GOVERNMENT

OF

THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC HEARING

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TUESDAY

JANUARY 25, 2005

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The Board convened at 9:30 a.m. in the Second Floor Hearing Room, Suite 220-S, 441 4th Street, Northwest, Washington, D.C., Geoffrey H. Griffis, Chairperson, presiding.

COMMISSIONERS PRESENT:

GEOFFREY H. GRIFFIS	Chairperson
RUTHANNE G. MILLER	Vice Chairperson
CURTIS L. ETHERLY	Board Member
PATRICIA GALLAGHER	NCPC
JOHN A. MANN II	NCPC
KEVIN HILDEBRAND	Zoning Commissioner
JOHN PARSONS	National Park Service

OFFICE OF ZONING STAFF PRESENT:

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

OFFICE OF PLANNING PRESENT:

STEVE COCHRAN	Office of Planning
ARTHUR JACKSON	Office of Planning
KAREN THOMAS	Office of Planning

OFFICE OF ATTORNEY GENERAL PRESENT:

LORI MONROE, ESQ.

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

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P R O C E E D I N G S

9:41 a.m.

CHAIRPERSON GRIFFIS: I would like to call to order this meeting of the Board of Zoning Adjustment of the District of Columbia. It is the 25th of January 2005 and my name is Geoff Griffis, Chairperson.

Joining me today is the Vice Chair, Ms. Miller; Mr. Etherly, our esteemed Member is on his way, a little delayed, but he will be here in time for the hearing as we call it. Representing the National Capital Planning Commission is Mr. Mann. Representing the Zoning Commission with us this morning is Mr. Hildebrand.

Copies of today's hearing agenda are available for you. They are located where you entered into the hearing room. You can pick that up and see what we will accomplish in our morning session.

There are several important things that I'll go through in the opening statement. First, I will start with all proceedings before the Board of Zoning Adjustment are recorded. They're recorded in two fashions. First, we have the Court Reporter who is sitting on the floor to my right which is creating the official transcript. We are also being broadcast

live on the Office of Zoning's website. Attendant to both of those, there are several important things. First, when coming forward to speak to the Board you will have needed to filled out two witness cards. Witness cards are available at the table where you entered into the Hearing Room and also on 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.

We also ask that people turn their cell phones and beepers off so that we don't disrupt any of the transmission. And of course, we will ask that people refrain from making any disruptive noises or actions in the Hearing Room so we don't disrupt any of the testimony or the proceedings as they go forward.

When coming forward to speak to the Board, you'll just need to state your name and your address, once, before addressing the Board so that we can obviously give you credit on the transcript for the important things that you will be saying this morning.

The order of procedure for special exceptions and variances is as follows: we will hear from the Applicant, their case presentation. We will then hear from any government agencies reporting on the case. We will then hear from the Advisory

Neighborhood Commission. Fourth, we would hear from parties or persons in support of the application. Fifth would be parties or persons in opposition to an application. And sixth, finally, we will return to the Applicant for any rebuttal testimony or closing remarks. So we have six distinct steps to get through on all special exceptions and variances.

Cross examination of witnesses is allowed 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 obviously be able to participate fully in the case and also participate in any cross examination that is warranted. The record will be closed at the conclusion of our hearing today except for any material that the Board requests. And we will be very specific as to what material is to be submitted into the record and when it is to be submitted into the Office of Zoning.

After that material is received, it should be very clear to everybody that the record would be finally closed. No other information would be able to be accepted into the record, meaning there would be nothing further that this Board would actually deliberate on in deciding its case.

The Sunshine Act requires that this Board conduct all of its proceedings in the open and before the public. This Board may enter into Executive Session, both during or after the hearing on a case for purposes of reviewing the record and/or deliberating on the case and that would be in accordance with our rules of procedure, regulations and The Sunshine Act.

Let us go to -- actually, let me again say a very good morning to everybody and a very good morning to Ms. Bailey of the Office of Zoning sitting on my very far right. Ms. Monroe, with the Office of Attorney General is present also and Mr. Moy, closer on my right, with the Office of Zoning.

I'm going to ask at this time if people are going to give testimony or thinking about giving testimony, if you would please stand and give your attention to Ms. Bailey and he is going to administer the oath.

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

(THE WITNESSES WERE SWORN.)

CHAIRPERSON GRIFFIS: Thank you. Ms.

Bailey, why don't we take up any preliminary matters at this time.

Preliminary matters are those which relate to whether a case will or should be heard today such as requests for postponements, continuances or withdrawal or whether the proper and adequate notice has been provided. If you are not prepared to go forward with a case today or you believe the Board should not proceed with a case on its agenda this morning now would be the time to bring to the attention of the Board, and you can do so by coming forward and having a seat at the table in front of us.

Let me ask Ms. Bailey if there are any preliminary matters for us at this time.

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

Yes, Mr. Chairman, there is. It has to do with the second case of the morning, Application No. 17274. There was a request for postponement of this case.

CHAIRPERSON GRIFFIS: Good. Are there any questions from the Board on that request for postponement?

Very well, I see no difficulty in granting a postponement on the case 17274. I believe we should

set it for the 29 March 2005 in the morning session.

MS. BAILEY: Thank you, sir.

CHAIRPERSON GRIFFIS: Thank you. Is there anything else for the Board's attention at this time?

MS. BAILEY: Not from the Staff, Mr. Chairman.

CHAIRPERSON GRIFFIS: Very well, not seeing any other indications from the Hearing Room of preliminary matters, let us call the first case in the morning.

MS. BAILEY: Application 17273 of The Darrell Green Youth Life Foundation, pursuant to 11 DCMR 3104.1, for a special exception to establish a private school that's a Youth Learning Center and ancillary office for 40 students and 3 staff, under section 206, or in the alternative a special exception for a child development center under section 205. The property is located in the R-5-A District at premises 2629 Douglas Road, S.E., Square 5871, Lot 147.

CHAIRPERSON GRIFFIS: Good, ready to proceed?

Good morning.

MS. TILLMAN: Good morning. Good morning, Mr. Chairman and Members of the Board. My name is Tasha Tillman and I reside at 16050 Elegant Court,

Bowie, Maryland. I am the Director of Learning Centers for The Darrell Green Youth Life Foundation. Our mission is to help children and youth develop into leaders who positively influence their communities. We achieve our mission through our Learning Centers whose guiding tenets are to nurture the child, strengthen the family and rebuild the community.

We have Learning Centers in the D.C. Metro area, one in Northeast D.C., others in Prince George's County. Our Learning Centers provide after school services, supplemental educational service, academic achievement, character development for the children and youth of this community.

We work with children ages 5 through 12 and we develop -- we individually assess them, identify what their strengths and their deficiencies are and develop a learning plan to help them prosper in school and socially through developing their character skills.

Our program has a professional staff. We hire teachers who work full-time with the children. They actually go out and visit the schools. They get involved in the lives of the children that we serve. They're educators by experience and by education and background and they develop individual learning plans

for the students and again, we use an assessment that is nationally standardized.

Our program is after school primarily, although we are much more than an after school program, as you can tell so far from the description.

We also provide a summer program for our children. Our summary program is theme-based. It's generally five to six weeks in length and at the end of the summer program, we do a mystery trip that culminates the theme of the summer program. The mystery trip, we take the children outside of where their communities, outside of what they're used to. We've been to places like -- last year our theme was Election Year 2004, based on what was going on in the community and our society. So we took the children to Philadelphia and they got to see Independence Hall and all of the sights there. They've been to places like Disneyland, Disney World, Mount Rushmore, the Grand Canyon. They've been skiing in Pennsylvania. So they've been to a lot of different places. And that's the culmination of our summer program.

The vision and heart of our founder is to make an impact on the lives of these children. There are so many needs in the community that are left unmet. We don't desire to meet them all, but we do

desire to fill a gap, so we're here before you today requesting a special exception to reside in the community at 2629 Douglas Road, Southeast. We're asking for a special exception that we may provide our program there.

Not only do we serve children, but we also serve adults in the community; the parents of the children that we serve, as well as any other adults that reside in that community. We provide services to them where they can come in and take advantage of the resources that we have to offer.

Computer materials, fax machines, internet, e-mail, we're also preparing to offer an Adult Learning Center where they can come in and take self-facilitated courses that will help enhance their job skills.

So it is our hope today that you will find favorably for us to have this special exception.

CHAIRPERSON GRIFFIS: Good. Thank you very much.

Are there others that would like to speak and then we'll take Board questions.

REV. DR. WRIGHT: Good morning, Mr. Chairman and the Board.

CHAIRPERSON GRIFFIS: Good morning.

REV. DR. WRIGHT: I'm Mildred Good Wright and I am representing the Washington View Tenants Organization and the Board of Directors at the Washington View Complex. My address is 2629 Douglas Road, Apartment 105.

I'm here to 100 percent vote in representation for The Darrell Green Youth Center and we believe that this Youth Learning Center will provide the services that are greatly needed for our youth at the Washington View Tenants Complex. And we wholeheartedly agree with the holistic approach to learning and academia and to strengthen character, developing the strength and character for our young people.

CHAIRMAN GRIFFIS: Thank you very much.

MR. FLEET: Good morning, Mr. Chairman and Board. My name is Edmund Fleet and I live at 2619 Douglas Place, Southeast. I'm the Community Program Director for William C. Smith, owner of Washington View Apartments and the Smith Company, we manage over 10,000 units of multi-family housing within the Washington Metropolitan Area, predominantly in Southeast Washington. And at Washington View specifically, we collaborate with the tenant organization to bring services that meet the needs of

that community and we collaborated to seek out the services of Darrell Green Youth Life Foundation.

Initially, we sought it out back in 1995, but weren't able to work out an agreement and when the opportunity became available again recently, we sought them out and partnering with them just ties in with Smith's philosophy in terms of trying to build communities and bring to our apartment multi-family housing different community programs to meet the needs of our community that we manage.

CHAIRPERSON GRIFFIS: Thank you very much and it's, in fact, excellent to hear that you actually sought them out for a service within one of your facilities or buildings.

Let me go directly to that, Mr. Fleet. You said that you're the owner, you're the principal owner of the structure of which The Darrell Green Foundation will put their organization, is that correct?

MR. FLEET: Correct.

CHAIRPERSON GRIFFIS: Now part of the also larger, the complex, is a condominium structure?

MR. FLEET: Well, it used to be, but the community -- just to give you some history, Bank of America purchased the property back in 1995 and the

property was divided where part of it was set aside for condominiums.

CHAIRPERSON GRIFFIS: I see.

MR. FLEET: And so those condominiums are separate from the apartments.

CHAIRPERSON GRIFFIS: Indeed. So there's a condominium association currently organized and operating?

MR. FLEET: Correct.

CHAIRPERSON GRIFFIS: But they are in different buildings than this is what's being proposed?

MR. FLEET: Correct.

CHAIRPERSON GRIFFIS: Very good.

MR. FLEET: And they actually are in support also. I serve on that Board because I live in those condominiums.

CHAIRPERSON GRIFFIS: Oh, you do?

MR. FLEET: Yes.

CHAIRPERSON GRIFFIS: Excellent, excellent. So personally and professionally vested in this one, aren't you?

MR. FLEET: Correct.

CHAIRPERSON GRIFFIS: Excellent. Ms. Good Wright, a very good morning to you.

REV. DR. WRIGHT: Good morning.

CHAIRPERSON GRIFFIS: And we appreciate your being here. You've indicated you're the Board of Directors and I didn't catch the Board of Directors of what?

REV. DR. WRIGHT: Of the Washington View Tenant Organization.

CHAIRPERSON GRIFFIS: Okay, so there's also a tenant organization?

REV. DR. WRIGHT: Yes sir.

CHAIRPERSON GRIFFIS: Excellent, excellent.

REV. DR. WRIGHT: And Ms. Edith Hackett is the president who is here with us.

CHAIRPERSON GRIFFIS: I see. Oh good. A very good morning, Ms. Hackett.

You made a statement which I was intrigue with you and you said you appreciated the holistic approach.

REV. DR. WRIGHT: Yes.

CHAIRPERSON GRIFFIS: Of what's being proposed and when you say that, I glean a couple of aspects that you mentioned, but let me ask you directly in the holistic approach, does it mean also dealing with the parents and those adults that are

associated with the children?

REV. DR. WRIGHT: Yes sir. And with the Biblical training that these youths and the parents are integrated also into this Biblical training to strengthen their character.

CHAIRPERSON GRIFFIS: I see.

MR. WARDWELL: And in the moral, right and wrongness that sometimes the parents don't give them. So this organization has that foundation and spiritual background.

CHAIRPERSON GRIFFIS: Good, good. Thank you very much.

And Ms. Tasha, it was, correct?

MS. TILLMAN: Yes, Tillman.

CHAIRPERSON GRIFFIS: Tillman, I'm sorry. Tasha is your first name.

I was running too fast there. Ms. Tillman, let's stay with adults. You indicated as you closed out that you were proposing or anticipating having an Adult Learning Center. Is that different than the description that you have in the submission?

MS. TILLMAN: No, it's not. We serve children primarily, but we also serve the adults in the community. We want to continue serving them in a greater magnitude through the Adult Learning Center.

We are aware that the exception that we're seeking for a Child Development Center, if that is granted, only allows us to serve children through the age of 15 which conflicts with that aspect of our program. So we want to bring that to the Board's attention as well.

CHAIRPERSON GRIFFIS: Okay. I'm now clear. You indicated you will have an Adult Learning Center. Is it a different facility or different rooms?

MS. TILLMAN: No, it's within the same center. The adults are allowed to come in and utilize the center during the day when the children are absent.

CHAIRPERSON GRIFFIS: And these adults, conceivably some will be parents of the children that might be going through.

MS. TILLMAN: Yes.

CHAIRPERSON GRIFFIS: Otherwise, they will be parents in the community that would be associated, essentially with the children in some respects, be it socially or be it just by passing on the street.

MS. TILLMAN: Correct.

CHAIRPERSON GRIFFIS: I see. So would you describe it, the fact that the adults are essentially

secondary or accessory to the main mission of the Child Development Center?

MS. TILLMAN: Yes.

CHAIRPERSON GRIFFIS: Okay. Let's go to -- a couple other specifics. As you are well aware of, our regulations are to certain things that we need to walk straight down and get very clear on as we proceed, but let me first state that I don't think and I know other Board Members will state the same that there's a great appreciation for the programs that you're proposing and also in the location that it is in and such a great relationship that's been created here. It is definitely worth the applause of this Board.

However, we also have our straight-forward, very legal tests that we're going to run down here. We've indicated that the ownership is put. The hours of operation, there was some varying hours. Why don't you just state what you're proposing at this point?

MS. TILLMAN: During the school year our hours of operation are 11 a.m. to 7 p.m., Monday through Friday. During the summer program, our hours of operation are 8:30 to 4:30. Children will be served between the hours of 9 and 3:30. That gives

our staff time to come in and prepare for their arrival.

CHAIRPERSON GRIFFIS: So daily operations are 11 a.m. to 7 p.m.?

MS. TILLMAN: During the school year, yes.

CHAIRPERSON GRIFFIS: Okay. And children wouldn't conceivably be in there at 11 a.m.?

MS. TILLMAN: No, they would arrive around 3 p.m.

CHAIRPERSON GRIFFIS: Okay, so this would be for obviously the staff setting up, getting ready, whatever it is, putting the programs together. They would anticipate that children would be there by 3 o'clock or so and then would leave by 6:30 or so?

MS. TILLMAN: Correct.

CHAIRPERSON GRIFFIS: So 11 a.m. to 7 p.m. 8:30 to 4 in the summer program hours which would run the months of June, July and August?

MS. TILLMAN: Yes.

CHAIRPERSON GRIFFIS: Okay, and how many staff? I know you indicated three staff positions. Is that actually -- let me put it into context here. It is fairly standard for the Board to set time limits on special exceptions for Child Development Centers, especially ones that are just getting started. We're

going to talk to you a little bit about the time limit, but for discussion purposes now, let's assume it's a 5-year term. In five years, then you need to figure out the operating, so when you have requested three employees or three staff, is that the total amount for 5-year growth period? Is that never anticipated to change?

MS. TILLMAN: Well, no. The three staff is simply educators. Our student/teacher ratio is a max of 15:1 and that's very high, given the comprehensive nature of our program. I did note, as I was reading through the application that I believe the person who wrote the application is no longer with our organization, unfortunately, said that it would be one educator, one administrator assistant and one other person and that's not accurate.

We would have three educators, one lead educator and two educators working in that facility. And because of the size of the facility, we won't grow beyond 40, so we will be with three staff members.

CHAIRPERSON GRIFFIS: Okay, but that's three educators.

MS. TILLMAN: Correct.

CHAIRPERSON GRIFFIS: It's the same number, just the titles are different.

MS. TILLMAN: Correct.

CHAIRPERSON GRIFFIS: I see. So three educators would actually operate it. Would you be there?

MS. TILLMAN: No, I'm at our foundation headquarters. I oversee all of our facilities.

CHAIRPERSON GRIFFIS: Okay, so that would be it. Now you also indicated that there would be volunteers.

MS. TILLMAN: Yes.

CHAIRPERSON GRIFFIS: That would be utilized. Do you have an approximation of how many volunteers you might have?

MS. TILLMAN: We have a ratio of three volunteers per classroom, so it would be roughly about nine. And that's on varying days. They don't all come every day. So probably about three a day.

CHAIRPERSON GRIFFIS: Right, and where do they usually, for this program, where would they come from?

MS. TILLMAN: The surrounding community. We have corporate partnerships that send volunteers to us, college students who have community service hours to complete, those things.

CHAIRPERSON GRIFFIS: And when you talk

about students, you said 40, you won't go beyond 40. Is that an enrollment number or is that how many?

MS. TILLMAN: It's enrollment, yes.

CHAIRPERSON GRIFFIS: And how many would be on site, maximum at one time?

MS. TILLMAN: Forty.

CHAIRPERSON GRIFFIS: Okay.

MS. TILLMAN: We are an enrollment-based program, not drop in.

CHAIRPERSON GRIFFIS: Right, right. But conceivably some people have class at one time, the facility would have 20 children, but 40 are actually enrolled, so we often have differing numbers.

MS. TILLMAN: Sure.

CHAIRPERSON GRIFFIS: So we're looking at 40 enrollment, 40 on site. Excellent.

And there's an indication that the children will come from the immediate area and specifically the immediate residences that are under the ownership of W.C. Smith.

MS. TILLMAN: That's correct.

CHAIRPERSON GRIFFIS: What's ensuring that or is it anticipated that that might change?

MS. TILLMAN: No, that won't change. That's part of the agreement that we have with William

C. Smith as part of our leasing agreement that we will accept children.

CHAIRPERSON GRIFFIS: So it is very, very definitive and straight, so you would obviously have the contacts and be marketing to those folks.

Okay. Great. Let me open it up to any other questions from the Board.

Mr. Hildebrand.

MR. HILDEBRAND: I wanted to clarify one thing in your hours. For your summary hours, do you envision that there won't be an adult component that would extend beyond the 4:30?

MS. TILLMAN: That is correct. They could come in and take advantage of the facility as long as we have staff there.

MR. HILDEBRAND: Which would be 8:30 to 4:30?

MS. TILLMAN: Correct.

MR. HILDEBRAND: Thank you. The student count within the apartment complex will generate 40 students to take advantage of this program?

MS. TILLMAN: Absolutely.

MR. HILDEBRAND: Okay, thank you.

CHAIRPERSON GRIFFIS: Ms. Miller?

