFFIS: Right.

MS. RUFFIN: Well, it's not on a Sunday in the District.

CHAIRPERSON GRIFFIS: I understand.

MS. RUFFIN: But it could be Monday through Saturday depending upon the family size and what have you.

CHAIRPERSON GRIFFIS: But in terms of regular activities during the week?

MS. RUFFIN: During regular activities during the week, for our normal -- and I hesitate to do this --

CHAIRPERSON GRIFFIS: Yes.

MS. RUFFIN: -- because this church is what we call the mother church in the District of Columbia for the Church of God in Christ. And oftentimes we have our district as well as jurisdictional functions there. So I hesitate to do this, but if it's no one but us, normally during the week, it might be 50 parking spaces and then up on Sunday.

CHAIRPERSON GRIFFIS: And that's evening times?

MS. RUFFIN: That's evening time, yes.

CHAIRPERSON GRIFFIS: Okay. Other

questions?

MEMBER MILLER: I just want to make sure I have your numbers right, too.

MS. RUFFIN: Yes.

MEMBER MILLER: I mean, basically there are 350 spaces in the parking lot right now; is that right, available? Is that wrong? I want to get it right.

MS. RUFFIN: Yes. Yes, yes. It's about 400 there now that we use.

CHAIRPERSON GRIFFIS: I'm sorry. To clarify, because I recall from earlier testimony in this application that it was substantially less than that, --

MS. RUFFIN: That's right.

CHAIRPERSON GRIFFIS: -- we're talking about in this site --

MS. RUFFIN: That's correct.

CHAIRPERSON GRIFFIS: -- and the paved area.

MS. RUFFIN: That's correct.

CHAIRPERSON GRIFFIS: And you think there's upwards of 400 parking spaces?

MS. RUFFIN: Yes, sir. The space that's in the lease from RLA is one number, but then there's actually more space than that that we have been parking on.

CHAIRPERSON GRIFFIS: I see.

MEMBER MILLER: So I guess there are two numbers. How many spaces are there in this lost?

MS. RUFFIN: It's about --

MEMBER MILLER: How many spaces do you lease?

MS. RUFFIN: I guess we lease about around 200, yes, according to the lease, yes.

MEMBER MILLER: Okay. Because today I wrote down 350 spaces any day, including Sunday. Is that wrong?

MS. RUFFIN: Let me clarify something on the lease. Okay. All I can tell you is I know what we can get on there. And we can get that many cars on there.

CHAIRPERSON GRIFFIS: "That many" being 400?

MS. RUFFIN: Yes, roughly 400.

MEMBER MILLER: You can get 400 cars on that lot?

MS. RUFFIN: Right. Roughly, yes.

MEMBER MILLER: And how many do you use?

MS. RUFFIN: How many do we use ordinarily? I think I said earlier that on a Sunday, we use anywhere from 75 to 100 spaces normally.

MEMBER MILLER: So who uses the other spaces?

MS. RUFFIN: The Hispanic church uses some of them, and the businesses in the community that are open on Sunday also --

CHAIRPERSON GRIFFIS: Do they utilize spaces that you have leased?

MS. RUFFIN: Yes.

CHAIRPERSON GRIFFIS: Okay. So there are others outside of the church that utilize those lease spaces?

MS. RUFFIN: Oh, yes. Yes, yes.

MEMBER MILLER: How many spaces do you have leased?

MS. RUFFIN: Well, that's where --

CHAIRPERSON GRIFFIS: She said approximately 200.

MS. RUFFIN: The area we are parking now, I know that RLA testified earlier that it was something like 200 spaces. And I know what our lease says. But we actually park more cars than what they say and what the lease says. I can't explain it.

CHAIRPERSON GRIFFIS: If this is a footprint of the site which is showing in the parking garage, which, look, it's not the entire site, but clearly we're looking at a fairly substantial portion of the site, do you park all across? Oh, there we are. Good site plan. Thank you very much. Do you park across that entire site?

MS. RUFFIN: Point it out to me which one it is.

CHAIRPERSON GRIFFIS: He is giving some

directions. That's Park on the top.

MS. RUFFIN: Yes. We park from starting at Park Road going back to the alley.

CHAIRPERSON GRIFFIS: Okay. So there are existing buildings on the site.

MS. RUFFIN: Yes.

CHAIRPERSON GRIFFIS: So you park, let's just say for clarity and graphics, you park on the top half of that portion of the parcel, subtracting where the existing buildings are.