VICE CHAIRPERSON MILLER: Good morning.

You discussed the question of providing services to adults in addition to children, even though you're applying for a Child Development Center, and I'm looking at the definition of a Child Development Center in 199 of the regulations. It does provide for some uses identified as accessory for adults and they include counseling education, training and health and social services for the parents or principal guardians of children attending the center.

And my question is does that encompass the uses that you anticipate and are seeking for the adults?

MS. TILLMAN: Yes.

VICE CHAIRPERSON MILLER: So you wouldn't be offering services to adults who are not parents or guardians of the children?

MS. TILLMAN: I apologize, I missed that. Yes, we would. We want to provide the services for all the adults in the community and not just limit it to the parents of the children that we serve.

VICE CHAIRPERSON MILLER: And do you see anywhere in the regulations where that would be allowed?

MS. TILLMAN: No, I don't, but that's why I wanted to let you all know.

Ms. Miller, we are completely willing to comply with the laws and regulations of D.C., so if we have to augment our program in order in order to do that, we're willing to do that.

VICE CHAIRPERSON MILLER: I also want to note for the record that this regulation is also being reviewed by the Zoning Commission now and may be broadened, but this is the way it stands right now.

MS. TILLMAN: Sure.

VICE CHAIRPERSON MILLER: I also wanted to ask you how many other centers are you operating in the District?

MS. TILLMAN: One other center in the District.

VICE CHAIRPERSON MILLER: Which one is that?

MS. TILLMAN: It's in Northeast, D.C. at 119 Franklin Street.

VICE CHAIRPERSON MILLER: And that was approved by the BZA, I assume?

MS. TILLMAN: Yes, it was, several years ago. That center has actually been in operation since 1993 and it was brought before the BZA October of 1997 with a decision in January 1998. And we received special exception under Section 206.

VICE CHAIRPERSON MILLER: Do you have the name of that or the number of that one?

MS. TILLMAN: The case number was 16267.

VICE CHAIRPERSON MILLER: And what's the name of that one?

MS. TILLMAN: It's the same. It was in partnership with Horning Brothers and The Darrell Green Youth Life Foundation.

VICE CHAIRPERSON MILLER: Okay, thank you. And I just want to clarify, I'm sure you answered this and I just didn't catch it exactly. There's an agreement with the apartment that you would provide services only to families in the apartment complex, is that correct?

MR. FLEET: Yes, and we have at Washington View, we have 352 units, so there's a very large population there.

VICE CHAIRPERSON MILLER: But there's some written agreement?

MS. TILLMAN: Yes, we have a written agreement.

VICE CHAIRPERSON MILLER: Okay, thank you.

CHAIRPERSON GRIFFIS: Any other questions?

COMMISSIONER ETHERLY: Nothing urgent, Mr. Chair, but it was just noted in the OP Report and I

wanted to inquire of Ms. Tillman as to whether or not you were required to be licensed by DCRA in order to operate?

MS. TILLMAN: We are not based on the nature of the children that we serve. We're not child development in the truest sense of having to be licensed. We don't provide hot meals. We do provide snacks and we don't do day care.

COMMISSIONER ETHERLY: Okay, thank you. Thank you, Mr. Chair.

CHAIRPERSON GRIFFIS: Excellent. Thank you.

I note in the record that there's ample parking and also obviously driveways. Has there been any comments or questions or concerns in terms of how the residents will access the facility? Normally in something like this we have drop off and pick up as one of the big, exciting discussions all morning. Is that an issue here at all?

MS. TILLMAN: It's not an issue for us because our children do reside in the community. The center is in walking distance of all of the apartments, so they're easily accessible.

CHAIRPERSON GRIFFIS: Good. I don't have anything else on my list of questions, unless anyone

else has anything.

Actually, just quickly, noted that we have the photographs and such. You don't have any floor plans of the facility, do you? It's certainly okay if you don't.

MS. TILLMAN: We have just the site plan, not the floor plan.

CHAIRPERSON GRIFFIS: Mr. Fleet, do you know what kind of square footage we're talking about here?

MR. FLEET: I don't.

CHAIRPERSON GRIFFIS: Is it like 2,000, 5,000?

MR. FLEET: I'd probably say over 2,000.

CHAIRPERSON GRIFFIS: Okay. Just for my interest perhaps, what is the facility, Ms. Tillman, are there four classrooms? Is there one open room? What's in there?

MS. TILLMAN: There is a library which will also be used as a classroom, a regular classroom and a computer lab and an office and a reception area.

CHAIRPERSON GRIFFIS: I see.

MS. TILLMAN: There's also two large common areas where the kitchen is and big open community space.

CHAIRPERSON GRIFFIS: Oh great. So it's substantial. This is all built out. You're not having to do a lot of renovations or anything?

MS. TILLMAN: None at all.

CHAIRPERSON GRIFFIS: Okay, good. All right, if there's nothing further from the Board, if there's nothing -- is this in?

Good, nothing further, then let's move on, we can hear from the Office of Planning who is with us and also submitted a report. Do you have their report?

MS. TILLMAN: Yes, I do.

CHAIRPERSON GRIFFIS: Excellent, and let's move ahead and a very good morning.

MS. THOMAS: Good morning, Mr. Chairman and Members of the Board. I'm Karen Thomas for the Office of Planning and we reviewed this special exception request before us under the requirements of Section 205, since we believe that the definition of the Child Development Center and the proposed programs were more conformed to the definition under Section 199.

The center is proposed to occupy rooms at a basement level of the 30-unit Washington View apartment building. And this would primarily be

before and after school program, with limited hours and student capacity. Due to the center's operation, including its hours of operation and number of students, as well as the fact that a majority would be residents of the apartment building.

The Office of Planning does not believe that there would be an adverse impact on the neighborhood or the immediate apartment community, due to the impact of drop off and pick up traffic.

In addition, there's ample supply of parking on site and on street for parents and visitors to the center. A separate entrance and lobby area of the building has been assigned as the center's main entrance.

We believe that the application met the criteria of Section 205 as outlined in our report and based on these facts, the Office of Planning recommends approval of the requested special exception on the condition that summer outdoor play begin no earlier than 9 a.m.

Thank you.

CHAIRPERSON GRIFFIS: Good. Thank you very much. Are there any questions about the application from the Board?

Yes, Ms. Miller?

VICE CHAIRPERSON MILLER: Does the Office of Planning have an opinion on the request for adult use of the facility?

MS. THOMAS: Well, based on the fact that we are doing a study on that, no. We had no issues with the fact that adults because we were made to understand that based on the definition it could include adults as well, based on section 199 as you referred to. It could have included adults.

But I think they would need to be more specific as to how many would be using the center. Would that add to the amount of -- is that going to be at the same time with the students? As you brought that up, I have no idea.

CHAIRPERSON GRIFFIS: Okay, so we need clarification on the proposed adult use. We have the Fridays and I'll turn it over to you, but this is our understanding. Friday would be adults only for those that are part of the children's lives and they would get their counseling services or what they go in for. You indicated that they might be open during the summer time also. So let me let you speak to that?

MS. TILLMAN: Let me give clarification on that. Since the time our application was filed, I've changed the program. We've had a lot of our parents

in the existing programs with issues with us not being open on Fridays. We're not child care. They do depend on us to be there. So we don't have Fridays adult only. Fridays are family fun days, so the children still come to the center, but they're not set with a rigid schedule as they are through the rest of the week.

So adults are allowed to come still during that time. We will maintain the occupancy requirements as set out by the Fire Marshall. For the adults in terms of being there when there are no children present because we understand the concerns adults may have with children being present as they're learning, we ask that they come during times that the children are not there or at times when the children aren't using the computer lab and that's on a week to week basis what that schedule will be like, based on the educators in the center.

CHAIRPERSON GRIFFIS: I see. Okay. And the whole perspective, the hours of operation you've given us is 11 to 7 and that's Monday to Friday?

MS. TILLMAN: That is correct.

CHAIRPERSON GRIFFIS: And the summer is the same days.

MS. TILLMAN: Yes.

CHAIRPERSON GRIFFIS: Are you ever open on the weekends?

MS. TILLMAN: No.

CHAIRPERSON GRIFFIS: So if I understand you correctly, the Friday adult only is not part of the program and part of the application, but rather that's more of the family evening where you would have children and adults together, otherwise any adults that would be utilizing the facility would come when the children were not present?

MS. TILLMAN: That is correct.

CHAIRPERSON GRIFFIS: All right, any other questions, follow up? Any questions from the Office of Planning?

MR. HILDEBRAND: Actually, I had one question. You mentioned that the capacity of the center would be limited by the Fire Marshall. Have they given you a capacity, a total capacity that you're allowed?

MS. TILLMAN: Mr. Fleet, do you have that?

MR. FLEET: We have one, but I can't remember it off the top of my head.

MR. HILDEBRAND: Is it significantly larger than 40 students?

MR. FLEET: I believe it's over 100.

MR. HILDEBRAND: It's over 100. So you could potentially have -- conceivably they would all be either family members of the students until such time as the zoning regulations are modified to allow non-guardian or parent adults to be part of the center. So there would be some relationship between the students and the adults that are there. So your capacity would then be naturally limited by that number as well.

MS. TILLMAN: That's true. But we have not obtained our Certificate of Occupancy until the proceedings of this Board.

MR. HILDEBRAND: Thank you.

CHAIRPERSON GRIFFIS: Yes, Ms. Miller?

VICE CHAIRPERSON MILLER: I just want to clarify your schedule since it's been changed, since the application. It sounds like now Fridays are 11 to 7 are family days and not adult only, is that correct?

MS. TILLMAN: It's not adult only. That is correct.

VICE CHAIRPERSON MILLER: But it's different from Monday through Thursday because Monday through Thursday are basically children only?

MS. TILLMAN: Right, that is correct?

VICE CHAIRPERSON MILLER: Right, Friday

families. Is there a period for adults only?

MS. TILLMAN: There's no longer a period for adults only, except during the hours that the children aren't present Monday through Friday and that's between the hours of 11 and 3.

VICE CHAIRPERSON MILLER: Oh, I see. Okay. Thank you.

MS. TILLMAN: Sure.

COMMISSIONER ETHERLY: Mr. Chair, just to perhaps -- I don't want to say clarify because I think I understand precisely the center's operations and what the intent and endeavor is. Perhaps just to put even more of a realistic based in reality kind of assessment of it, as we talk about it, I think part of the thrust of this section of the regulation that we've been getting at is perhaps to ensure that we're not essentially talking about an open free for all where you could conceivably pull adults from other parts of the city, other wards who might be in need of services because we know the need is very significant throughout our communities. But would it be your experience that as you're envisioning adults for this facility, you are primarily talking about and contemplating adults who are going to come from if not the actual complex itself, residents, or parents or

guardians of your young people. They're going to come from the immediate community and most frequently these are going to be adults that are going to have a strong tie or connection to the young people who are at the site?

MS. TILLMAN: Absolutely. The adults who participate in our program also have to be enrolled. And Washington View has in place an identification requirement that all residents in their community has an ID badge that indicates that they are that.

When we register children and adults in the program, we match that registry with the lease list with the property owners, so we do know who really does live there and who does not.

If an individual is not on lease, but maybe resides there, they cannot participate in our program.

COMMISSIONER ETHERLY: Okay, thank you. Thank you, Mr. Chairman.

CHAIRPERSON GRIFFIS: Thank you all. Does the Applicant have any cross examination of the Office of Planning, any questions?

MS. TILLMAN: No, thank you.

CHAIRPERSON GRIFFIS: Good and we thank you very much. We appreciate the report and the

issues it has brought to light and also the analysis.

Let's move ahead then. I don't have any other government report or agencies that have put reports in the record.

Is ANC-8A represented today, the ANC? Not noting any. And I don't have any report from them --

MS. TILLMAN: He's not here, but I did obtain the support from Mr. Anthony Muhammad who assured me he would be here this morning, that ANC-8A is in support of our application.

CHAIRPERSON GRIFFIS: Okay, Mr. Etherly?

COMMISSIONER ETHERLY: Thank you, Mr. Chair. The Office of Planning report noted that the ANC was scheduled to meet on the 4th of January. Are you aware as to whether or not that took place?

MS. TILLMAN: That meeting did take place. I did not meet with them, however, until after that meeting. We have had a difficult time reaching them and getting them to meet with us and so I was able to meet with him, I think it was the day after they actually had their meeting.

COMMISSIONER ETHERLY: And that was with Mr. Muhammad, the chair?

MS. TILLMAN: Yes.

COMMISSIONER ETHERLY: Did Mr. Muhammad

indicate that they were able to take any type of formalized action?

MS. TILLMAN: Yes. He met with me. We talked about the application. I sent him, forwarded literature. He called me back the next day and said that the ANC was in support of the application and that they would be here at the hearing today.

COMMISSIONER ETHERLY: But you're not certain as to whether or not they actually -- what he said support whether or not they actually took a vote?

MS. TILLMAN: I have no idea.

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

CHAIRPERSON GRIFFIS: Good, thank you. Any other questions on that? I don't have any other official submissions into the record.

Let me ask for those present today in support of the application, persons that would like to provide testimony. Is anyone here that would like to provide testimony outside of those great ones that we've heard already?

Very well. Now persons in opposition to application 17273. Any persons present to provide testimony for the Board? Not noting anyone coming forward, we can move on to any closing remarks that

the Applicant might have.

And let me just ask you now definitively, as we look at this in terms of approval of a period of a year, if you would just comment on a five-year period.

MS. TILLMAN: Okay, I'm sorry, I'm not understanding what you're asking me.

CHAIRPERSON GRIFFIS: In most special exceptions, in fact, all, if I'm not mistaken of a Child Development Center, there's a time limit set on the length of a special exception in which at the end of it a re-application would be required for special exception.

MS. TILLMAN: Okay.

CHAIRPERSON GRIFFIS: And so that's what I'm -- we've granted special exceptions for two years, for five years and the like.

Yes, Mr. Mann, did you have something?

COMMISSIONER MANN: I was just going to note that on application 16267 where you did that in conjunction with Horning Brothers?

MS. TILLMAN: Yes.

COMMISSIONER MANN: It was for a period of 10 years.

CHAIRPERSON GRIFFIS: Okay.

MS. TILLMAN: Thank you. Thank you all very much for hearing our case this morning and for considering the special exception that we have requested. As we've stated very much before the heart of our found is to impact the lives of the children in the community and make a difference, giving back to the community that has given he and his family so much.

Our organization resides in the District of Columbia. We have a vested interest in making sure that our children are properly and adequately served. Just to reiterate, our guiding tenets are to nurture the child, strengthen the family and rebuild the community. Recently, our founder was quoted as saying "we do that one child at a time."

We have several success stories of children who have been with our program for years and they've come back. We have several students in college, several students who have graduated from college and they keep coming back. We are glad to have them.

We take our jobs very seriously. We do what we do because we have a purpose and a mission and that's to impact the lives of the community. We are seeking a special exception with hopes that you all

will give us that -- grant us at least five years. Hopefully, we can get 10 so we can come back again. We do have a 3-year lease agreement with William C. Smith at the Washington View community. We are in partnership with William C. Smith at other properties where we've provided services and continue to provide services there as well.

And it is our hope today that we could get a bench decision so that we could move forward and begin serving that population. They have been without services for some time now and so it is our desire to bring services back to the community.

CHAIRPERSON GRIFFIS: Good. Thank you very much. Anything else?

Any last questions, clarifications?

Can I ask a quick question for clarification. You've indicated that children enrolled and utilizing will not be older than 15. Do you have a specific age range that you're actually focusing on?

MS. TILLMAN: Yes, children ages 5 through 11, we enroll, but they can stay in the program through age 12.

CHAIRPERSON GRIFFIS: Oh, I see. Excellent. Okay. If there's nothing further, let's

move ahead. I think the record is full on this and it is proper for the Board to proceed for deliberations today. I think it's more expeditious to do so under a motion and therefore I would move approval of Application of 17273 for the Darrell Green Youth Life Foundation. This would be for the special exception to establish a Child Development Center for three staff and 40 students enrolled and on site at the premises of 2629 Douglas Road, Southeast. There will be conditions associated with the motion that I would like --

COMMISSIONER ETHERLY: Enthusiastically seconded, Mr. Chair.

CHAIRPERSON GRIFFIS: Excellent. Thank you very much.

Let's start off, first of all, I'm going to run down some conditions that I open up for everyone as deliberation. I would make the condition 1 be the approval of the facility for a period of five years; the number of teachers and staff as noted in the motion itself, 3 and 40 in enrollment and 40 on site. The age range has been given from the Applicant as 5 to 12 years. The center operation would be during the normal year Monday through Friday, 11 a.m. to 7 p.m. Summer program hours would start in the

summer months. We can base that on a temperature. So once it goes above a balmy 70 -- no.

(Laughter.)

Basically June, July and August, the hours of operation will be from 8:30 a.m. to 4:30 in the afternoon.

I have one last condition that I'd like to put on and the condition would be thus, that the facility would be made available for those parents, guardians and adults in residence in the facility with which the program takes place, this is brought to light as I see as a unique aspect of the program that's being proposed here.

I want to thank Ms. Miller for really being strong and holding on line of our own definition of what she's supported, very familiar with the Child Development Center definition 199 in the DCMR Title 11 and its problems, but also its associated intent. Being very direct on this, I think the intent is clear, that when you look at Child Development Center there isn't -- under that definition and under the special exception approval process, it's not to open it up to having multiple types of full-time facilities that are not understood by the community or the Board or the like.

This is clearly not the case. What is the case, in fact, numerous times and in closing remarks by Ms. Tillman, the important and the quite moving statement is the fact that this is being set up to impact the lives of the children. Well, I think it's pretty clear in the submissions and in the testimony that we've heard today is you can impact the children's lives by getting them into a center and giving them some training, but how else do you impact children's lives without impacting the adults that surround them and certainly the parents and guardians in the definition as we've seen is the exact intent that you would obviously have to incorporate them in the learning that the children are doing and so all would progress together.

I think then it is appropriate to condition the allowance of having the adults in the surrounding area under the same aspect and that is that those parents and adults are critical to impacting the children's lives, as this is unique in terms of focusing specifically on a residential population which is diverse and these folks all do different things, but they all come together with one common bond and these children are part of that and I think it would be an appropriate and important aspect

to the success, actually, of this program and in this location.

I'll open it up for discussion on the motion and all the conditions at this time.

COMMISSIONER ETHERLY: Mr. Chair, I'll just note that the Office of Planning did also note at page 5 of its report a suggested condition regarding the start time for summer outdoor play beginning no earlier than 9 a.m.

As a seconder of the motion, I'm not necessarily overly concerned about perhaps conditioning that, but I just wanted to note that for my colleagues as to whether or not they would want to condition timing.

I know that we didn't necessarily get into detail with the Applicant about plans for outdoor play times and what have you, but I would just want to note that for my colleagues.

CHAIRPERSON GRIFFIS: I think that's appropriate.

Mr. Mann?

COMMISSIONER MANN: I would just want to suggest that it's been somewhat overcome by the limitations that they put on the hours that they would allow the center to operate anyway.

CHAIRPERSON GRIFFIS: I would move the 9 a.m. down to 8:30, so it would add half an hour.

COMMISSIONER MANN: Well, they said they would operate from 8:30 to 4:30, but the children would only be there from 9 to 3:30.