MS. RUFFIN: Yes.

CHAIRPERSON GRIFFIS: Okay. How many cars do you have on a deck?

MR. PRIFTI: Five hundred.

CHAIRPERSON GRIFFIS: Five hundred cars on a deck. Okay. I'm having a little trouble just figuring 400 in that space, but let's move ahead.

MS. RUFFIN: Okay.

CHAIRPERSON GRIFFIS: Go ahead.

MEMBER MILLER: Okay. Well, let me try to confirm another number. I think you said that you

went around the community and you saw what type of buildings were different places.

MS. RUFFIN: Right.

MEMBER MILLER: And each of those types of uses have parking spaces under the regs that they are supposed to have basically. And then I think you said the community was 198 short.

MS. RUFFIN: Right.

MEMBER MILLER: Okay. Now, that 198 number, does that take into account this parking lot or not? I mean, after all the cars that can fit in this parking lot, say it's 400, are you still 198 short or are you 198 short not including this parking?

MS. RUFFIN: Not including the parking lot. The parking lot makes up the difference.

MEMBER MILLER: Well, it sounds like the parking lot has more spaces, then, because if it has 400 spaces and the shortage was 198, not including the parking lot, there would be a 202 surplus.

MS. RUFFIN: Yes, but, you know, I don't

know. It accommodates the church, and it accommodates the community on Sundays. And it accommodates the community during the week. I don't know. It might be that, you know, some people are not utilizing that at the same time or that it could be others that don't own cars, you know.

MEMBER MILLER: Is the parking lot at capacity most of the time? Is it full or is it not?

MS. RUFFIN: On Sundays, it's pretty much at capacity, yes. And then there is parking on both sides of the street on Sunday.

MEMBER MILLER: Okay. Thank you.

CHAIRPERSON GRIFFIS: So you control that site? Is there an attendant that controls who utilizes it?

MS. RUFFIN: During the week, yes, we have an attendant out there. On Sundays, no. There's a gentleman who volunteers from church that's out there most of the time to make sure people park appropriately and what have you but not a paid attendant.

CHAIRPERSON GRIFFIS: So he can pack them in. In terms of program, if someone was just driving through the neighborhood and saw that parking lot, they pulled in?

MS. RUFFIN: They would pull in.

CHAIRPERSON GRIFFIS: What would happen? Could they park there?

MS. RUFFIN: Yes, yes. As long as there was available space, they park.

MEMBER MILLER: How long are your services on Sunday?

MS. RUFFIN: On Sunday, like I say, we start with prayer at 9:00 o'clock. And we end with evening service about 9:00 o'clock in the evening.

MEMBER MILLER: But your 9:00 o'clock prayer, does it have an ending in the morning?

MS. RUFFIN: Oh, yes. It goes from 9:00 to 9:30. And then Sunday school starts at 9:30 and goes until 11:00 o'clock. Morning service starts at 11:00 and generally goes until about 2:00.

If we have an afternoon service, that

will start around 3:00 and will go until after 4:00 or 5:00, depending. And then we have Bible study starting at 5:30. And that generally goes until 7:00. And then at 7:00, we have the evening service, Sunday evening service. So it's all day on Sunday.

MEMBER MILLER: Do you have any other structured, scheduled events during the week, classes?

MS. RUFFIN: Yes. On Tuesday evenings, starting at 7:00, prayer and Bible study again and on Friday evenings, starting at 7:00, Friday night service and pastoral teaching.

MEMBER MILLER: When do these end, 7:00 to what?

MS. RUFFIN: On Tuesday night, it generally ends around 8:30-9:00 o'clock. On Friday night, it's more like 9:30-10:00.

MEMBER MILLER: Thank you.

CHAIRPERSON GRIFFIS: There's nothing further from the board. Mr. Glasgow, cross?

MR. GLASGOW: Mr. Chairman, I think what

we're going to do is just put on rebuttal testimony because the evidence that our traffic consultants have and their studies are just so vastly different than what this testimony is that I don't know that it's going to be productive to get into a whole series of questions. We'll just put on our witnesses and let them deal with that.

CHAIRPERSON GRIFFIS: Excellent. Okay. Very well. Mr. Ruffin?

MR. RUFFIN: We're finished. We close.

CHAIRPERSON GRIFFIS: Okay. Good. Thank you very much.

At this point, then, we're at 20 of 8:00. I think it's appropriate that we end for the day. However, before we let everyone go, let's figure out. Mr. Glasgow, you indicated that you are going to bring rebuttal witnesses. How many are you proposing at this time?

MR. GLASGOW: It will probably be two to three.

CHAIRPERSON GRIFFIS: Two to three is

what you have indicated.

MR. GLASGOW: Two to three witnesses, Mr. Chairman.

CHAIRPERSON GRIFFIS: I'm obviously asking these questions in order to establish the time requirement that we're going to need. Two to 3, I would imagine you need about 10 to 15 minutes, not counting cross-examination. Is that correct?

MR. GLASGOW: That's right. It is going to be very short because we just want to address this issue with respect to the development summary with the old plan and the new plan. We're going to take a minute to deal with that with the engineers and the construction people and then to the extent that the Board deems relevant, parking essentially outside the site because if this project were to be developed, let's say, with some mixed-use residential development, there would be no on-site parking probably for anyone out in the community. And that could just proceed forward as a matter of right. But we will deal with that to the extent that the Board

wishes to.

I guess that goes to the issue of whether or not the 1,244 spaces because there was nothing in that testimony that dealt with whether the 1,000 spaces for our use on our site doesn't meet the requirements. The only testimony -- or does not meet the demand.

The only testimony that we have had, direct testimony, has been from DDOT, Office of Planning, and our traffic consultant on that dealing with our use, our generation of traffic.

CHAIRPERSON GRIFFIS: Right. That's understood.

MR. GLASGOW: So I guess that we will want to have some direction as to the relevance that the Board places on parking within the community and whatever its demands are.

CHAIRPERSON GRIFFIS: Good. And I think the relevance goes to the issue brought up that if this is a public parking structure --

MR. GLASGOW: Right.

CHAIRPERSON GRIFFIS: -- and, therefore, cannot be -- and that's fully understood by the Board -- cannot be totally controlled as to who utilizes it as a private development of a residential building might be and based on the fact that part of your case presentation is the need and requirement for anything above 1,000 is not there, then the relevancy goes to the fact of how do you assess what the actual demand is.

I think it's pretty clear what the retail square footage and use demands this size to be, but if we go back to what this actually is is a program but public parking structure. How do we put that all into the picture of our deliberation of your argument of no demand is needed for the additional spaces.

MR. GLASGOW: Right. I think there are two things there. One is the letter from RLARC to clarify the issue that this is not a public parking garage for general use. Rather, it is being built as a garage for patrons of DCUSA.

That was to clarify the point on that

issue, as I think the Council members' letter alluded to it also, that I believe that what that testimony was going through -- and we can have Ms. Budoff clarify that.

I think there was a misreading of a question from the Chairman at the last hearing that she was thinking that that was not something where like Target would be allocated 800 parking spaces and someone else would be allocated a number of parking spaces.

CHAIRPERSON GRIFFIS: Right.

MR. GLASGOW: To the extent that the Board wants us to, we can drill this down as tight as we want to keep others out. And that's what the condition that has been consented to with the Office of Planning gets to.

If the Board wants to make sure that no one other than the users of this parking facility go in there, that can be pretty well-handled between what RLARC has written and the condition that the Office of Planning has proposed.

To the extent that the Board wishes to -- which the applicant is amenable to and that's why we came up with the alternative with the stacked valet. I mean, the stacked attendant, the attendant-assisted parking, was to address if the Board wanted the structure to be able to have more flexibility to deal with outside demand. So we were doing this as --

CHAIRPERSON GRIFFIS: I think it's pertinent evidence, but let me clarify because it's not my opinion that the Board is setting up, essentially what we want, but, rather, our trying to investigate the full picture of what this is.

And I know I understand what you're saying, but at the end of the day, it's going to be based on our assessment and judgment of obviously the variance request that is here.

But even that letter, which you say definitively addresses this issue, still rises to the level of this will be a programmed but public parking garage.

And so think maybe I'm making is a bigger issue than it actually is. It's just a quick assessment of 1,000 spaces certainly satisfies the retail above. This isn't going to be built if the retail above isn't built. They're joined somehow.

MR. GLASGOW: Yes.

CHAIRPERSON GRIFFIS: The connection is what I think we were struggling with previously. I think it's come clear with what is happening today in the additional submissions. But still and all, if we're relying on a very strong presentation of an argument that this satisfies the demand, shouldn't we have a bigger picture of the overall demand that it might actually be asked to satisfy.