CHAIRPERSON GRIFFIS: Right, exactly and that was the point. I think that's an appropriate concern and I appreciate Mr. Etherly bringing that up in detail, but I think it is --

COMMISSIONER ETHERLY: No, I'm completely fine with that, Mr. Chair. I just wanted to note that.

CHAIRPERSON GRIFFIS: Good.

COMMISSIONER ETHERLY: Just to finally conclude with my remarks, as a seconder of the motion. I think clearly all of the requirements of Section 205 have been met and satisfied by the Applicant and I just wanted to commend the Applicant, the property owner and of course, the residents association for I think what's been a very solid clear collaborative effort in bringing a very important part of our community together with the Darrell Green Youth Life Foundation.

Clearly, the foundation has played a wonderful role in the lives of a lot of communities

since Mr. Green arrived on the scene some many years ago to chase down Tony Dorsett.

(Laughter.)

A little boosterism for the local home team, but I truly commend the effort here. Oftentimes, we get into a lot of controversy, vitriol rhetoric, if you will, when we talk about child/elderly community centers and the types of services that are going to be involved because of concerns about impacts on the residential quality of life. And clearly here, there's a united front to see this application move forward and I just wanted to commend you all for coming forward with what's going to be a wonderful program for the community. Thank you.

MS. TILLMAN: Thank you very much.

CHAIRPERSON GRIFFIS: Excellent.

MR. HILDEBRAND: I would like to second the feelings of Mr. Etherly, but just ask that since the Zoning Commission is taking up the issue of possibly changing the definition of child/elderly development centers that rather than have the condition expressly stated as you have, Mr. Chairman, but to ask that the center operate within the bounds of the current definition until such time that the

zoning regulations are altered.

I don't see this as being a huge lag time, but I would hate to presuppose how that will turn out.

CHAIRPERSON GRIFFIS: I'm not sure I understand.

MR. HILDEBRAND: In other words, that the adults that are available to use the center are as defined by the zoning regulations which would be parents, guardians of the children involved in the program.

CHAIRPERSON GRIFFIS: Okay, others?

VICE CHAIRPERSON MILLER: Yes, I think in granting this application, we would be granting it on grounds that they're going to comply with the section under which they're applying which is 206 which encompasses 199. I'm not sure we even have to specify a condition that reiterates --

MR. HILDEBRAND: Exactly --

VICE CHAIRPERSON MILLER: The definition. So that if the definition does change, they would be able -- if it broadens, they would be able to include more adults, if that happens, without coming back to us.

MR. HILDEBRAND: Exactly. I would agree with that.

VICE CHAIRPERSON MILLER: Okay, and I have a minor suggestion, just in the wording of -- I think, Mr. Chairman, you characterized it as the normal year and I think we can call it the school year hours and then the summer hours.

CHAIRPERSON GRIFFIS: Good.

VICE CHAIRPERSON MILLER: And then I also want to say that this seems like a terrific program and I think that that's great that you are all doing this.

MS. TILLMAN: Thank you.

CHAIRPERSON GRIFFIS: So it's my understanding then that the conditions that I had articulated would actually not be incorporated into this motion. Is that correct? Just say yes.

MR. HILDEBRAND: That's correct, Mr. Chairman.

CHAIRPERSON GRIFFIS: Okay, hearing from the two strict constructionists on the Board, they seem to have been persuasive in that aspect and it is -- as I say, I mean the intent and purpose is in agreement from the Board of going forward and it does -- we look at this obviously and specifically for our own deliberation. But there is regulatory impact and any decision that we made in terms of interpretation

of definition and this is risen not in this case, but in other cases to such a high level that there was an emergency request from this Board of Zoning Commission to actually rewrite this and Mr. Hildebrand has stated very eloquently the fact that they are undergoing that at this point.

Yes?

VICE CHAIRPERSON MILLER: Mr. Mann has brought to my attention that I made reference to 206 and I intended to make reference to 205 for the relief that is before us, just for clarification.

CHAIRPERSON GRIFFIS: All our jokes for lunch are out the window now then that you've corrected that.

Very well, anything else? Any other deliberation?

We do have a motion before us that has been seconded and conditioned. Everybody in favor signify by saying aye.

(Ayes.)

Opposed? Abstaining?

(No response.)

Very well. Thank you very much. I think we can dispense with our rules and regulations and issue a summary order on this which will obviously

move things along much quicker.

I don't think it's inappropriate to say that as you have this, if you had time actually to submit into the Zoning Commission some background of your program that will help them in looking at this definition and just indicating that this is obviously discussion that has come up on the Board.

Mr. Hildebrand will obviously bring that back to the Zoning Commission also, but it would certainly support your efforts and endeavors in this one and the next.

MS. TILLMAN: Thank you.

CHAIRPERSON GRIFFIS: Good. Thank you all very much. We appreciate you being down here. And very good luck to you.

MS. TILLMAN: Thank you very much. You all have a wonderful day.

CHAIRPERSON GRIFFIS: Thank you. Ms. Bailey, is there anything else for the morning?

MS. BAILEY: No, Mr. Chairman, that's it.

CHAIRPERSON GRIFFIS: Excellent. Then let's go get to work and then we can adjourn the morning session.

(Whereupon, at 10:37 A.m., the morning session was adjourned, to reconvene at 1:10 p.m.)

A F T E R N O O N S E S S I O N

1:10 P.M.

CHAIRPERSON GRIFFIS: Good afternoon, ladies and gentlemen. Let me call to order the 25th of January 2005 public hearing of the Board of Zoning Adjustment. My name is Geoff Griffis, Chairperson. Joining me today is Vice Chair Ms. Miller and also Mr. Etherly. As we have and will call to order simultaneously the Foreign Missions BZA, I would like to introduce and say a very good afternoon to Ms. Gallagher representing National Capital Planning Commission and Mr. Parsons who is representing the National Park Service.

Copies of today's hearing are available for you. They are located at the wall where you entered into the hearing room. You can pick one up and see the order of procedure for today.

We are being broadcast live on the Office of Zoning's website and we are also being recorded by the Court Reporter who is sitting to my right. Attendant to both of those, we ask that people plese refrain from any disruptive noises or actions in the hearing room and also we ask that people turn off cell phones and beepers at this time so that we don't

disrupt the testimony and procedure as we go through it.

Additionally, we ask that people fill out two witness cards. Witness cards are available for you at the table you entered into and also the table in front of us where you will provide testimony. Those two cards with your name and information that's requested on it, should go to the court reporter prior to coming forward to speak to the Board. When you are ready to speak to the Board, I would ask that you have a seat, make yourselves comfortable. State your name and address for the record, before proceeding. That way we can give you the credit of all those important things that you will be stating.

The order of procedure for the Foreign Missions case that we have for us this afternoon is as follows: first we will hear the statement and witnesses from the Applicant. We will then hear any government reports attendant to the application. Those include, of course, Secretary of State and the Office of Planning on behalf of the Mayor. Third, we will hear reports from and/or recommendations from other public agencies that have provided reports. Fourth would be report from the Advisory Neighborhood Commission within which the property is located.

Fifth, we will hear persons in support. Sixth would be persons in opposition.

We will institute time constraints for cross examination, if we get to that level. I don't anticipate it in this case, but obviously the Board is well within its jurisdiction to do that.

The record will be closed at the conclusion of the hearing on a case except for any additional material that we would request and we'll be very specific on what material is to be put into the record and when it is to be submitted into the Office of Zoning.

The Sunshine Act requires that this Board conduct all its proceedings in the open and before the public. This Board may conduct review and deliberations sessions in executive session and that would be, of course, in accordance with our rules of procedure, regulation and also in accordance with the Sunshine Act.

The decision of the Board in this legislative proceeding must be based exclusively on the record that's created before us and therefore we ask that anyone present today not engage Board Members in private conversation so that we do not give the appearance of receiving information outside of that

public record of which we will be deliberating on.

At this time, let's consider any preliminary matters. Preliminary matters are those which relate to whether a case will or should be heard today such as requests for a postponement, continuance or withdrawal. If there are any preliminary matters associated with FMBZA case application 17275, now would be the time to bring that to the attention of the Board. You can do so by coming forward and having a seat at the table.

I will say a very good afternoon to Ms Bailey, representing the Office of Zoning and also Ms. Monroe, with the Office of Attorney General, that's with us. Mr. Moy will be in and out, also assisting the Board.

Ms. Bailey, good afternoon. Are there any preliminary associates with 17275 that we should be aware of?

MS. BAILEY: Mr. Chairman and to everyone, good afternoon. Staff does not have any preliminary matters, sir.

CHAIRPERSON GRIFFIS: Very well, not seeing an indication from those present today as having preliminary matters, let's move ahead and I would ask that all those individuals who wish to

testify this afternoon actually and also with the FMBZA case, if you would please stand and give your attention to Ms. Bailey. She is going to administer the oath.

Any other application this afternoon, we can swear you in now, so that you don't have to worry about taking the time in the opening. Excellent. If you would just give your attention to Ms. Bailey.

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

(THE WITNESSES WERE SWORN.)

CHAIRPERSON GRIFFIS: Excellent. In which case, Ms. Bailey, if you wouldn't mind. Let's call the first case.

MS. BAILEY: That is Application 17275 of the Application of the Republic of Lithuania, pursuant to 11 DCMR 1002, to permit the expansion of a chancery for the Embassy of Lithuania in the D/R-5-B and R-5-D Districts at premises 2622 16th Street, Northwest, Square 2575, Lot 32.

MR. COLLINS: Good afternoon, Mr. Chairman and Members of the Board. My name is Christopher Collins with the law firm of Holland & Knight. Seated

to my right is Jill Cooper. Ms. Cooper is an urban planner with our firm. I'm sorry, to my left, your right.

To my right, your left, Mr. Andrius Krivas. Mr. Krivas is the Counselor with the Embassy of Lithuania. And to my far right is Mr. Nelson Mejia. Mr. Mejia is representing the architecture firm for this project.

Additionally, there are seated behind me is Ambassador Usackas and a number of representatives of the Lithuanian government who Mr. Krivas will introduce and we did submit to you a list of those individuals. You should have that in front of you.

This is an application for expansion of the Lithuanian Embassy, excuse me, chancery, on 16th Street, pursuant to the Foreign Missions Act and Chapter 10 of the Zoning regulations. The site is split zoned, R-5-D and D/R-5-B. We do have the unanimous support of the Advisory Neighborhood Commission for this application.

We have the support of the State Department, as well as the support of the Office of Planning, with one exception, dealing with a closed court which we have addressed in our statement and the architect will also address in more detail.

This design is a result of a design competition in Lithuania. The expansion is intended to meet current needs to do Lithuania's reestablishment of independence, as well as their entry into the European Union and NATO. The design is low key and respectful of the existing building and respectful of the surrounding neighbors.

We did submit to you a pre-hearing statement and exhibits which explain the case in detail and there are two witnesses today, Mr. Krivas who will introduce the special guests this afternoon.

Mr. Krivas?

MR. KRIVAS: Thank you. Good afternoon, Mr. Chairman, distinguished Members of the Board, Mr. Ambassador, ladies and gentlemen. My name is Adrius Krivas. I am a counselor with the Embassy of Lithuania and it is my particular honor and pleasure today to introduce to you a delegation of Lithuanian Ministry of Foreign Affairs officials who came over to attend these proceedings.

With his Excellency, Mr. Vygaudas Usackas, the Ambassador of Lithuania, present here today are Mr. Kestutis Kudzmanas, the Director of the Administrative Department of the Ministry of Foreign Affairs in Vilnius; Mr. Viktoras Dagilis, Deputy

Director of the Information Technologies Department of the Ministry; Mr. Rimantas Latakas, the head of the Budget and Finance Management Division of the Ministry; and Mr. Ramunas Kriksciunas, the Chief Officer in the Security Division of the Ministry of Foreign Affairs.

The Embassy of the Republic of Lithuania to the United States has a proud history. It was first established in 1924 which is more than 80 years ago and it was established in the very place, location and building in which the embassy is today.

During these 80 years, 50 of them, Lithuanian remained under foreign occupation by the Soviet Union. However, throughout that period, the embassy retained its diplomatic status and retained its building, the maintenance of which was largely possible due to the noble efforts of the Lithuanian community, emigre community here in the United States. Some representatives of it are here today.

The embassy resumed its normal diplomatic functions when the Republic of Lithuania regained her independence back in 1991. Since then, many important political events have happened in the life of my country and most notably, last year, Lithuania was admitted as a full-fledged member in the U.S.-led

defense alliance, NATO, and in the European Union. This led to a considerable increase in the diplomatic activities conducted by the embassy and to match those requirements the embassy embarked on a program of increasing its staff.

Most of the new staff are already here and we are also looking forward to one or two more appointments over the course of the next couple of years and also another factor that is important is the increased need for diplomatic activities in terms of meetings and conferences at the embassy. This made us feel too crowded at the embassy and we initiated a project aimed at expanding the chancery of the embassy to accommodate new staff and to accommodate additional diplomatic activities.

For that purpose, a national architectural competition was conducted in Lithuania. It took place last year, whereas a commission, a jury composed of the leading Lithuanian architects looked at a number of designs and selected what they considered to be the best.

One of the important conditions of that competition was that the architect should have a partner company in the United States which would practically be able to implement the project here. So

the winner of the competition was a Lithuanian architectural company named Grafo which for that purposed teamed up with a New York-based architectural company called the Phillips Group, LLP. Architectural representatives are with us today.

So as a result of the project of expanding the chancery, we expect to have preserved the building which is proud of its history because it embodies the political and also emotional connection between the Republic of Lithuanian, the Lithuanian community in the United States and the United States of America. And on the other hand, the expansion of the chancery is intended to allow us to accommodate additional staff and additional diplomatic activities as I mentioned.

Therefore, on these groups, we would really gratefully appreciate your favorable consideration of the Lithuanian Embassy's application. And I will be very glad to answer your possible questions.

Thank you.

CHAIRPERSON GRIFFIS: Good, thank you very much and we appreciate your being here, of course, today.

Are there any questions of preliminary

matter from the Board?

Very well, why don't we proceed.

MR. COLLINS: Thank you. The next witness is Nelson Mejia with the architecture group, firm of the Phillips Group.

MR. MEJIA: Good afternoon. As Mr. Krivas noted, we're representing -- my name is Nelson Mejia. We're representing the Phillips Group which we were fortunate enough to team up with the company of Grafo in Lithuania and were actually considered and was selected as the winning design for the extension of this important project.

Just to give you a brief description of the embassy, the building on site, I'm just going to take two minutes. The building is located on the west side of 16th Street on the northwest between Euclid and Fowler Street. It's a through lot. It has a frontage on Mozart Place at the rear. The lot is actually split by two districts, an R-5-D on the east side and a D/R-5-B on the west side. The building as currently exists is composed of a five-story building with a full cellar. It measures in square footage 10,098 square feet. There are no handicap facilities. There's no elevators. There are no sprinklers. As Mr. Krivas mentioned, the building has been preserved

in a lot of its ways from its original and it has taken great care.

The parking at the rear of the site, being a very narrow site, there are 11 spaces currently on the site. The design objectives of this competition and from the program were from the start a structure, there is not going to compete with the existing building, which obviously has a large history. It has significance to the government, also to the people here. The facade of the building, it's an Italian design, Italianate design. The focus on that was to get something that would not compete with it. There would be very subtle, they would always blend. It would be a background more to the building than anything that's going to try to mimic, copy it or try to actually change it by bringing attention to something else.

The esthetics and functional objectives as well was the program, program requirements from the embassy, and also the minimal impact on the surrounding neighborhood. The plans, as you have on the brochure, actually indicate some of the addition, especially if you look at the S-09 East Elevation, you'll see that the elevation facing the 16th Street. It's actually approximately 70 feet from the street

itself and 70 feet from the existing facade of the building.

So, in reality, it's going to be very difficult to actually make the two as one, in reality. It was designed with minimal openings. It's more of a function. It was also designed not to clash with the building. And the way we did that was try to create a sliver, if you will, between the two buildings of glass that kind of separates the two structures. So there's no ambiguity of what we're trying to do with the building. We're just trying to keep the existing building as it stands on that.

There are trees on the site as well, on the front street, which actually are going to buffer a lot of this as well. So we believe the 16th Street side on the Italian Renaissance facade that's existing is not going to be impacted at all on that.

CHAIRPERSON GRIFFIS: Has there been some questions of design compatibility?

MR. MEJIA: Not that I know of.

CHAIRPERSON GRIFFIS: Okay. I think we can move on a little bit as --

MR. MEJIA: Okay.

CHAIRPERSON GRIFFIS: -- I don't see our whole big jurisdiction of the FMBZA getting into

design criteria, although it would be fascinating to spend the time.

Let me see if I understand your statement. First of all, in terms of the addition, it's so far set back from the primary facade of 16th Street that just physically it will be read as something distinct and different than the Italianate, as you've described the original building. And then, in providing that sliver of glass, the rising glass, it adds to also the materiality change that will separate the two.

MR. MEJIA: That's correct.

CHAIRPERSON GRIFFIS: Okay.

MR. MEJIA: Yes.

CHAIRPERSON GRIFFIS: And then the trees staying, for at least a little while, so that that adds a little bit more.

MR. MEJIA: Yes.

CHAIRPERSON GRIFFIS: Good.

MR. MEJIA: Right. I think it would just reduce the obvious of the new from that.

The chancery has at this point, the new floor plans make accommodations to not only bring in the existing building to handicapped standards. There will be an accessible entrance and apportioned directly with access to a new elevator. There will

allow not only access to the extension but also to the existing building.

The chancery has uses, the chancery uses their offices from the cellar to the fourth floor, and there are two apartments on the upper floor, on the fifth floor.

Almost all the addition is located on the R-5-D portion the site. In order to provide adequate post-function and outdoor assembly spaces the rear of the building adjacent to the main conference room, there is a patio space and, in addition to that, there's provisions for 16 parking spaces, pretty much in the same configuration as the existing 11, just pushed further back into the lot.

A small portion of the building is on the opposite, on the other side of the boundary, on the D/R-5-B zone. Most of this portion of the building stops at the ceiling of the third floor. There's a small portion, however, that exceeds the 50-foot height requirement on this section of the R-5-D on that. And that mainly was done for two reasons. To provide some privacy for the executive offices and the Ambassador's offices, which have a balcony, and to create a buffer between the property line and the building for these window spaces.

So, that the section that actually rises on that portion is kind of, kind of ancillary spaces. They're bathrooms, they're stairs, they're exits. Minimal windows on that.

In order to maintain some of the natural light that was, there is into the existing dining area and some of the office spaces, there was a courtyard created into this space, not for any functional reasons or requirement reasons. They don't require any daylight or ventilation. But it's more of an aesthetic and also to continue to keep those rooms with natural light as the program requested.

The parking area in the rear has 16 spaces. It's, as I mentioned before, it's configured in the same manner as the existing 11. Basically, though, the width of the lot, there's very little variation that can happen with the parking areas. The parking requirement is 17, therefore, we are one short. The parking area is large enough also to provide stacked parking for at least 20 cars. So that stacked parking was an option and I believe most the guests here arrive either through limousines, chauffeur or taxi. It could be an option.

There are three non-, three areas of non-compliance. We have, I believe, provided

justification on our submission. Pages five through nine, for the waivers on the parking, the closed court requirement, and to allow the R-5-D height requirements to be used in this small portion of the R-5-D zone.

The Office of Planning has agreed on most of these plans except for the closed court, because they would be, and I'm kind of quoting here, practical, no practical difficulty in complying with their regulations. We believe there is practical difficulty here. The closed court will not be able to be seen by anyone outside of the building. It's not providing any requirements by code or health for any reasons here. It will reduce, you know, if it's made to comply with the existing court regulations for this district, our area we need to increase, because that's our point of non-compliance, we don't comply with the area based on the height. Our court actually starts on the roof of the second floor. We would need to push our building 15 feet further to the rear in order to make the court comply. This will require a separate relief, zoning relief, and will create a number of practical difficulties.

The first one will be --

MR. COLLINS: Excuse me, Mr. Mejia, if I

can interrupt. Did you bring it with you, a drawing to illustrate?

MR. MEJIA: Yes, we have a drawing.

MR. COLLINS: Can we submit those?

CHAIRPERSON GRIFFIS: Absolutely. Often said it's worth a thousand words, right?

(Pause.)

MR. MEJIA: I'm just going to go through it. We have the small copy. We don't have the larger copy here.

CHAIRPERSON GRIFFIS: That's okay. We have it in front of us, so you can just do it. We're pretty quick studies.

MR. MEJIA: Thank you. Basically, what we've tried to do here is tried to illustrate what would happen if we need to make the requirement of the court area. Obviously, in addition to loosing a minimum of four parking spaces, the area of the building that would need to be increased, one of the reasons for that is we've located the core, meaning the elevator and the stair as close as possible to the existing building to provide a required means of egress. These buildings typically, they have a center hall stair which is open. Technically, it's not really a fire stair. These will serve as a real fire

stair and there are two stairs in the space.

The second part of it is there is a programmatic requirement for an open patio which is an extension of the assembly space on the ground floor and I think, as you can see this area, where I'm pointing is actually part of the assembly post, so it's an extension of that large meeting room.

As you can see from the diagram, once this is projected into the space, it actually takes two parking spaces from that area to create the turnaround. In order to get into the parking would take another two spaces.

The additional area would sum up approximately on all five levels, approximately 2300 square feet, about 10 percent of the building itself and obviously it would have a price increase in the project.

It will also move the 60-foot tall portion of the building which is currently located here further into the district, so it would create, actually increase our requirement here since we're supposed to be at 50 feet in this district.

CHAIRPERSON GRIFFIS: While we're on that subject, can you clarify where the actual zone boundary is. On your site P plan and S-O-1 it shows

that the R-5-D concludes approximately at the edge of the proposed new addition. However, on the plans themselves, it seems to vary. I would note S-0-3 -- I guess -- well, maybe I'm reading it now correctly.

So the R-5-D is only a matter of -- it's on an angle, but it's anywhere from 5.5 feet to a little bit more away from the extent?

MR. MEJIA: Correct.

CHAIRPERSON GRIFFIS: Okay, on that then if that's correct, Mr. Collins, a quick question to you on 2514.1. As has been testified today and also in the written submission, this has been in single ownership prior to 1958, is that correct?

MR. COLLINS: Yes, it has.

CHAIRPERSON GRIFFIS: Okay, in which case wouldn't it be a matter of right that you could move the zone boundary line upwards of 35 feet, if I'm --

MR. COLLINS: I wish that it were so. 2514.1 does not apply to our situation. Rather, we're under 2514.2.

2514.1 allows the shift of the density from the -- in this case the D/R-5-B would be allowed to be added to the R-5-D density to make the building bigger on R-5-D.

CHAIRPERSON GRIFFIS: I see.

MR. COLLINS: That's not our situation.

CHAIRPERSON GRIFFIS: But rather, you're trying to move the boundary line just to accommodate that.

MR. COLLINS: Essentially, we're asking that the use, height and bulk regulations be extended 35 feet, in this case, up to 7.5 feet is all we're asking.

CHAIRPERSON GRIFFIS: Sure.

MR. COLLINS: And that does require -- it would, in the normal case, require special exception. We're addressing the special exception criteria, but this case is not a special exception case as you know.

CHAIRPERSON GRIFFIS: As you've stated.

MR. COLLINS: Yes.

CHAIRPERSON GRIFFIS: Okay. Good.

MR. MEJIA: Just to illustrate a couple of things that we feel are kind of detrimental when this section gets pushed further in here is the space between the addition and the existing building on the opposite lot, what you see down here now is the gap by about 18 feet from corner to corner of the building, which I think would be more disturbing to the residential portion of the neighbors.

CHAIRPERSON GRIFFIS: We're not seeing

what you're pointing out there.

Let me see if I understand exactly what you're showing us. In S-E-1, you're showing us what the impact would be if you made a conforming court, correct?

MR. MEJIA: Yes.

CHAIRPERSON GRIFFIS: If you increase that, you have to push the rest of the building back, you're losing the parking, you're main room is extending out over a patio. It seems to not really work in terms of the massing and the function of the property itself. Okay.

MR. MEJIA: Correct. It will also require serious deviations from the plan that was envisioned here. The plan was to have a very compact office building, minimal spaces. The envelope is as tight as possible, given the program requirements. To extend the courtyard, obviously because of the lot restrictions and the area restrictions, it would be more additional parking requirements, so it's kind of a bit of a Catch-22. We increase it, but we're actually asked to provide more parking, so we need more area.

CHAIRPERSON GRIFFIS: Right. In order to keep to the massing and the circulation and the

upgrades that you're actually doing, the vertical and horizontal circulation, you actually have to add the 2,045 square feet. If you add to the open area, so what you're saying, if I understand you, it kind of flies in the exact intent, if not purpose of a court.

Is the diagram showing on S-E-1 correct in terms of the adjacent building structures? There's nothing directly against the property line on the adjacent property, no structure where that court is being proposed?

MR. MEJIA: No, that's correct.

CHAIRPERSON GRIFFIS: So what we're seeing is the footprint of the existing massing?

MR. MEJIA: Existing mass.

CHAIRPERSON GRIFFIS: Okay.

MR. MEJIA: Just to summarize, I think the Office of Planning agrees with us on all counts, except the closed court, but they're willing, the Office of Planning, to support an additional intrusion into the different type of zoning, meaning have it relieved to extend the D-5-D further into the opposite district into the D/R-5-B. And it seemed to us it didn't make sense in terms of changing one type of relief for another when the one we're asking, actually works with that building and the additional change of

the relief really doesn't fit with our proposed building and their program.

The enlargement of the court also in our belief creates a little bit more of a security problem. We minimized our windows along the property line, I think, by extending the court. We have more exposure on that side of the building as well. I mentioned before, the courtyard is really more of an aesthetic issue to maintain the windows. They're important to the old building and also to give some daylight into that space as well.

CHAIRPERSON GRIFFIS: And the impact is only on your property?

MR. MEJIA: That's correct. There's no impact that we could see adversely to the neighbors.

CHAIRPERSON GRIFFIS: Okay. I think this is excellent clarification of the project itself and the architecture and the massing, Mr. Collins, or rather in the Applicant's submission. Am I correct in saying that no relief is being asked for for these aspects?

MR. COLLINS: That's correct. This is not a special exception case. However --

CHAIRPERSON GRIFFIS: In fact, it couldn't be under the FMBZA.

MR. COLLINS: That's correct, it cannot. But just to address the issue, under the municipal interest criteria we do show that if this were a special exception case, we would meet the criteria.

CHAIRPERSON GRIFFIS: I appreciate that and that's good clarification for the Board.

Ms. Miller?

VICE CHAIRPERSON MILLER: How about if this were a variance case? Do you think you would meet the criteria?

MR. COLLINS: No, for the same reason. There's no variance requirement in a Foreign Missions Act case. The sixth criteria under the Foreign Missions Act in Chapter 10 are the only criteria that apply in a Foreign Missions Act case.

VICE CHAIRPERSON MILLER: I hear you, but I thought you said you're using the criteria to show that you would meet them anyway?

MR. COLLINS: Yes.

VICE CHAIRPERSON MILLER: But my question was you said with respect to special exception.

MR. COLLINS: Oh, I'm sorry, yes, with the variance, we also -- there are two areas where if this were a normal case we would need a variance. One is the parking and the other is the courtyard and the

parking certainly. And the third is the special exception for extending the use, height and bulk up to, in this case, 7.5 feet.

So we do believe we meet those requirements for what would be a special exception or variance, but to be totally accurate, they are not required in this case.

VICE CHAIRPERSON MILLER: And my other question is with respect to the closed court issue, I believe I've heard a lot more arguments as to practical difficulty with respect to that issue than are presented in the application and I'm wondering if Office of Planning had heard those arguments before they did their report?

MR. COLLINS: No, they have not. Mr. Jackson and I did have a discussion about that. After he and I talked about that and he mentioned that he did not see how we would meet that requirement, with the caveat that we're not required to meet that requirement, we did go back and put our heads together and really take a hard look at the practical difficulties as we've called it, the list of horribles that would happen if this were to occur.

And it does add 10 percent to the building program, 10 percent to the construction costs, space

that we don't need. We could put a -- because this is a rulemaking case, so I can talk to you about as well, we could put a hat on top, we could put a roof on top and it would become an atrium and not a closed court. A court must be open to the sky. If we put a top on it, it's no longer a court. But if we put a top on it it becomes an atrium and there are all sorts of building code issues that flow from that, fire shutters, separation, and all sorts of other things that are just not in the program. This is simply a means by which to get daylight to the rear of the existing building where there are some wonderful internal spaces that would be dark all the time if we were unable to keep this court open for the natural light to hit those windows.

VICE CHAIRPERSON MILLER: Thank you.

CHAIRPERSON GRIFFIS: Let's move ahead.

MR. MEJIA: I think just in closing, I just want to say I think there's enough justification to meet the practical requirements here to keep the court and I hope you will see it that way. Thank you.

CHAIRPERSON GRIFFIS: It's not ours to see.

Mr. Collins?

MR. COLLINS: That concludes our

presentation, unless you have any further questions.

CHAIRPERSON GRIFFIS: Anything else? We're quick studies.

Okay, let's move ahead then. It would be appropriate now to hear from the State Department.

I know we do have a submission from the Department of State. It is noted as Exhibit No. 24 in the record.

Good afternoon, sir.

MR. MLOTEK: Yes, good afternoon, Mr. Chairman. If it pleases this honorable Board, for the record I'm Ron Mlotek, the legal counsel, Office of Foreign Missions, U.S. Department of State. And in conformity with our very longstanding practice, we always like to defer when it comes time for the government reports to the representative of the Mayor. We think that's appropriate.

CHAIRPERSON GRIFFIS: I just had to hear the graciousness. So why don't we move on then?

MR. MLOTEK: Thank you.

CHAIRPERSON GRIFFIS: Would Office of Planning like to present first, Mr. Jackson or would you return the favor and we'll start the tennis volley?

MR. JACKSON: Mr. Chairman and Members of

the Board. I appreciate the deference shown by the Department of State's representative and I would proceed just to briefly stand on the record for the Office of Planning report. However, I would like to update the report based on the presentation that was made today. The Applicant has indeed provided additional information with regard to the practical difficulty that's associated with this application and I would note that essentially what the Office of Planning, the position the Office of Planning is taking is that what we want to do is make sure that the integrity of the zoning regulations and map are kept intact by any action to be taken today.

In that regard, we think it's in the District of Columbia's interest to uphold those standards and as such we are applying what would normally be in this situation, what normally could be considered a special exception in other circumstances, applying those standards to make sure that to the application or to that relief to make sure that the integrity of the zoning regulations was upheld.

In this regard, we noted that the expansion of the building, the chancery building, would be consistent with the criteria under Sections 1001 and 1002 and as such we think that's in the

municipal interest to uphold. We think that the uniform extension of a less restrictive bulk and height provision into the D/R-5-B zone district would be consistent with the criteria stated under Section 2514 and we had questions about the extension of variance relief for the court in that seen previously that the standard, in terms of practical difficulty was illustrated.

However, we have heard what was presented today in terms of additional information and we see that it's kind of a Catch-22. If you extend the building, you need more relief in other areas.

We also note that on the plans, if you look at the residential units which is the ones we're most concerned with, the units themselves do not actually have any frontage along that court. There is a study in one of the residential units that is getting light from the court, but otherwise the air and light circumstances of the rooftop units are handled by the exterior walls of the building and not the interior wall along the court.

Since that is not a concern, we have changed our original recommendation and we do find that granting relief under these circumstances is consistent with the relief, the standards that would

be required under normal zoning regulations. So we find that the requested relief can be granted in the municipal interest.

I would also like to thank the Ambassador and the staff and of course, the interest group, the Lithuanian country who have maintained this building and have gone to great extent and great efforts to upgrade it. I had an opportunity to visit it and it's very, very interesting inside. A lot of the work that has gone on to repair the walls and the damage that was done over time is very impressive.

We have talked -- we mentioned the possibility of making this a historic property, but if that's not in the cards, we are assured that the government will be maintaining the historic part and we find that the addition will be a great -- will supplement the excellent architecture along this portion of 16th Street.

With that, that concludes our recommendation on this application and the Office of Planning is available for answering any additional questions.

CHAIRPERSON GRIFFIS: Thank you very much, Mr. Jackson. I would agree with you in terms of the interest of the architecture of the existing condition

and I think that's an excellent discussion that you've been having.

Let me clarify, of course, under 1001.6, the municipal interest under the FMBZA is where you raised the question of conforming, maintaining the zone regulations and plan and that is what your concern was in terms of looking at this application to make sure that it fell within that, not strictly in terms of the procedure of granting the relief, but rather that it fit within the parameters of what might be anticipated if this was not under the FMBZA.

MR. JACKSON: That is correct.

CHAIRPERSON GRIFFIS: Okay, thank you very much. Are there any other questions from the Board at this time?

(No response.)

Does the Applicant have any cross examination of the Office of Planning?

MR. COLLINS: Mr. Chairman, respectfully, this is a rulemaking case and there is no cross examination.

CHAIRPERSON GRIFFIS: Indeed. I have to change my opening, don't I?

(Laughter.)

I read that thing and I was thinking none

of this really pertains, but we'll rewrite that this afternoon.

Good, let's move ahead then.

MR. MLOTEK: May it please the honorable Board once again. For the record, I'm Ron Mlotek, legal counsel, Office of Foreign Missions, U.S. Department of State. And Mr. Collins and the Chair are correct about cross examination, but just to make it clear, the Board always retains the right in view of the State Department to ask questions of anyone, including the embassy representatives that would ordinarily be considered -- constitute cross examination in an ordinary case. But technically, normal contested case cross examination does not go on.

CHAIRPERSON GRIFFIS: Right.

MR. MLOTEK: In this kind of case.

CHAIRPERSON GRIFFIS: Thank you for that clarification. And after all, there was a rule that precluded us, but we break it quite often anyway.

MR. MLOTEK: Right. But then I have to point it out.

For the record, I note that we did submit a letter signed by Ambassador Francis Taylor who is the Director of the Office of Foreign Missions and

also serves as Assistant Secretary of State for Diplomatic Security. It's a dual-headed function.

On December 23, 2004, he wrote expressing the Department of State's support for this. I'm not going to repeat it verbatim. We believe the criteria, the federal criteria under the act are met. I would just simply flag or highlight for benefit the last, the penultimate paragraph on page 2 of the letter where we do note that there a special reciprocal or reciprocity interest on the part of the United States Government because of our on-going construction plans in Vilnius as is the case in many places around the world and in light of the conditions in the world, we have to consider upgrading the security, the physical security of our buildings almost everywhere and Vilnius is no exception and these will require a great deal of interactions with local land use and zoning authorities there. A lot of Vilnius is still historical, I believe, in its appearance. It's a very historical place and so we look forward to the fullest cooperation from the authorities in Lithuania, both the national authorities and the municipal authorities and we think that the approval or favorable action on this application here would certainly be helpful in that regard and induce the government to be as helpful

as possible to us in Lithuania.

You heard Counselor Krivas give a little historical synopsis. I'm not going to repeat it or add to this in any major way, but I just would simply like to observe that all of us here today in a small way, but a significant way, I think, and a memorable way, are actors or observers to an important, small, but important piece of history because Lithuania for many years was under Soviet occupation. Stalin invaded Lithuania in pretty blatant violation of the international law, even at the time, in 1940. And -- 1940, yes, thank you. Got the history right.

And nevertheless, this government refused ever to recognize this forcible annexation and one symbolic and important consequence of this refusal to recognize the occupation was that we continued to recognize diplomatic representation of Lithuania as well as Latvia and Estonia, the other two Baltic Republics here in Washington, D.C. And I remember when I started as then a young lawyer doing this work at the Department of State for our missions work, it was very difficult for me personally to understand how it was possible to have what were in effect embassies. We called them legations, but because of the archaic terminology, I think still in D.C. zoning law there

are references to legations. It means an embassy, really. That we had these three legations here in Washington, D.C. and we even had accredited diplomatic representatives that came from the Lithuanian diaspora with diplomatic privileges and immunities, as everyone else, even though they hadn't been back in Lithuania for a very long time. And very few of us ever thought that there would ever actually be a renewed or revived Lithuanian embassy, much less a Lithuanian state here. So it's extremely gratifying to me personally. I know to the Department of State and I think to all of us here that we are participating in this small piece of history in dealing with an embassy that no one ever thought would really be where it is today. And so we're very pleased and gratified at that.

The only other issue that I could address, if anyone wants me to, I certainly don't want to push on an open door. They always train lawyers not to do that, is the issue of whether you require variances or special exceptions in these cases and what is required and what is not required. It's complicated. It's technical. It's even confused my colleagues back at the State Department today. I had to deal with a whole bunch of questions that arose from other people who misread what I said as to meaning that embassies

do not have to comply with the zoning laws of the District of Columbia at all. And that is, of course, not the case, but I could just summarize it by saying this and if you have any further questions, I'll elaborate and if not, we can just leave it there and that is the following.

Chancelleries are not free to ignore the provisions of D.C. zoning law and D.C. zoning regulations which Mr. Jackson has the duty to uphold the integrity of. They're not free to ignore them. So if there is a requirement such as there is in this case that says a light well must be of a certain size, that doesn't mean that the Lithuanian chancery can go ahead and ignore that.

It's simply that in these special foreign missions cases because of the Foreign Missions Act and because of the way the special Foreign Missions Board of Zoning operates, they do not have to technically apply for a variance in the normal case and that also means they do not have to meet the standards which are pretty high, as we know for a variance.

Now if they can make an argument that in any event they do meet those high standards as the argument has been made here and I think largely Mr. Jackson accepts this, if I understand that correctly,

so much the better. And so legal counsel as in this case Mr. Collins did, would in such a case want to be able to show the Board that look, we don't have to meet them, technically, but we meet them any way and that's all for the better.

Nevertheless, whether they meet them or whether they don't meet them, the Board still retains the discretion to deny relief or to disapprove the application because of that departure from the standards. The only difference is that in justifying or in writing its opinion at the end of the day as to why it was disapproving, it could not base its disapproval on the failure to meet the variance test because the only tests that the Board under the law is authorized to use are those six criterion in the Foreign Missions Act, one of which requires or several of which require balancing of the international interest and the federal interest over and against the municipal interest. So then the Board would have to balance the District's interest in having a light well at a certain size as against all these other interests that you've heard about and that's the way it would work.