MR. GLASGOW: Yes. If it is determined as a matter of policy -- and that's what the Board has to do is weigh the policy here as to what flexibility to build into the operation of this garage, whether there's increased flexibility or whether it's this garage is sized to deal with the retail structure above, because that's how it is

sized at this point in time.

If the policy decision is made to be able to deal with some other potential demands on the garage, then the attendant-assisted parking is available to do that.

CHAIRPERSON GRIFFIS: Okay. So your beginning questions were trying to probe how you're staging your rebuttal witnesses.

MR. GLASGOW: Right.

CHAIRPERSON GRIFFIS: Has that been clarified?

MR. GLASGOW: I believe so because what we'll do is I was thinking we can have a quick rebuttal witness to deal with the statement that was read into the record by counsel with respect to this parcel 27 development.

And also if we need to, we can have our RLARC representative deal with that also.

CHAIRPERSON GRIFFIS: The LDA exhibit --

MR. GLASGOW: That's correct. Yes. That's five minutes.

CHAIRPERSON GRIFFIS: Okay.

MR. GLASGOW: The other really depends more upon how the Board as a Board wants to approach it with respect to the demand off site, what off-site demands there are, what off-site demands may or may not be factored into the size of this --

CHAIRPERSON GRIFFIS: I would say for my purposes in looking at it, you have figures that have been presented as part of the testimony today and in terms of the demand in the surrounding area.

I'd put it to you to say whether you think that that is going to be of pertinence for this case application and make that point or, you know, rebut that, those numbers and details.

I mean, obviously we just want to clarify. We have these now in front of the Board. So what is the Board to do with them --

MR. GLASGOW: Right.

CHAIRPERSON GRIFFIS: -- in your presentation? I'm clear on what the party in opposition wants us to do with it.

MR. GLASGOW: We have information on that. I will submit that. I would say that that's what, probably ten minutes?

CHAIRPERSON GRIFFIS: Okay. Okay. Did you have a question?

MEMBER MILLER: Well, kind of. One of the issues I think that you should be addressing is any adverse impact since it's a variance test to the public and that the displacement of parking, which is what was raised today, would be an issue that I would think I would like to see addressed because it sounded like from your presentation before that this garage is going to have more than enough spaces so that it wouldn't have to just serve the retail and could serve the public as well and it was a general parking lot.

So I find this letter a little bit confusing. Maybe they're trying to change for this proceeding.

MR. GLASGOW: I think that they're indicating that if the Board was concerned, that

commuters and others would overrun this garage and that parking wouldn't be available for the retail users or the community or anybody else. RLARC is letting you know that they can deal with that issue as any other user.

I think we are in some ways almost being held to a different type of standard that anyone else that would be developing this type of property.

If we were coming in and just building a facility, like this retail facility, and let's say we're providing the 1,600 spaces or whatever that's required, I mean, no one ever asks, "Well, what happens to any parking that's on the surface right now?" or whatever.

Normally, at least historically, the Board has sort of taken the position that whatever surface parking there was, everybody always knows that's a temporary use. The site is going to be redeveloped.

What is on the surface parking needs to fend for itself in some other fashion because

development is going to occur, either this project or some other project, or in some fashion.

And there is going to be no requirement if there is some other matter-of-right solution. I don't know what it is at this point in time since the city has indicated that for the last 20 years, they have wanted to have some high-density retail here, that there is going to be some type of parking relief.

And then the question is going to be what -- and I guess what is being said is what flexibility is there on behalf of utilization of this garage to address existing parking demand in the neighborhood.

CHAIRPERSON GRIFFIS: Right. Is your question answered? There it is. I think we're going to get to where we need. It just struck me maybe this is some of the problem. When we're asked to look at parking and calculations, we go to this the strict regulations would lay out use, the zone district, and the square footage depending. But let's take it at that aspect.

So for a certain amount of square footage, you are required to provide one parking space. And that is dimensioned on how it is and how you get to it.

In this case, I think we're struggling with we have that in this application of what we are being asked to look at, this very strict formulaic calculation. But there is an aspect to this garage that is different than that of a full private development.

To utilize the last application, we have had projects that have changed in their square footage utilization, where the retail expands at a certain level in a residential building and they have to provide the increase of parking that's directly attendant to that retail square footage. And they have to show exactly how they put it there.