And the final proof of this or explanation of this is if this were an ordinary variance case, the

tests that are in the D.C. zoning regulations for what you need to show in order to justify receiving a variance would not involve any role at all for the federal interest. It would be totally irrelevant that the State Department supported the granting of the variance. Maybe we would have nothing material to say. We wouldn't even say anything. That clearly is not the intent of the federal legislation which is now also part of D.C. law. That's why we say variance, strictly speaking, this isn't a variance case. They don't need to have a variance. But that doesn't mean that the Board is required simply to ignore or take no regard of the fact that D.C. zoning regulations say you have to have thus and such and they want to have some relief from whatever the thus and such is. You can take that into account. You can even base your decision on that. I don't think in this case that would be justified because this is a departure that doesn't seem to have any negative impact on any resident certainly or any surrounding structure or on any important other interest. It's all internal to this building itself and therefore the only issue therefore is the general integrity of the zoning regulations as the Office of Planning has pointed out, but the Board can easily say in this case it has

satisfied that that integrity is not in any way diminished because of these other considerations. That's it.

CHAIRPERSON GRIFFIS: Good. Thank you for that summation. As I understand what you're saying, of course, the jurisdiction of this Board under the FMBZA is to review under the six criterion that is afforded us in 1001 and that takes in not only the location meaning the use, the location of it, but also the replacement or expansion which you're asserting is the use, location and also any area aspects that might be reviewed.

MR. MLOTEK: Absolutely, height, bulk, density, every single consideration. The zoning regulations as regards the substance of them apply in full here. Where we depart because of the federal legislation is in the procedure that you follow when a chancery, and this only applies, let's remember, this doesn't apply to anything diplomats want to do here, only to their chancery, their office space. If this were the Ambassador's residence, it would be strictly a civilian variance test followed to the letter as it usually is and the State Department really wouldn't have a major role or anything relevant to say in such a case. But in a chancery case, all of those

requirements, the substantive requirements of height, bulk, density, setback, size of light wells, etcetera, they apply. It's just that if a chancery wants to make a case for relief from them, they don't have to -- they're not required to meet the high test of the variance.

CHAIRPERSON GRIFFIS: Good. Thank you very much. I think it's very clear your position and understanding of that and believe me, we give that great substantive weight. I do not believe at this time that the Board is making an official ruling on agreement or disagreement with you, but rather, we are processing the application as we have it before us today. And we'll move ahead in that manner.

Is there anything else from the Board at this time? Any other questions?

Mr. Mlotek, always a pleasure to see you.

MR. MLOTEK: Likewise.

CHAIRPERSON GRIFFIS: And we appreciate you being here and getting us all organized.

MR. MLOTEK: Thank you.

CHAIRPERSON GRIFFIS: Let's go to the ANC. Is the ANC represented today?

Ms. Miller will just cite that for the record.

VICE CHAIRPERSON MILLER: We have a resolution from ANC-1C, dated January 11, 2005, supporting the application. It meets the great weight requirements and they have no concern about the application and a quorum was present.

CHAIRPERSON GRIFFIS: Very well, the ANC has provided that testimony for the record. It obviously has met their review and approval and so we'll take that into the record. It was cited as Exhibit Number 28.

Let's move ahead then to any persons present to provide testimony in support of the application? Is there anyone present today as a part of Application 17275 to give testimony in support?

Persons present to give testimony in opposition to the application can come forward at this time. Not noting anyone present to provide further testimony, I believe we can move on.

Are there any other follow-up questions, clarifications from the Board? Discussion among us?

Is there action then?

COMMISSIONER PARSONS: Mr. Chairman, I'd be glad -- first, I want to congratulate the Lithuanians for the support they have in the community. As you may have come to know some of these

cases are very controversial. So congratulations for that and to the architects as well. I think this is a very good solution, very respectful of the historic structure.

I agree completely with Mr. Mlotek and his assessment of our role here and I'm glad that Mr. Collins urged this dialogue, if you will, on meeting the zoning regulations. So in that context, I would move that we agree not to disapprove -- I always get confused at this point -- as to what the proper motion is, but anything that would let this project move forward I so move.

CHAIRPERSON GRIFFIS: Excellent, thank you very much. I think that's appropriate language. I would second the motion. Is there further deliberation on it? If not, let me just pick it up and run through it. Of course, we'll start with 1001.1 of our regulations of which we look at the criterion in terms of the international obligation of the United States. And that has been clearly addressed in the record. I won't go back into the substance of that. 1001.2 of the historic presentation and .3 which ensures compatibility with historic landmarks. It's obviously well established in this application that this is not a designated or

in a historic district. There was good testimony from the Office of Planning that discussion is underway in preserving the architectural integrity and I think the testimony from the architects themselves ensures the fact of the intent of this addition, but also in the future of what might be done to the structure and how it would, if not, as a landmark, would certainly be preserved as an important piece of architectural work on 16th Street.

Point 4 goes to the adequacy of offstreet parking. Again, it has been met in the application and it has been shown in document to the fact of the amount that's provided that it is near impossible to provide the one additional and the fact that the actual demand for parking is considerably reduced, based on how people are transported to and from, be it in driven cars.

1001.5 goes to whether it can be adequately protected, and of course, that was also met in the submissions and the findings which we have within the record. Point 6 in the Office of Planning talks about the municipal interest. It actually has been, I think, a very fruitful discussion on the substance of this and what we have, of course, a firm understanding of many of the aspects of municipal

interests and today, I believe we entered into a brief discussion on even further substance of the regulations and the important role that they play for the municipal interests. And as I say, although I don't feel that the Board has made a definitive ruling in that manner, it is important dialogue to have had. And of course, .7, the federal interest is determined by the Secretary of State has also been well documented as being fulfilled in this application.

I'll open it up to any other Board Members at this time, if there are any other additional comments or deliberative aspects.

Very well, not noting any, we do have a motion before us. It has been seconded. I'd ask for all those in favor signify by saying.

(Ayes.)

Opposed? Abstaining?

(No response.)

Very well, I thank you all very much and I appreciate everybody being here this afternoon and presenting such an excellent case. I believe that is all the business that we have, Ms. Bailey, for the FMBZA at this time, is that correct?

MS. BAILEY: Yes, Mr. Chairman.

CHAIRPERSON GRIFFIS: Very well, if that's

the case then, I would adjourn the afternoon session of the FMBZA for January 25, 2005.

Ms. Gallagher, have a great afternoon. It's good to see you as always.

And in the same respects, let me make up some time here and call to order the afternoon session of the Board of Zoning Adjustments of the District of Columbia and dispense with the fact that my name is Geoff Griffis, even though I just said that. I am Chairperson today. The Board is the same as was constituted, except for the following. We have, of course, representing the National Capital Planning Commission, Mr. Mann; Mr. Parsons -- oh, interestingly enough, Mr. Parsons will be here on one case and we will have another Zoning Commissioner joining us on additional cases as we get to that. We're going to possibly change the order of the schedule this afternoon, but I will get to that very quickly.

For those of you who have just come in, of course, our agendas are available for you. They're located where you entered into the Hearing Room. They're located on the wall.

We are being recorded, as I've stated, and I will restate at this time, we're being broadcast live on the Office of Zoning's website. We are also

and most importantly creating an official transcript. The Court Reporter sitting to my right is creating that.

If you are planning to testify in front of the Board today, I would ask that you do several things. First, you're going to need to fill out a witness card. The witness card needs to go to the Recorder prior to coming forward. When you do come forward I would ask that you just state your name and address for the record before you start speaking. And then you can proceed with your testimony.

Let me ask everyone that's here right now if they would turn off cell phones and beepers or any other sort of party noisemakers or any sort of distractions so that people giving testimony aren't disrupted and our transmissions aren't disrupted.

Let's move forward to procedures. Procedures for the special exception and variances is as follows. We'll hear from the Applicant, their case presentation and all their witnesses. We will then hear any government report and agencies attendant to those applications. We would then go to the ANC within which the property is located for their case presentation. Fourth, we'll hear persons or parties in support of the application. Fifth would be persons

or parties in opposition to an application and sixth, finally, we'll hear from the Applicant again and any rebuttal testimony, witnesses and closing remarks.

Cross examination of witnesses is permitted in this afternoon's hearings for those parties and Applicants in the case. The ANC in which the property is located is, of course, automatically a party in the case and therefore will be able to conduct cross examination.

The record will be closed at the conclusion of the hearing on a case, except for any material that we may keep the record open for and we will be very specific on what we will keep the record open for and when that material is to be received into the Office of Zoning. After that is received, of course, it should be fully understood that the record will be finally closed, no other information would be accepted.

The Sunshine Act requires that this Board conduct all of its proceedings in the open and before the public. This Board does enter, sometimes, Executive Session, to review records or deliberate on cases. That is in accordance with the Sunshine Act and it also is in accordance with our rules of procedure and regulations.

Let me ask of those -- a show of hands. Is anyone present now that was not sworn in previously that is going to be giving testimony? Is anyone present that wasn't sworn in? So everyone has been sworn in that will be giving testimony this afternoon? Excellent. Then let's dispense with that and I want to go to any preliminary matters.

Preliminary matters are those which relate to whether a case will or should be heard today, such as request for a postponement, continuances or withdrawal or whether proper and adequate notice has been provided for that application. 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 as an indication of having a preliminary matter.

Let me say again a very good afternoon to Ms. Bailey who sits on my very far right. Mr. Moy, closer to us on our right, also with the Office of Zoning, good afternoon. Ms. Glazer is with us from the Office of Attorney General.

Ms. Bailey, are you aware of any preliminary matters?

MS. BAILEY: Mr. Chairman, just clarification. Are we going with the order that the cases are listed on the docket?

CHAIRPERSON GRIFFIS: Forgive the delay. What I would like to do in this and the precariousness and because we do everything on the record here, I'm going to tell you what I'm thinking about.

The issue is this. We have a request for a continuance based on the nonavailability of the party in opposition to be present today. We have a hearing set for the 1st of February.

But we also have numerous motions within that application. And so what I propose to do at this time is we're going to call that case. We're going to dispense with several of the motions and one of which is the request for a continuance.

It should take us no more than 15 minutes to get through that and then we'll go to the rest of the cases for the afternoon which is one which will provide us for the rest of the day.

Is that appropriate and understood from the Board Members?

The issue, of course, is that our Zoning Commissioner on that case is not with us present, but I think we can move ahead with those aspects.

So in that case, Ms. Bailey, why don't we move ahead.

MS. BAILEY: Application No. 17232 of the

RLA Revitalization Corporation, 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, or in the alternative, for a special exception from the roof structure requirements under section 411, a special exception pursuant to 11 DCMR Section 2108 to reduce the amount of required parking spaces by no more than twenty-five percent (25%), and a variance from section 2115.9 to permit attendant assisted parking in the C-3-A District to permit a multi-use commercial establishment in the C-3-8 District at premises 1400-1420 Park Road, N.W., 3100-3220 14th Street, N.W., and 1417-1437 Irving Street, N.W., (Square 2674, Lots 719, 720, 812, 832, 863, 866, 869, 870, 871 and 872.)

CHAIRPERSON GRIFFIS: Is that all of them? Okay. Good. As I said, we do have a -- let's take a -- we fully understand that there's a request to continue this because the representative from the party in opposition is not able to be present due to illness today.

We do have an already scheduled date to continue this which is the 1st of February if I'm absolutely correct in my memory, in which case we obviously will be taking this up in the afternoon of that date.

But we do, in addition to that, have numerous motions, some of which I believe that we can dispense with at this time as we will not take additional testimony on it as the record is sufficient for the Board's deliberation and decision on that.

Let's take up, first of all, the first motion, first motion to dismiss the application because of ex parte communications in violation of the law.

This rises, the issue, and actually directly concerns me, as being perceived to have conducted private conversations with the grid properties and who knows, maybe others, in terms of establishing -- oh, and the Department of Transportation, of course, in terms of establishing some of the specifics in this application and as noted in the Motion for Opposition by the representative of the Applicant, they are very clear that they did not, and their client did not, involve themselves in any sort of discussion or conversations with me.

I want to just to straightforwardly affirm the same. This is a very serious issue and a very serious accusation and I think it needs to be addressed directly and specifically. This is my understanding of it. First of all, I have never been in a meeting private, public or whatever -- well, public, I can be because in these hearings, but private with a Mr. Greenwald, Grid Properties or in fact, the Department of Transportation's representative, Mr. Noble.

In fact, is Mr. Noble present today?

(No response.)

Interesting. I'm not sure I'd recognize him. So I thought I'd say hello.

But nonetheless, I think the issue arises and I don't fault the confusion of what the motion and the basis of the motion. The letter from the Department of Transportation is addressed to me. And the letter starts with "Dear Mr. Griffis and Mr. Greenwald" and goes on to say "this follows up on several conversations." I -- if I was reading that -- not -- I believe that the wording is absolutely inappropriate of the letter as it was framed. But it's fairly clear that anything put into the record, more often than not, is addressed to me as Chairman of

the Board of Zoning Adjustment. But it is not unlike some of the memos and letters that are written to Ms. Kress, the Director of Office of Zoning, although she has no participation in the public hearing or the Board, but rather it is in order to get into and on the record.

So let me open it up to other Board Members and discussion or comments that they might have.

COMMISSIONER ETHERLY: Mr. Chairman, I am entirely in agreement with your assessment of the situation as relates to the first motion. I just believe simply that the factual basis for the motion is very much in error and I would be prepared to move denial of the motion to dismiss the RLA application because of ex parte communications in violation of law for the grounds that you've just stated.

CHAIRPERSON GRIFFIS: Thank you.

VICE CHAIRPERSON MILLER: I'd second that motion.

CHAIRPERSON GRIFFIS: Good. We have a motion and seconded and further deliberation, comments?

Very well, I'd ask for all those in favor signify by saying aye.

(AYES.)

CHAIRPERSON GRIFFIS: Opposed?

(NO RESPONSE.)

CHAIRPERSON GRIFFIS: Okay, let us move on. The second motion goes to the -- well, I'm going to put it in my terms. It is requesting that we strike the letter that was filed into the record and also strike the testimony of Ms. Budoff regarding the letter. And the letter was going toward -- as the party in opposition has asserted, a confidential letter and confidential meeting.

Let me open it up for discussion on that, if there's any comments.

VICE CHAIRPERSON MILLER: Mr. Chairman, I would note that neither party cited any authority for their position on this issue and I looked at Federal Rules of Civil Procedure and we are not bound by those rules, but often we look to them for guidance. And basically, I think it's within our discretion whether or not to strike the letter and the testimony.

I don't believe that we're required to. There is a public policy that favors out of Court settlements and by having this on the record against the wishes of one of the parties, that would be against that public policy.

It doesn't go, on the other hand, to liability to which this rule often speaks, but in any event, we also have to consider the relevance here and I guess when I juggle all of those, it comes down to striking it as -- I would say in our discretion we might strike it as confidential settlement that was -- that has the expectation of the parties to be confidential.

CHAIRPERSON GRIFFIS: Okay, I appreciate that and I think the absolute importance that you just said -- it's our discretion. And I would move that we grant in part and deny in part the motion. I would move that we grant, in fact, removal of the letter striking the letter from the record.

I'm not sure that -- I am not making the assertion of establishing that it was confidential or not confidential. I don't think that is definitively noted. But rather, it goes to the issue of whether the facts and the items raised in the letter have any sort of real relevancy for us in terms of the case that's before us.

And I would deny, of course, in part the removal of the testimony of Ms. Budoff, just on two things. One, I think it was very brief, but also there was some substance in terms of the testimony.

In addition and quite frankly, common sense, going through and striking a sentence here out of the transcript, it seems to be not a good use of time.

I do believe that we should -- because the concern that was arising in the motion that it might prejudice the Board in terms of our impression of one side or the other, who's doing what, I know for myself and I think the Board would agree, that quite frankly, we'll disregard the issue and oftentimes things are slung in a public hearing which I think we're good judges on, noting what should stick and what shouldn't. That's legal phraseology, isn't it?

(Laughter.)

Okay, but in all seriousness, of course, I don't think that that aspect will have any influence on the deliberation of the Board in terms of the substance of the case at hand.

So we have a motion before us. I'd ask for a second.

VICE CHAIRPERSON MILLER: Second.

THE COURT: Thank you. Any other further comments?

VICE CHAIRPERSON MILLER: I just want to comment that reviewing the letter and the testimony, I found the testimony was extremely relevant to the

issue at hand and I agree with you that it would be difficult to parse out any references to the letter and I don't think there was much in there referencing the letter.

CHAIRPERSON GRIFFIS: Good. Thank you.

COMMISSIONER ETHERLY: I also agree with the motion, Mr. Chairman. I want to speak in support of the motion.

I think it's a very important kind of milestone as we continue forward with what is clearly a very complicated, but I think it's a very important milestone because it's going to, I hope, set the tone and the tenor for our on-going proceedings as we continue to deal with what are some very complicated questions here.

I just simply think that there's again, as was the case with our first motion, no factual basis here really, with respect to concerns of any prejudice that the letter might have raised. But I want to just be very clear in my statement of that. This Board, time and time again, is asked to weigh probative value of a great deal of information that it takes in, in any case, evidentiary and otherwise, and I think my colleagues and I have developed a very excellent ability to do that. But I think it's very important

that this Board say unequivocally that day in, day out, every Tuesday, we give each and every participant in the cases that come before us, each and every party, a full, impartial, and I believe without err, very just hearing. And I think it's very important to say that.

Clearly, there are a lot of emotions involved here. I find myself using that phrase more often than not when we deal with cases here at the BZA, but clearly, there are emotions involved. There are some concerns of a very serious nature to all of the parties at issue. But I simply don't want to let any kind of impression stand that this Board does not approach its duty seriously and with a sense of impartiality and professionalism without regard to a client's representation, location, organizational status. You name it or what have it. I just think it's very important to say, because I don't want us to get out of hand and get sidetracked from what the focus is here with regard to this particular application.

So I just very motivated to note that for the record. But once again, I can't say it enough. I know the concerns are very high and emotions very energized about the issue that's before this body, but

I just simply do not think that there's any ground for the motion in front of us with regard to the striking of the letter.

I will support the motion. I do disagree, somewhat, with the need to strike a letter. Once again, I think we are very much able to determine what the probative value is of the letter, but I will support it because I think ultimately it's the right outcome.

Thank you, Mr. Chairman.

CHAIRPERSON GRIFFIS: Good, thank you very much and it's well said and I think you do speak to the Board in those comments.

Any others?

Very well, we do have the motion before us. It's been seconded. I would ask for all in favor signify by saying aye.

(Ayes.)

Opposed? Abstaining?

(No response.)

The third motion before us we have the motion to challenge RLA misrepresentations about DC USA Mall offstreet parking requirements and to deny RLA application for a variance and exception, is as noted and the motion itself.

This goes directly to the fact of whether there was a miscalculation of the number of spaces that are before us in terms of the application.

Let me go, first of all, in saying I don't believe -- well, one thing, I believe that this is a factual issue that's arising and the appropriate process that is set forth in special exception in the variance provides for the address of what may be believed as a factual error and that comes, of course, in the cross examination and also in the presentation of one's case. It is not in motions and then therefore asking to deny an entire application.

Let's go to the specifics of this. It's being asserted that the total building area of DC USA Mall equals 886,615 square feet. There is a calculation that is based on approximately, I believe, this is from my memory, 480,611 square feet. There's an aspect of 516,949 square feet of the gross floor area. I'm assuming that's the calculation for the parking calculation is taken off of the 480,000 square feet being asserted by the party in opposition and this motion that, in fact, the total number of 886,000 plus square feet is what the parking calculation should come out to, which I believe was roughly over 3,000 parking spaces.

What that would mean in this particular application is the fact that we would be -- what an applicant or a developer would be asked to do is calculate the parking requirement for the parking and therefore it would, in fact, in my mind, thinking about this late at night, last night, I thought that's kind of an endless project. So it might be good for the architectural profession to make sure that this happens. But in all seriousness, the fact of the matter is if you added one deck on that was providing the parking for that which was above it, but it created its own parking requirement, you'd have to add a deck below in order to satisfy the parking requirement for the parking that's above it. But then once you added that parking level, you'd have to -- you guys love it when I go into this, don't you?

Okay, so the aspect, of course, and specifically and very directly, 2118.4 in the zoning regulations addresses this specifically. And I will read in terms of 2118, Rules of Interpretation, which is very important for this aspect. 2118.4 says "in computing the number of parking spaces required, that portion of the gross floor area or cellar area devoted to parking spaces, loading berths, loading platforms, service delivery, loading space, vehicular access to

parking spaces, may be excluded." Rules of Interpretation for calculating parking requirements excludes, of course, that aspect of which you are parking it. So I think it's fairly clear, in my mind. I would not -- not only my mind. I would indicate that we deny the motion that's before us regarding the misrepresentation and to deny the entire application.

I ask for a second.

VICE CHAIRPERSON MILLER: Second.

CHAIRPERSON GRIFFIS: Thank you very much. Let me open it up to any others for additional comments, questions.

(No response.)

Very well, okay, I don't think I need to go further into the other aspects of that. So we have a motion before us. All those in favor, signify by saying aye.

(Ayes.)

Opposed, abstaining?

(No response.)

Okay. We have the -- let's take -- which one is that? That's the amendment to the application, is that correct?

We have the last application, the motion of the amendment and whether there was a withdrawal,

whether the Applicant is precluded from -- yes?

I'm sorry, if you wouldn't mind sitting down. You're going to need to turn a microphone on. You're going to need to state your name and address for the record.

MS. RUFFIN: Hi, my name is Delores Ruffin. I'm Chair of the Trustee Board for the Kelsey Temple Church of God in Christ.

CHAIRPERSON GRIFFIS: Welcome.

MS. RUFFIN: I just spoke with Attorney Ruffin and he asked that I bring it to the Board's attention that he thinks you should not be ruling on his motions in his absence and so that's why I came forward to make that known and you were just ruling on the third one when I came back in.

CHAIRPERSON GRIFFIS: Very well, and I appreciate you bringing that to our attention. It's not something that we didn't, in fact, deliberate on in terms of our procedure this afternoon. It is the Board's decision to take up the motions. As I indicated in the opening of this, we weren't allowing the Applicant's representative to address the Board in any of the motions or the oppositions or the ANCs being the fact that we feel that the record is full on these motions. There's no need for oral testimony,

discussion or questions to be answered.

We have all we need to dispense with the motions that we will. I'm not sure that we'll decide all of them, but certainly the ones we've already done, I see nothing that would hinder or influence poorly anyone that's a part of this case.

Is that clear?

MS. RUFFIN: It's clear. I just am sharing with you what he said so I'm not in the position to argue it one way or the other from a legal perspective.

CHAIRPERSON GRIFFIS: I understand that. And let me be absolute direct. Even if Mr. Ruffin was here today, I'm not sure I would have given him the opportunity to address the Board.

MS. RUFFIN: I understand.

CHAIRPERSON GRIFFIS: We have it all and sufficiently in the record.

MS. RUFFIN: Okay.

CHAIRPERSON GRIFFIS: Good. Thank you very much for bringing that to our attention, however.

Let's go then to the motion that we did have now before us and that was whether there was an opposition to the -- rather the motion -- I've got to get this phraseology in front of me.

(Pause.)

The confusion, of course, is all mine. However, this is it. The motion from the opposition is an opposition to motion to amend. So we have -- which didn't come in under a motion from the Applicant, but we have a letter amending the application, so we now have a motion opposing that ability to amend. And that goes into a larger issue that I do believe and I will ask other Board Members if they agree. I do believe that this is something that, in fact, will need to be dealt with by both parties and possibly have questions answered and therefore, I would hold this in abeyance until next week, in fact, in the afternoon, and we would start with this motion as the preliminary matter as we call the case on the first of February.

The direct questions I think the Board is going to ask under this motion to both sides, but specifically to the Applicant is what is the nature of the amended relief, meaning what regulations are not being complied with that this relief is being asked to address? I guess -- well, in addition, looking at 2115.9, how is this applicable to the requested amendment to the application?

Further, you might call it topic 2, which

goes beyond, I believe the motion that's before us in the amendment, but I think the Board would like to see additional clarification on this aspect.

What we have before us is a public, municipal parking garage. What is, therefore, the requirement for parking for the private retail that's above it and how is it satisfied or not satisfied?

And if this is a public, municipal parking garage, does it actually have a parking requirement? Kind of like what we were just into. If you build a parking garage, do you have a parking requirement to park the garage.

But directly saying, and if it does not, if that's the conclusion, then obviously we don't have the ability to grant relief from a requirement that doesn't exist. However, if it isn't and it's joined, somehow joined with that which is adjacent above, as that parking calculation is satisfied in the structure that's being provided, what's the vehicle for that satisfaction. I said that. But what is the total calculation of which this garage is to satisfy? Can you satisfy one demand without understanding the overall demands?

Gosh, I hope that's clear. It was sure clear late last night, wasn't it?

Okay, but to be -- that's one -- that's two major directions that the Board will take up as we start out and it all essentially goes to what is the nature of the relief that we're looking at.

COMMISSIONER ETHERLY: Mr. Chair, just for purposes of clarification, are you inviting any type of briefings or written submissions on those questions or essentially, as part of our status hearing next week, looking for oral testimony in response to that question?

CHAIRPERSON GRIFFIS: That's an excellent point to bring up because I think we want to be very direct with this. There isn't time to ask for the written submissions on this and the briefing. So obviously, we're going to bring that up immediately. We're going to have direct testimony or discussion on that, but I want to just state very clearly and directly that we want to have it very brief. It's going to be more questions from the Board and very quick and brief answers back. We'll be very deliberative in making a decision and move forward. There's no reason to waste anybody's time that's going to be here in terms of trying to go further into clarification. We're going to need to get clarification very quickly and move on.

Yes, Ms. Miller?

VICE CHAIRPERSON MILLER: Two things. One is it sounds like some of the questions that you asked are pretty much directed at the Applicant, and I'm wondering, we're not precluding them from submitting anything in writing, are we?

CHAIRPERSON GRIFFIS: Never precluding.

VICE CHAIRPERSON MILLER: Okay, we're just saying we're not requiring it because of this short period of time.

CHAIRPERSON GRIFFIS: That's right.

VICE CHAIRPERSON MILLER: Second, I don't know. I have some confusion about whether we have a motion before us to amend the application or not and I would expect that that would be addressed on Tuesday.

CHAIRPERSON GRIFFIS: Whether there's a motion?

VICE CHAIRPERSON MILLER: Whether there is opposition to a motion, but we don't exactly have a motion to amend.

CHAIRPERSON GRIFFIS: No, we don't have a motion to amend. We have a letter that's indicating that they are adding an alternative to the application. Unless you can persuade me after, in executive session, that this is a huge issue and we

need to decide whether it's a motion or not, I really don't want to hear any discussion on it. I think we can get to it.

VICE CHAIRPERSON MILLER: We understand the subject that's going to be before us, whether or not we have a motion before us. Is that what you're saying?

CHAIRPERSON GRIFFIS: I want to get to the substance of what we're -- what the application is, not how it was presented.

VICE CHAIRPERSON MILLER: Exactly. Okay.

COMMISSIONER ETHERLY: I would agree, Mr. Chair. I think what we have is clearly a need for some type of clarification on the part of the application and whether or not that clarification precipitated the opposition to the motion is probably a secondary question for me, but I think the critical question really is confirming what the nature of the relief being sought is and going from there.

CHAIRPERSON GRIFFIS: Excellent. Okay, is there anything else then? Have I covered it all?

VICE CHAIRPERSON MILLER: Did you rule on the motion for continuance?

CHAIRPERSON GRIFFIS: You know, we can take a vote on that. I don't think -- well, let me,

Mr. Glasgow is here.

Is there any opposition to continue this on the 1st and he's indicating no, there is no opposition to it. So I don't see any reason why we wouldn't have consensus on that, unless there is objection to it. Obviously, and where we are in the case presentations, of course, we're going to the Government reports and then we're going to the party in opposition case presentation. It doesn't make much sense to move ahead, not allowing the party in opposition to be able to cross the Government, and certainly obviously we wouldn't be here to even present their own case, so it seems to make some logical sense.

Okay, anything else then?

MR. COCHRAN: Mr. Chair, I do have a question.

CHAIRPERSON GRIFFIS: Yes.

MR. COCHRAN: What would be the procedure if the Applicant is -- if the case that winds up being before you is the one for the variance from the stacked parking?

In other words, would OP go in with its testimony and if so, on which part, which version of the application?

CHAIRPERSON GRIFFIS: That's exactly correct.

(Laughter.)

I don't know. I don't know how to answer that question. I mean we're going to figure it out also and we're going to have to address what starts before us. What you're asking us is which one should you be prepared to address, is that what you're saying?

MR. COCHRAN: That's correct.

CHAIRPERSON GRIFFIS: I'm not sure what we're going to be addressing or what the application actually is.

So I'm sorry, I wish I could answer that definitively, but in fact, I don't think we'll be able to until 15 minutes after we start the case next week.

And let me underscore the fact that -- and to be absolutely clear, we're actually asking that it be made clear to us what the nature of relief is before us.

Okay. Also, in what Ms. Miller brought up, of course, Mr. Cochran, you're not precluded from submitting anything into the record in terms of supplemental reports. Looking at the letter from the amendment from the Applicant, I'm certain that you --

I would say that you should be prepared to address that issue as it is formed now, noting the fact that it may actually take a different form later. And I don't mean to be indirect and think that that's what's going to happen. I'm just saying we need some clarity on it.

Anything else? Anything else from the Board?

Mr. Bailey, Mr. Moy, are you aware of anything else we need to do on Case No. 17232 today?

MS. BAILEY: I'm not aware of anything, Mr Chairman.

CHAIRPERSON GRIFFIS: Very well, then let us just reiterate the fact that this has been previously scheduled. We are in the afternoon of February 1. We have three cases before us. They're all 223s. No, they're not, but two of them are. I don't have any idea, not having reviewed the record, how long they're going to take. You obviously won't be called at 1 o'clock, but I certainly wouldn't hope it would be very late in the afternoon and we're going to spend some good quality time and hopefully finish this case on the 1st of February.

So with that, let's move ahead. We're going to take a 10-minute break and then we're going

to call the last case in the afternoon. We're going to get through that very quickly.

(Off the record.)

CHAIRPERSON GRIFFIS: Very well, let's resume.

Ms. Bailey, when you're ready, why don't we call the next case and the last case in the afternoon?

MS. BAILEY: Thank you, sir. And that is Application No. 17229 of the Hillwood Museum and Gardens. I'm going to read it just a little differently from the way it's advertised, Mr. Chairman and that is this is a request for a modification of the conditions contained in BZA Order No. 16019 to change the existing on-site conditions. The Applicant's request is under Section 3129 of the zoning regulations. The property is located at premises 4155 Linnean Avenue, Northwest, Square 2245, Lot 1 and the property is zoned R-1-A.

CHAIRPERSON GRIFFIS: Very well, thank you. Good afternoon.

MS. PRINCE: Good afternoon, Chairman Griffis, and Members of the Board. My name is Allison Prince and I'm here today for the law firm of Shaw Pittman and I represent Hillwood Museum and Gardens,

the Applicant in this BZA application.

I also represented Hillwood back in 1995 when Hillwood secured permission for some of the new construction that is show in the drawing to my right and several conditions were established in that order that we're seeking modification of today.

CHAIRPERSON GRIFFIS: On that, with that statement, do you agree with Ms. Bailey in the announcement in terms of making this a modification to the existing order? Is that your understanding?

MS. PRINCE: We filed this case as an entirely new application. It is, in fact, a modification, but it wasn't filed within the requisite 6-month time period.

CHAIRPERSON GRIFFIS: Right.

MS. PRINCE: So we really have it structured as an entirely new application, but we are modifying conditions in an older application. Your call. You have to waive the 6-month rules. The parties are entirely different. The Board Members are totally different.

VICE CHAIRPERSON MILLER: Ms. Prince, do you think that the modifications you're seeking are minor modifications?

MS. PRINCE: No, these are not minor

modifications.

VICE CHAIRPERSON MILLER: Thank you.

MS. PRINCE: I'm more comfortable with it as a whole new application and I've treated it as such.

CHAIRPERSON GRIFFIS: And I think that makes sense and I think we'll take it from your judgment in terms of the submission and you've addressed it very specifically in the written submission, so I think it would be proper to move ahead.

Of course, what I would want to do is get more substantively into it and we'll get to these questions of those conditions that may not have carried over and just to make clarity that the aspects that those are going to be done away with or not done away with.

Okay, let's move ahead then.

MS. PRINCE: Hillwood is here this afternoon seeking a variance in order to modify certain operating conditions which, as I mentioned, were originally established in 1977, but most recently modified in the 1995 BZA Order No. 16019.

Variance approval is necessary to allow the museum to operate more effectively in response to

a changing climate of museum visitorship. These changes will enable the museum to fulfill its overall mission and better service its constituency.

There is no new construction involved in this application. I'm here today with Fred Fisher who is the Director of Hillwood Museum and Gardens and has been with Hillwood for 14 years. Mr. Fisher has the benefit of having been in this role at the time of the last BZA application.

Also here is Ellen Charles, the Chairman of the Board and the granddaughter of Marjorie Merriwether-Post. Ellen is two rows behind me. And Ellen Becker who is the Deputy Director for interpretations at the Hillwood Museum.

In requesting modifications to its operating conditions, Hillwood needs to address only the third part of the variance test regarding impact. The Board originally granted a use variance in 1977 and in its 1995 reconsideration order the Board specifically confirmed that the use variance runs with the land and that the Applicant is not required to reestablish the basis for granting the original variance in connection with any modification and we need only address the third part of the variance test when we seek to modify conditions.

The first two parts of the test were satisfied in the original order granting the use variance, to allow the operation of a museum on the site. So you will only be hearing about the third part of the variance test today, the impact of the changes in the conditions on the neighborhood.

CHAIRPERSON GRIFFIS: Let me see if I understand that from your statement and also from your submission which goes substantively into this. What you're saying is you have a use variance. That use variance runs to the land. Those aspects that afforded it to be granted, that use variance, haven't changed.

MS. PRINCE: Correct.

CHAIRPERSON GRIFFIS: And therefore, how could we -- what would be the basis of trying to reassess all of those when that is what is and it continues through?

MS. PRINCE: Correct.

CHAIRPERSON GRIFFIS: Change in the conditions of that use variance, obviously, go to impact as the conditions would have been to mitigate any sort of perceived negative impact of the use variance itself. Therefore, we're looking at impact.

MS. PRINCE: That's correct, and because

that very issue was challenged in 1995, the Board was forced to address it in its reconsideration order and the Board did, in fact, agree with the Applicant's position on that issue.

For those of you who have not had the good fortune to visit Hillwood, it occupies 24 and a half acres in Forest Hills, adjacent to the park and right off Linnean Avenue. This large drawing that I have on my right, I have in reduced format to submit to the Board. I should note that one would not see any of this from Linnean Avenue or even from an airplane. There was some artistic license taken in the drawing and some trees were removed, just to be able to show the buildings and so it actually characterizes the property in a sort of larger than life format. And if you were to visit the site, you would not perceive it in that way.

CHAIRPERSON GRIFFIS: You ought to have a vellum of all the trees and just lay it over and then you take it away. Okay.

MS. PRINCE: As noted in our pre-hearing statement, the new operating conditions which we're proposing are the result of extensive negotiations between Hillwood and seven families which reside within 200 feet of Hillwood. We've submitted these

conditions to the Board in our pre-hearing statement. And what we did was structure and entirely new set of conditions that will supersede any other conditions that govern Hillwood's operation. So there wouldn't be any need to look at our new conditions and reach back to determine whether any older conditions carry over. We've carried them over in the conditions that we have before you today and we've eliminated those that are no longer relevant. For example, there was a condition 19 in the most recent order that addressed the need to accommodate all construction vehicles on the property. We don't have any new construction involved in this application, hence that condition has been dropped. It would probably be added again in the event that we became before you at new construction at some point in the future.

We've also submitted a chart that compares the current conditions, the conditions initially proposed by Hillwood in August of 2004 and the conditions that are we are requesting today as a result of our extensive discussions with the neighbors. I think that chart reflects the extent of the give and take between Hillwood and the neighborhood and it really captures the reason why we were able to reach a negotiated settlement and that is

the parties met halfway. There was a true meaningful exchange and a willingness to listen to one another about what was most important to the neighborhood and what was most important to the operations of Hillwood.

But as Fred will address, I don't think there would have been any hope for an agreement had there not been good will between the neighbors and Hillwood at the time we began these discussions.

The outreach to the immediate neighbors began with two meetings in the spring of 2004, before the application was filed. Those meetings continued and most recently Hillwood met with ANC-3F on January 17th. During the 10-month process, there was a continuous dialogue between Hillwood and its neighbors, including Mr. Steven Dennis, the Single Member District Commissioner from the ANC who really oversaw a lot of the process and was very helpful to the formulation of a negotiated settlement.

The discussions culminated in the neighborhood development agreement which sets forth the new operating conditions for Hillwood and resulted in an excellent outcome for all involved. A signed copy of the agreement -- I have a signed copy here with me today for the record, although I don't believe that that agreement needs to be attached to the order.

What we've tried to do is incorporate into the conditions all of the aspects of the agreement that are appropriate for inclusion in an order. And when I say that I want to make you aware that there are some aspects of the agreement that I do not believe this Board would find appropriate for inclusion in the order. They bind Hillwood, but they would not be appropriate. For example, we have a moratorium that restricts greatly Hillwood's ability to apply for significant changes to the operating conditions for a 10-year period that began to run on the date of the filing of the application. I think this Board has recognized that such conditions are not feasible for inclusion in a Board's order, but you should be aware that Hillwood has committed to that.

So the conditions that you have before you in connection with the pre-hearing statement have been adjusted to take into account the removal of aspects of the agreement that would not be appropriate for inclusion in the Board's order.

As discussed in detail in the pre-hearing statement, the Applicant fully satisfies the standards for the Board to grant the requested relief. We have two witnesses who will provide statements and who are available to answer any questions you have.

Our first witness is Mr. Fred Fisher, as I mentioned, the Executive Director of Hillwood. Mr. Fisher will discuss the need for the proposed changes and the negotiations with the neighbors.

Our second witness is Martin J. Wells, traffic engineer, who will discuss the traffic impacts associated with the changes to the conditions. We do not have a report from the Department of Transportation, although we tried to secure one. I can report and I think the Office of Planning representative will reiterate that Mr. Abdullabah from the Office of Planning has stated to me that he was satisfied with the first version of the conditions proposed and applauds our effort and ability to achieve a settlement with the neighborhood and is therefore very happy with the second set of conditions which are less burdensome from his point of view.

Mr. Wells prepared a detailed traffic report that was based on the first set of conditions and I can share that with this Board. I have copies with me today. We had not submitted it previously because we were hopeful of achieving a negotiated settlement that would lessen any of the impacts discussed in his report, although his report found that the original set of conditions resulted in an

acceptable level of impacts.