They cannot say, "Well, you know, across the street is a public parking garage or surface." We're going to satisfy our parking requirement across the street because everyone is going to utilize that

and that counts towards, you know, what we need. Is that clear?

So all we're trying to do is connect back into how the actual demand realized and regulatorily required, how that retail is satisfied within this garage with the balance of others that will be able to utilize it.

MR. GLASGOW: I understand, Mr. Chairman. We also will provide testimony because we have looked at four other major mixed-use retail parking garages, such as the ones up at Chevy Chase Pavilion and Mazza Gallerie and all of those and Georgetown Park and 4000 Wisconsin.

And when you go into any of those garages, no one asks you, "Are you shopping at the retail upstairs?"

CHAIRPERSON GRIFFIS: "Where are you going?"

MR. GLASGOW: "Where are you going?"

CHAIRPERSON GRIFFIS: Okay.

MR. GLASGOW: You go in. You either --

CHAIRPERSON GRIFFIS: So you're going to have a witness that is going to go through those cases?

MR. GLASGOW: That's correct. What we're saying is what is normal, customary, incidental, and everything else in the District of Columbia for a project of this size with this type parking is just what is happening here.

CHAIRPERSON GRIFFIS: Okay. I think that would be productive in terms of this case presentation, which is obviously what we are having to base our decision on and solely.

Okay. Any other clarifications from the Board or questions? Yes, Mr. Cochran, did you have --

MR. COCHRAN: Neither DDOT or ROP feel a need to clarify anything that they have commented on. I just wanted to be sure that you don't feel the need for us to clarify something.

CHAIRPERSON GRIFFIS: Right. I didn't see anything arising today that would require any

sort of supplemental reports or additional testimony. I'm assuming -- of course, you are welcome to be here when we set this date, but we're hearing rebuttal testimony that will be crossed by the parties in opposition.

Are either the applicant or the party in opposition needing to have Office of Planning or DDOT here at the next hearing anticipated? Okay. So there it is in terms of our attendance.

Mr. Ruffin, do you have questions on process or any other clarifications of what we're doing?

MR. RUFFIN: I don't think so.

CHAIRPERSON GRIFFIS: Okay. Good. This is what I would like to do. I want to establish what day it is. It's still the 1st, right? Okay. So at February 1st, let me tell you we've got one heck of a schedule through February. This looks like it may be our shortest session in February.

However, what I want to do is complete this. This is an awful lot of documentation. The

longer we drag this out for the Board, the harder it is and, actually, the more time it takes because we have to go back and reread everything. It's better to have it fresh in mind.

I'm going to put this first in the afternoon next week. We have, as I say, one stacked morning. And we have one case in the afternoon because we have anticipated it is going to be quite lengthy. So I'm not going to put you after that. I want to get you on before. So let me hear any difficulties in making that date. That's next week.

MR. RUFFIN: The 8th, 1:00 o'clock.

CHAIRPERSON GRIFFIS: Yes, the 8th at 1:00 o'clock, the beginning of our afternoon session.

MR. RUFFIN: I'm available right now.

CHAIRPERSON GRIFFIS: We can take a dinner break, but we want to see our families, friends, and homes tonight.

MR. RUFFIN: Well, if you want to put it into March, that's fine, but February is clear because I have some trial work set for the 23rd. So

that's the reason why the 8th is clear.

CHAIRPERSON GRIFFIS: So the closer in, the better?

MR. RUFFIN: Closer is better.

CHAIRPERSON GRIFFIS: Okay. We don't want to get close to the 23rd?

MR. RUFFIN: Right.

CHAIRPERSON GRIFFIS: Mr. Glasgow?

MR. GLASGOW: We'll be here.

CHAIRPERSON GRIFFIS: Excellent. I'm not going to push the issue, then. Then we'll do it first in the afternoon on the 8th of February. Well, there it is. It's the first case in the afternoon.

CHAIRPERSON GRIFFIS: Okay. Anything else? Anything else I can answer at this time?

(No response.)

CHAIRPERSON GRIFFIS: I do appreciate everyone's patience with us this afternoon in getting this all done. Ms. Bailey, Mr. Moyer, are you aware of any other business for the Board in the afternoon session the 1st of February?

MS. BAILEY: No, Mr. Chairman.

CHAIRPERSON GRIFFIS: Excellent, in which case let's adjourn.

(Whereupon, at 7:56 p.m., the foregoing matter was adjourned.)