If the Board has no questions, I'd like to proceed with Mr. Fisher's testimony, then move on to Mr. Well's testimony and I won't flood you with duplicative copies of documents that you got in the pre-hearing statement, but I will make sure that you have the three documents I referenced: that drawing, the signed agreement with the community and finally, the traffic report.

CHAIRPERSON GRIFFIS: Good. I think we have a couple of quick questions.

Ms. Miller?

VICE CHAIRPERSON MILLER: You may have just answered it, but I just want to clarify, the neighborhood agreement that we had in our package is not signed by the neighbors. Have all the neighbors that are involved, those seven neighbors, signed the agreement?

MS. PRINCE: Representatives of each of the seven families have signed. There's one wife out there that has not signed, only because of logistics. Her husband signed today and we waived to substitute his page in, but Mr. Axelrod coordinated the arduous process of securing notarized signatures from the seven families and he can, I think, make

representatives in terms of the neighborhood support.

VICE CHAIRPERSON MILLER: Thank you.

CHAIRPERSON GRIFFIS: Just for a quick clarification, of course, you mentioned that there were several conditions in the agreement that weren't in your estimation appropriate or within the jurisdiction of this Board.

Why don't we get very specific on all those that aren't, that aren't being asked.

MS. PRINCE: Yes, and there weren't many, there weren't many.

The agreement is at a level of detail that is far beyond what the Board would typically have as a condition in the order. For example, the agreement lays out a lot more specificity about the nature of the neighborhood agreements and the reporting requirements associated with -- I'm sorry, with the neighborhood meetings and the reporting requirements associated with those meetings. We capture the concept that we need to have neighborhood meetings in the condition that would be in the Board's order.

The other two major concepts that are not included as proposed conditions are the moratorium that we discussed and the arbitration language.

CHAIRPERSON GRIFFIS: Right.

MS. PRINCE: And I had not seen arbitration language in an order of the Board before. And since it's an alternative enforcement mechanism, and we certainly stand by the available enforcement mechanisms as well, I felt that was inappropriate for inclusion.

Every other concept that is in the agreement with the neighbors is captured somehow, some way in a condition. However, in an abbreviated format. And Mr. Gell, who was the attorney for the neighbors did review the conditions.

CHAIRPERSON GRIFFIS: Right, and we'll hear from Mr. Gell, but for full clarification then, for instance, the proposed in the agreement, "Hillwood agrees to take reasonable measures to assure employees and visitors do not park on street." What you're saying is that that is covered, that concept is covered in specific conditions.

MS. PRINCE: Well, I believe it is. I believe --

CHAIRPERSON GRIFFIS: And I agree. And that to me, I'm not really sure what that -- I understand the intent. I'm not sure how that's really measurable or enforceable. "No more than two buses each morning and the afternoon." That's also covered

in one of the --

MS. PRINCE: The bus conditions are absolutely -- those were absolutely critical to the neighbors. Those are captured in the contentions as well as the agreement.

CHAIRPERSON GRIFFIS: Good. And the implementation to reduce queuing, that's also addressed very specifically, am I correct?

MS. PRINCE: I believe the queuing language is addressed in the conditions.

CHAIRPERSON GRIFFIS: Where was that? Okay.

MS. PRINCE: It's in condition 8.

CHAIRPERSON GRIFFIS: Eight, yes.

MS. PRINCE: There's a whole paragraph with A through E, all of that queuing.

CHAIRPERSON GRIFFIS: Exactly, exactly. Okay. Very well, if there's nothing further from the Board, let's move ahead.

MR. FISHER: Mr. Chairman, and Members of the Board, thank you for giving us this time.

Good afternoon. My name is Frederick J. Fisher. I reside at 25 Upton Street, Northwest. I'm the Resident Executive Director of Hillwood Museum and Gardens and I have served this position for 14 years,

until December of last year I lived on the grounds of the museum and now reside across the street from it.

Hillwood Museum and Gardens has appealed to this Board for modification of its current operating conditions to provide some additional flexibility for its public operations. Hillwood is the 24.5 acre estate of the late Marjorie Merriwether-Post, heiress to the Post cereal empire. Mrs. Post purchased the 1926 estate in the mid-1950s and redesigned it for social entertaining and to house her magnificent world-renowned collection of fine and decorative arts with the idea that Hillwood would eventually become a public museum. In fact, she initially gave it to the Smithsonian Institution which after her death declined to accept it and gave it back to the Foundation Mrs. Post established to help fund her museum. It was open to the public in 1977 by the Foundation.

Today, Hillwood, one of only 800 museums in America accredited by the American Association of Museums, reflects a way of living that has long banished and houses one of the finest art collections in America. Its primary fame and I guess in keeping with the theme of Russia today, this afternoon, is the

Imperial Russian art collection, the largest in the world outside Russia which has been tagged by Mikhail Pietrovsky, Director of St. Petersburg Hermitage Museum as his museum's western annex.

The site is beautifully situated, surrounded by natural woodlands and fronted by landscaped gardens, therefore, none of the major structures or public activities is visible to adjacent residences on or near Linnean Avenue.

In the mid-1990s, Hillwood constructed a $3 million parking structure that holds 68 visitor automobiles, further, the 42 additional parking spots on the ground for visitors, plus a bus parking bay for two buses, as well as 85 additional parking spots for staff and volunteers.

Conforming the BZA operations conditions, no one who visits the museum may park on the public streets. Indeed, Hillwood is the only museum in the District that provides parking for all of its visitors and staff which, as noted, is and has been mandated by the Board of Zoning.

It has been 10 years since Hillwood last requested from the BZA some modifications of the museum's operating conditions. Since that time, the institution has evolved. At that time, in 1995, the

staff was approximately 60 with no volunteers. Our annual attendance was around 25,000 visitors and our museum membership program had approximately 350 members.

Today, our staff is around 90, with 250 volunteers. The annual attendance is near 45,000 visitors and our membership program has grown to 1650 people. In the mid-1990s, Hillwood engaged in numerous facility enhancements including preservation and new construction projects. Among this approximate $20 million investment was a total restoration of the estate's mansion, recreation of Mrs. Post's greenhouse and the construction of a new visitor orientation center and a new parking structure. These were approved by the BZA as part of our 1995 request.

During the course of this work, Hillwood was closed to the public for three years, reopening in September of 2000. This closed time allowed the museum an opportunity to re-engineer our public presentation in order to provide a greatly enhanced visitor experience. As a result, Hillwood is now presented almost as a transported experience. We strive to maintain a high quality museum encounter for our visitors in which they have an opportunity to view art in the context of a collector's environment.

To maintain that experience, we know that a restricted number of daily visitors preserves and protects that quality encounter.

Since we reopened, the stature of Hillwood has risen exponentially. We have had a tremendous growth of publicity, nationally and internationally. Local Hillwood is perceived as one of the important cultural tourism sites among the District's various historic houses and smaller museums.

I can say without reservations that Hillwood indeed is the cultural oasis of the Forest Hill region in the District and I'm sure the pride of our local residents. In its 28 years as a public institution, Hillwood has operated in a conscientious manner, always considerate of its neighbors. We strive hard to operate the museum with the least impact to our surroundings. In fact, approximately 20 percent of our staff, in one way or another, is devoted to managing our visiting public, always by reservation only, to avoid excessive traffic on a residential street.

Hillwood, I might point out, is the only museum in the District to provide, I'll say it again, free parking to all visitors and staff and volunteers.

As noted in my introduced, the primary

purpose in returning to the Board of Zoning Adjustment at this time is to seek some flexibility from the rigidity of our current operating conditions, to be able to better capitalize on visitor demand when people most want to visit the museums. Our greatest demand, for instance, is during the spring and fall seasons and always on Saturdays. Further, we would like to somewhat expand our off-hour educational activities, lectures, symposia, films, openings and colleague receptions. This is in response to Hillwood's growing initiative, to provide more family and student educational programs which work best on Sundays and evenings. Therefore, the most important request we are making is to increase the number of visitors that we can have on our site. Our request is to change our visitor monitoring systems from making individual reservations for people, to making reservations for their vehicles.

Currently, we are capped at 250 people a day. I should note that no other BZA approved museum has a cap on daily visitors. The museum seeks to monitor its visiting public through the parking capacity of the site which would compute to as many as 110 vehicles reserved for the first half of the day and 110 for the second half.

Further, we would like to increase the number of evenings and Sundays to somewhat expand our educational offerings. Currently, we are capped at 16 evenings and 10 Sundays annually and we are requesting to increase to 27 evenings and 18 Sundays annually. Four of these evenings could be used for fund raising activities which is identified in our neighborhood agreement as overflow events.

Hillwood began the process of seeking modifications of its BZA operating conditions by hosting a serious of meetings with our neighbors. We began by holding two meetings last spring, one in March and one in April, for the most immediate neighbors and the ANC-3F07 Commissioners. This was followed by a meeting in June for all of the residents in the immediate region of the museum and the ANC Commissioners. And then finally there was a fourth meeting in September, sponsored by our ANC Singe Member Representative Steven Dennis, again, open to all the residents within the greater neighborhoods of the museum and the ANC Commissioners.

Generally, the neighbors expressed positive sentiments about the museum as a neighbor. However, the last two meetings were somewhat contentious in that some neighbors felt we were asking

for too much a relaxation of our conditions. Initially, the museum was suggesting many more Sundays and evenings, knowing that it was necessary to have a starting point for negotiations.

Seven families who reside within approximately 200 feet of Hillwood property, formed a task force and began formal negotiations with us. We had several very constructive working meetings resulting in healthy give and take. And concessions were made on both sides. For instance, the neighborhood task force conceded to the museum's request for vehicle counts, as opposed to people counts which they insisted must be based upon the site's parking capacity and the museum's on-going reservation policy.

Hillwood conceded to reduce our total number of evenings and Sunday events from our initial request of a total of 75 to a more comfortable 45. That's a total of both Sundays and evenings.

Other significant changes to Hillwood's operating procedures include a cap on buses. The current approval does not limit buses in any way. In order to address the neighbors' concern about large buses driving to and from Hillwood, we have agreed to the following limitations, no more than two buses

shall be permitted to enter the property each more and each afternoon.

During each overflow event, there may be no more than two buses arrival including drop offs and pick ups. Buses on Sundays shall be limited to two buses on each of two Sundays per year and buses at evening events shall be limited to five evenings per year.

Also, we have agreed to implement additional measures to reduce the queue on Linnean Avenue. The neighborhood task force carefully negotiated all of the differences which resulted in a formal neighborhood cooperative agreement, signed by all parties. The museum's board and staff are greatly indebted to them who from the very beginning strove for constructive, practical solutions.

With these modifications, Hillwood can enjoy some flexibility in its operations without measurable impact to our neighborhood. Our obvious goal is to maintain a viable museum operation in perpetuity, but equally critical to our operation is to maintain continued good relationships with our residential neighbors so that we can continue to uphold our mission as conceived by the museum's founder, Marjorie Merriwether-Post.

Hillwood and the neighborhood task force made a presentation to the ANC-3F07 on January 10th. The Commission met the following week on January 17th for a final vote. The ANC passed a formal resolution approving the conditions agreed upon by Hillwood and the neighborhood group. The ANC only offered one minor change to the proposed conditions, that the quarterly reports provided for in Section 8, subsections A and B, of the neighborhood cooperative agreement, also be made available to the ANC-3F and residents within the 200 foot of Hillwood.

There was no opposition by other members of the community at either meeting and the Commission voted unanimously to support the formal neighborhood cooperative agreement.

I hereby request from the Members of the Board of Zoning Adjustment that you too honor our appeal. I believe the museum has undertaken due diligence in its year-long process to notify surrounding residents, conduct numerous meetings and successfully negotiate workable solutions with our neighbors.

All parties are comfortable with these additional modifications of our operating conditions, knowing that these changes will not overly impact the

peaceful tranquility of our residential area.

Thank you.

CHAIRPERSON GRIFFIS: Thank you very much. Let's get a couple of quick clarifications on some of your statements. I believe there was some question, you indicated that there are 45 evening and Sunday events?

MR. FISHER: Right.

CHAIRPERSON GRIFFIS: Is it not 41?

MR. FISHER: And four overflows.

CHAIRPERSON GRIFFIS: I see.

MR. FISHER: Total of 45.

CHAIRPERSON GRIFFIS: So you were specifically talking about the Sunday events and of course, the conditions, it's my reading that they wouldn't happen on consecutive Sundays?

MR. FISHER: Right, right.

CHAIRPERSON GRIFFIS: It's kind of a fascinating formulated stuff you guys were doing out there.

MR. FISHER: It takes a big staff to control all the details.

CHAIRPERSON GRIFFIS: Yes, yes. Establishing that a bus must exceed 25 feet in order to be called a bus. You know, if I pull up in my limo

--

MR. FISHER: I'll get my tape measure out.

(Laughter.)

CHAIRPERSON GRIFFIS: Okay. It looks like an awful lot of detail was put into that.

Any other questions? Ms. Miller?

VICE CHAIRPERSON MILLER: You're seeking a change here from limiting visitors to limiting cars. And I also heard that you say that you're going to be making reservations for cars and not for individuals?

MR. FISHER: Yes.

VICE CHAIRPERSON MILLER: So if some wants to walk to the museum, they don't have to make a reservation, they can just come in?

MR. FISHER: All attendance is by reservation.

VICE CHAIRPERSON MILLER: So it's not just limited to cars, the reservations, it's also people.

MR. FISHER: Right.

VICE CHAIRPERSON MILLER: If you want to come without a car, is there a certain limitation?

CHAIRPERSON GRIFFIS: Don't you have a number for that? I thought I saw a number of walking visitors.

MS. PRINCE: Not under the current

agreement.

MR. FISHER: All right, it was.

VICE CHAIRPERSON MILLER: So there's no limitation except that they have to make an appointment?

MR. FISHER: Right.

VICE CHAIRPERSON MILLER: So is that an automatic given, they call up, they can come? They just have to ask for a specific time, is that it?

MR. FISHER: Right.

VICE CHAIRPERSON MILLER: Do you limit -- but you don't limit the number of people.

MR. FISHER: We do now, but going forward, it changes and they can come. Again, it all depends on the parking, but they still have to make a reservation.

VICE CHAIRPERSON MILLER: But if they don't bring a car is my question, they can't just call up and basically get on a list and come in at any time?

MR. FISHER: Yes.

MS. PRINCE: Yes.

VICE CHAIRPERSON MILLER: Okay. And the number 41, does that represent any logical connection to what it's mitigating? I mean is there a magic to

that or just that it's a compromise?

MR. FISHER: It's a compromise.

VICE CHAIRPERSON MILLER: You wanted 75 and they wanted less.

MR. FISHER: It's a compromise.

VICE CHAIRPERSON MILLER: Okay, thank you.

CHAIRPERSON GRIFFIS: A pretty long walk from anywhere, isn't it?

MR. FISHER: The Metro is about 15 minutes.

CHAIRPERSON GRIFFIS: I see.

MR. FISHER: And we do get a few Metro visitors.

CHAIRPERSON GRIFFIS: Okay, but clearly the issues and your understanding in talking to the community, should I not ask this?

VICE CHAIRPERSON MILLER: Well, I'm sorry. It just depends on where you live. It's not a long walk necessarily from people who live in the neighborhood at least.

CHAIRPERSON GRIFFIS: And I'm looking at this aerial photograph. Even that's a long distance.

(Laughter.)

More importantly and specifically, the aspect is the vehicle traffic is more of a problem in

your understanding from the community's perspective?

MR. FISHER: It's certainly a concern.

CHAIRPERSON GRIFFIS: Right, I shouldn't say problem, but that's the nature of the concern.

MR. FISHER: That's the issue. Right.

CHAIRPERSON GRIFFIS: Have you been engaged in any and I'll ask them the same question, engaged in any conversations about the detrimental impact of the hordes of people walking from Metro to get to the museum?

(Laughter.)

MR. FISHER: I don't think they've been too concerned.

CHAIRPERSON GRIFFIS: Does that answer the question that way?

MR. FISHER: I think the only concern --

(Laughter.)

CHAIRPERSON GRIFFIS: Would any disagree? I'm looking at this. It's a fairly isolated wooden landscape around it. It looks picturesque from the satellite anyway.

Okay, Ms. Miller, anything else from the Board, questions?

Good.

MS. PRINCE: Before proceeding with the

testimony of Mr. Wells, I just wanted to clarify one statement. I've gotten in trouble for this before. We've characterized the ANC's position as being in support, when in fact, it is a lack of opposition.

CHAIRPERSON GRIFFIS: I see.

MS. PRINCE: And I just wanted to be clear on that, although the ANC is here to present its report today.

CHAIRPERSON GRIFFIS: Excellent.

MS. PRINCE: Mr. Wells has been qualified as an expert by this Board many times before. We present him as an expert in traffic issues relating to this application.

CHAIRPERSON GRIFFIS: Good and that is indeed the case. Mr. Wells has been qualified before. Let me just open it up to ANC whether they had any objection or comments rather on Mr. Wells' credentials as an expert witness.

MR. KLIBANOFF: We don't have any objections.

CHAIRPERSON GRIFFIS: No objections. Does the ANC have any objection?

MR. KLIBANOFF: The ANC does not have any objections.

CHAIRPERSON GRIFFIS: No objections to the

ANC also. Any comments from the Board?

Not noting any comments, I think we can proceed, Mr. Wells, the expert witness in this application and good afternoon.

MR. WELLS: Good afternoon, Mr. Chairman and Members of the Board. Indeed, I'm Martin Wells with Wells & Associates and we were retained to evaluate the traffic and parking characteristics of Hillwood.

We, in fact, conduct traffic counts and parking occupancy counts in the fall of 2003 and the peak season of spring 2004. Specifically, we took our counts on Wednesday, November 12, 2003; Saturday, November 15, 2003; Saturday, April 24, 2004; and Tuesday, April 27, 2004.

We counted the intersections of Linnean Avenue with Tilden Street and both of the Hillwood driveways. I would note that the attendance, the number of visitors to Hillwood on the surveyed days ranged from a low of 103 people to a high of 310 visitors.

I'll be very brief in what we found.

CHAIRPERSON GRIFFIS: Let me understand those numbers as we're looking at this somewhat differently. That's actually physical people that

walked into the museum, correct?

MR. WELLS: In fact, they typically drive to the museum.

CHAIRPERSON GRIFFIS: No, I know --

MR. WELLS: Those are the number of attendees at the museum. Hillwood keeps copious and really very detailed information on their visitors and they know how many they are based on the reservations.

CHAIRPERSON GRIFFIS: And that's my very question, the 110 and the 350 whatever it was, are physically the people that walked through those doors and walked through the museum.

MR. WELLS: That's correct.

CHAIRPERSON GRIFFIS: Do you have a vehicle count?

MR. WELLS: We do.

CHAIRPERSON GRIFFIS: Indeed, I thought so.

MR. WELLS: We have these on peak hours and I'll give you a taste for these data.

What we found is that Linnean Avenue carries very modest traffic volumes. If you look at the total daily volumes and we conducted link counts with the mechanical counters, continuous counts for

the weeklong period that included those survey days that we did the manual counts. The average daily traffic in the fall was roughly about 450 cars per day on Linnean. In the spring, it was higher, 750 cars, more or less. I say those volumes are modest because Tilden at the south end of Linnean carries about 8,000 to 9,000 cars a day.

Hillwood too, generates modest traffic volumes and I'm going to give you peak hour numbers here. During the weekdays they carry roughly 22 to 54 cars per hour. That's -- if one is measuring traffic impacts, it's typically the peak hours that we're looking for, how intense is the traffic demands. Now on Saturdays, it's higher. It's on the order of 30 to 60 cars per hour.

Hillwood, in fact, accounts for most of --

VICE CHAIRPERSON MILLER: Excuse me, before you go on, the figures you just gave for cars per hour, where was that? On what street?

MR. WELLS: For Hillwood?

VICE CHAIRPERSON MILLER: 2254 cars per hour?

MR. WELLS: Those are at the driveways.

VICE CHAIRPERSON MILLER: At the driveways.

MR. WELLS: And of course, there's only one way in and out of Hillwood and that's Linnean.

VICE CHAIRPERSON MILLER: Okay, thank you.

CHAIRPERSON GRIFFIS: That's why it had a higher Saturday count.

MR. WELLS: Yes, Saturday there are more visitors and particularly in April which is the -- the gardens here are wonderful and they're a great draw, so you have both the decorative arts and the gardens.

CHAIRPERSON GRIFFIS: 4500 different species, right?

MR. WELLS: I haven't counted them myself, so -- I've not been qualified as an expert in that area, so I couldn't tell you.

CHAIRPERSON GRIFFIS: I don't know where that figure comes from, but it was in my head.

MR. WELLS: It's plausible. I could believe that number.

I want to be clear about traffic impacts. I've told you that the traffic on Linnean is modest and that the museum generates modest traffic volumes. In fact, the museum accounts for most of the low traffic volume on Linnean, but very little of the traffic on Tilden Street.

During the week, the museum can account,

during peak hours, can account for about half the traffic on Linnean. And on Saturdays, in the spring, the peak season, accounts for about three quarters of that traffic. But at Tilden, which is more of a public intersection, it carries, it accounts for about 4 percent of the weekday traffic, 6 to 8 percent of the Saturday traffic.

Letter levels of service which you're so accustomed to hearing at these hearings are very good. At Tilden and Linnean which is the most heavily traveled intersection, it's level of service is C or better. The driveways, the site driveways, the museum driveways at Linnean from a traffic engineering point of view, the letter level of service is A. So it's superior.

Parking occupancy, we measured a peak parking occupancy in the fall, which is the low season of about 65 visitor parking spaces. And in the spring, we measured a peak occupancy for visitors of about 112 parked vehicles. Now perhaps not so coincidentally, the agreement among the neighbors and Hillwood would limit visitor cars to no more than 110 parked cars. That's about what we measured, 112, 110, about the same number in the spring. We measured that on the Saturday, April 24th and to repeat, at the risk

of repeating, Linnean Avenue at that level of traffic operates at a level of service A and the intersection down at Tilden operates at level of service C.

What impresses me so much about this case is that the agreement between the neighbors and the museum, the Applicant here, goes directly at the parameters that affect the neighbors most. The operating agreement that you see before you restricts the days and hours of operation, the numbers of buses and defines what a bus is, the number of overflow events, the number of evening and Sunday educational events, queues at the driveway and turn restrictions at the driveway.

So the neighbors and the museum have identified specific impacts that matter to them most and then directly addressed those impacts.

The parameters of the agreement, based on our studies will result in no adverse traffic or parking impacts and that concludes my testimony.

CHAIRPERSON GRIFFIS: Good. Thank you very much. And to correct the record, its botanical gardens with over 3500 plant species.

(Laughter.)

But that has nothing to do with cars, but the attraction to.

Ms. Miller, a question?

VICE CHAIRPERSON MILLER: How many parking spaces does Hillwood have on site?

MR. WELLS: Good question.

VICE CHAIRPERSON MILLER: Thank you.

MR. WELLS: We measured the number of marked spaces. There are both marked and unmarked spaces and there's a parking deck, which if memory serves has 68 marked spaces.

There are 67 surface, marked surface spaces and then there's an additional complement of unmarked spaces as Mr. Fisher has described. I believe the total was 195 spaces.

So there are spaces enough, in my opinion, obviously to accommodate the 110 visitor cars as well as spaces for staff and volunteers.

VICE CHAIRPERSON MILLER: How many spaces do staff and volunteers use, do you know?

MR. FISHER: We have 85 spaces that are both marked and unmarked for staff and volunteers.

VICE CHAIRPERSON MILLER: Okay, and you have 110 for visitors?

MR. FISHER: Right.

VICE CHAIRPERSON MILLER: Which brings to

the total 195. Thank you.

COMMISSIONER MANN: I can understand how you can control queues on the driveways near the entrances, but how do you control queues on Linnean?

MR. FISHER: What we are experimenting with, first of all, I don't think we've had a huge problem with queues. It does happen once in a while. I will admit that. But we've been careful at trying to get people in, but what we are experimenting now, particularly when we have events where we know it's timed and people, a lot of people might be coming, is that we're going to check it further up the visitor drive so that that will avoid the long queue outside and we'll check them quickly. And we've experimented with that I think maybe for the last 8 or 10 events and it's worked very well. It's really eliminated the problem. So going forward, that's what we will be doing.

And then we've also, just this last week installed a video camera that will pan the entire drive all the way down and we have quite a camera system for our security and our security staff can monitor that and let the security staff who are on the roads know if there is extra queuing and take care of it. So we're looking at all manner of ways to avoid.

COMMISSIONER MANN: So you can respond to the situation more or less instantly depending on demand?

MR. FISHER: Yes.

CHAIRPERSON GRIFFIS: Yes.

COMMISSIONER PARSONS: How are the right turn, no right turn signs working? Are people paying attention to that?

MR. FISHER: For the most part, I think they are. We don't run out and arm wrestle people. I live up the street. They let me go right. But for the most part it's -- Upton is a much more complicated drive and all of our instructions for visitors when they're making reservations is to come down Tilden. Tilden is kind of the key street to get to Linnean, so I think by just naturally people generally go, turn in that direction.

VICE CHAIRPERSON MILLER: I just have a couple of questions. Now that I hear you talking about how you direct your visitors to come down Tilden, did you get any sense of concern from the residents on Tilden of too many cars coming by their homes or anything like that?

MR. FISHER: No.

VICE CHAIRPERSON MILLER: Okay.

MR. FISHER: And they were invited to meetings. It wasn't like they were excluded, certainly.

VICE CHAIRPERSON MILLER: Also, this might be for Ms. Prince, but I wanted to bring your attention to one condition, 8C, because it seems like the type of condition that repeats itself in the neighborhood agreement, but for the most part is only here in this one place. It reads, "if requested by one or more of the parties to this agreement, Hillwood will consult with the parties to this agreement and will use best efforts to institute special measures recommended by them."

It looks to me like one of those hard to enforce, vague type of provisions.

MS. PRINCE: Yes.

VICE CHAIRPERSON MILLER: And I'm wondering if there's some special reason that you all left it in this particular condition, whereas it' snot in all the other ones?

MS. PRINCE: No. That should not have been put in on the queuing. That really was that kind of loose, we're going to work with each other kind of language that we captured in the agreement, but really

should not be in here. I agree.

VICE CHAIRPERSON MILLER: Thank you.

CHAIRPERSON GRIFFIS: Good. Anything else? From my understanding, obviously the queuing aspect was the difficulty of checking in at the gate which set people onto the street and you're moving that up, so you actually move vehicles onto the property which reduces or eliminates any of the queues that might happen outside.

MR. FISHER: Right. And we don't do that all the time. We do it when we know we've got a busy -- an event that will cause traffic coming all at one time.

CHAIRPERSON GRIFFIS: And does that mean someone physically leaves the gatehouse and walks up the road and cars are directed up there?

MR. FISHER: We have an additional security person, actually -- we have someone at the gate and an additional security so the gate person will just waive people through.

CHAIRPERSON GRIFFIS: I see. Okay. Good. Let's move on then. Anything else?

MS. PRINCE: That completes our direct testimony.

CHAIRPERSON GRIFFIS: Let's go to any -- I

think we've exhausted the Board questions. Mr. Gell, is there any cross examination of the testimony that's been provided?

MR. GELl: No cross examination.

CHAIRPERSON GRIFFIS: Does the ANC have any cross?

MR. KLIBANOFF: ANC does not have any cross.

CHAIRPERSON GRIFFIS: How about later?

(Laughter.)

Good. Noting that, let's move on to Office of Planning.

Mr. Jackson, good afternoon to you.

MR. JACKSON: Good afternoon. My name is Arthur Jackson with D.C. Office of Planning and I will be presenting a brief summary of the Office of Planning report. Overall, the Office of Planning found that the negotiated conditions are more specific and easier to implement that the original conditions. In reviewing the conditions that were approved in the previous BZA order and these conditions, we found that approximately 18 of the 19 conditions had actually been combined into 14, so that nothing is really lost in terms of the translation between the previous order and this order.

The one exception would be the last condition, number 19, which applied to construction equipment. So we don't think and given the proposed limits on vehicles that it appears that the anticipated, that there might be a modest increase in visitors, but that increase would not be evident beyond the boundaries of the property. We also think that a determining factor of this whole situation would be the traffic and circulation and frequency. But we have been in touch with the Department of Transportation. They have reviewed the traffic study and the attendant information and they have determined that they don't think that the conditions as originally stated and the current agreement would result in any significant traffic impacts.

They have indicated that if the BZA would like, they would provide a letter or a memorandum explaining what they found. But their current impression is that this would not be a significant impact on the property.

So this proposal, taken with the conditions that they are signing, the neighborhood cooperative agreement which is being signed, would seem to have the impact of making a good basic understanding between the community, between the

neighbors and Hillwood, about how to proceed in the future, in terms of allowing an additional increase in visitors, but not having the impacts on the roadways that the community is most concerned about.

Office of Planning raised the issue about Condition 19, however, looking forward to the fact that even though this does not involve construction in this proposal, there could be the use of construction equipment in terms of maintenance or upkeep of the property. In most instances, those will be on site anyway, but I was thinking keeping that condition in place would give the community the -- will reinforce the image that Hillwood would always plan to keep minimum impacts to surrounding streets and would bring these -- any equipment that would be needed for maintenance or upkeep, would always be on site. So that's the only thought we had in terms of that condition. And that's just for your advisement.

So with that, the Office of Planning would endorse the conditions, as presented, based on the additional input we received from the Department of Transportation.

That concludes the Office of Planning summary and we're available to answer questions.

CHAIRPERSON GRIFFIS: Excellent, thank

you. I'm sorry, I lost that last sentence. Based on the new information from DDOT, did that change your recommendation?

MR. JACKSON: In this instance, we had not -- we said we could not make a recommendation until we receive some input from the Department of Transportation, but at this point we have received that input and it was positive. Or I should say, it's not negative.

So at this point we would support the proposals, the proposed conditions and suggest that maybe Condition 19 be folded in just to seal the deal.

CHAIRPERSON GRIFFIS: Indeed. Okay, and that's the clarification I'm looking for.

MR. JACKSON: Okay.

CHAIRPERSON GRIFFIS: The note from DDOT, they didn't act negatively towards the application, is that what it was? Do we want a sun shadow or a shadow shadow study?

(Laughter.)

And Condition 19, Board Members, I think we ought to take that under consideration. Of course, Mr. Jackson is saying that it may not be applicable immediately for what we're looking at, but may well have applicability later. Let's see where that falls.

Okay, any other questions from the Board to the Office of Planning?

Yes.

VICE CHAIRPERSON MILLER: Mr. Jackson, can you say that DDOT said to you that they concluded there's no adverse impact from the proposed conditions?

MR. JACKSON: Yes.

VICE CHAIRPERSON MILLER: Okay, thank you.

MR. JACKSON: I guess my only clarification was if the BZA would like something in writing from DDOT. I informed them it might be a possibility and I can ask that they would provide something for the record.

CHAIRPERSON GRIFFIS: Does the Applicant require examination of the Office of Planning, Mr. Gell, ANC? Excellent. Thank you.

Let's move ahead. I don't have any other government reports attendant to this applications, unless others are aware of any. I think we can note for my perspective, I think Mr. Jackson's recount of the discussions and the issues of DDOT and also the Applicant's discussions are sufficient enough not to keep the record open at this time.

But let's move ahead then. Is the ANC

ready?

MR. KLIBANOFF: My name is Daniel Klibanoff. I reside at 3801 Connecticut Avenue, Northwest. I am the Commissioner for ANC-3F07. I recently took that post. Steven Dennis was referenced earlier by Hillwood. He used to hold this post. And then I'm also here with Frank Winstead, ANC-3F04, correct?

MR. WINSTEAD: Yes.

CHAIRPERSON GRIFFIS: What's with the Pal Pen?

MR. KLIBANOFF: It's the official -- it's our secret power button.

CHAIRPERSON GRIFFIS: Fabulous.

MR. KLIBANOFF: Without it, we don't have great weight.

CHAIRPERSON GRIFFIS: That's right.

(Laughter.)

CHAIRPERSON GRIFFIS: That's exactly correct. Do you want to say that again and look into the camera?

(Laughter.)

MR. KLIBANOFF: As mentioned earlier, we agreed, unanimously, if I can talk, passed a resolution showing no opposition to the application

put forth by Hillwood and the agreement that they reached with the neighbors within 200 feet, the seven families. With the one condition that the report that they put out in Section 8, subsections A and B of the agreement also be put forth to all the residents within 200 feet of the property and the ANC, just so we can have notification of their special events.

CHAIRPERSON GRIFFIS: Good. Anything else?

MR. KLIBANOFF: We do not have anything further besides the fact that it is very rare to see such amicability, I guess I should say between the residents and an institution trying to go through a process like this and we just wanted to make sure that was noted for the record, that it was a very positive experience and a very positive result.

CHAIRPERSON GRIFFIS: Good. I appreciate you bringing that to our attention. It should be noted for the record and is.

Let me ask two quick questions in terms of the motion that's put in. You have a whereas that you convened a special public meeting with required notice. How did you provide notice?

MR. KLIBANOFF: Notice was put forth on our website, anc3f.org, as well as in the Northwest

Current.

CHAIRPERSON GRIFFIS: Okay, and in terms of the condition, you're actually asking us, the BZA, condition to require the quarterly report that cite the subsection or the section 8, subsections A and B of the agreement. Am I understanding correctly?

MR. KLIBANOFF: We are requesting that.

CHAIRPERSON GRIFFIS: And you've heard from the Applicant that that might more appropriately be amended to the agreement and not part of an order. Do you have a comment on that?

MR. KLIBANOFF: That is fine. Actually, in prior discussions with them, they said they could provide that to us. So if that's not included, that is not a large issue with us.

CHAIRPERSON GRIFFIS: Okay. And so for the pure applicability of our deliberation and granting great weight to what's before us, your understanding of the ANC's vote and motion is not conditioned, the agreement of this is not conditioned on that aspect, meaning if we removed that, does it do away with this motion and the approval of the ANC?

MR. KLIBANOFF: I don't see -- do you, Frank? Okay. I don't see any problem with that.

CHAIRPERSON GRIFFIS: Excellent. That's

all I have.

Any other questions from the Board? Ms. Miller.

VICE CHAIRPERSON MILLER: I'm just curious why you all decided to do this in the form of no objection as opposed to support, since you are speaking about the whole process as a very positive one?

MR. KLIBANOFF: Actually, there wasn't a particular reason for that. It was just the format that we were following.

CHAIRPERSON GRIFFIS: It's the new millennium style. Everyone is doing it.

(Laughter.)

VICE CHAIRPERSON MILLER: Okay.

MR. WINSTEAD: My name is Frank Winstead, Commissioner of ANC-3F. I live at 4545 Connecticut Avenue, No. 508.

Both of us, me, Commissioner Klibanoff and myself, we're new Commissioners. This was basically custom in our ANC.

VICE CHAIRPERSON MILLER: Thank you.

CHAIRPERSON GRIFFIS: Excellent point.

Anything else from the Board? If there's nothing else from the Board, does the Applicant have

any cross examination for the ANC?

Mr. Gell? Good. Do you have any cross of the ANC?

MR. GELL: No.

CHAIRPERSON GRIFFIS: You're ready to go though? Good. Don't lose that motion. Thank you both very much. We appreciate it and we're ready to move on, Mr. Gell, when you are prepared.

MR. GELL: Thank you, Mr. Chairman. I'm Stephen Gell, Zoning Attorney, and I represented seven families that live very close to Hillwood. Most of those families, I think six of them were granted party status as a group. Another family did join at a later time, the Kellys joined at a later time. So they're all part of the agreement and they asked Bob Axelrod and Karen Fouright, two of the neighbors, to represent them in these negotiations which really were successful because I think both sides wanted to have an agreement because Hillwood had been a good neighbor and because I think as Mr. Wells has pointed out, the neighbors looked at what really was a problem for them, numbers of people on the site was not a problem. Cars were the problem and that is numbers of cars going up Linnean, numbers of cars turning, numbers of cars queuing and numbers of people who park their cars

on street rather than on the site.

I'll have a couple more comments, but I'd like Mr. Axelrod to make a statement at this time.

MR. AXELROD: Thank you. I'm Robert Axelrod and I live at 2610 Tilden Place, Northwest which is quite close to Hillwood Museum. I was the leader of the ad hoc group of neighbors who originally joined together to work with Hillwood to modify their initial proposal.

As we got into the process with Hillwood, I think we found that there were really four areas of concern for us. One is vehicular traffic to and from the museum, the quantity of it. The second was Hillwood has done a wonderful job of keeping all visitor parking on site. We wanted to be sure that that remained the case under the new conditions. The third was specifically buses. We find bus traffic through our neighborhood streets to be a lot more disruptive than passenger car traffic and the fourth really was the specifics of the amount of activity on Sundays.

We had a lengthy series of meetings and conversations with Hillwood's representatives, tried to understand their needs and concerns. They tried very hard to understand ours. I think we've come up

with a proposal that gives everyone the maximum possible in terms of addressing our concerns while at the same time giving Hillwood as much operational flexibility as they desired.

We are comfortable that under the proposed agreement car parking will remain entirely on site. We are comfortable that bus traffic is very significantly restricted. We're comfortable with the continuing restriction on Sundays to a maximum of 18 activities and we feel that the amount of car traffic to and from the site is manageable and that specifically Hillwood has done a wonderful job of addressing the potential queuing issue and I say potential because really to date there has not -- I've lived there seven years. I think there have maybe been three or four times when there have been a queue of cars offsite.

Our concern is specifically as Hillwood moved towards having more evening type events where everyone arrives for a specific starting time that that could potentially create a queue and Hillwood has done, we feel, an excellent job of modifying their operations to prevent that.

We, as a group of neighbors, reached out aggressively to the other residents of the immediate

neighborhood to solicit their involvement and participation. While there are only seven of us as signatories to this agreement, I can assure all of you that the others either had no interest whatsoever or mildly interested, but were comfortable with those of us who were seriously carrying the ball. And this agreement has the support of the entire neighborhood.

We feel that Hillwood has been a very good neighbor for many years. We feel that they have done a wonderful job of honoring the conditions of the zoning order currently in place which dates back to 1995. We support Hillwood in its continued cultural mission and are happy to be able to be here in support of their proposal this afternoon.

Thank you.

CHAIRPERSON GRIFFIS: Thank you very much. I think that's excellent articulation of all the four issues of concern and also the fifth in terms of actually a condition that has been anticipated, but has not, in your view, an actual problem and that being the queuing, but to hear how they have already anticipated how they might and that goes directly to what I believe you were really assessing is in terms of event control when people would arrive at a single time or within a short period of time, that would

probably be more of a period where that condition would be applicable.

Vehicular traffic to and from, you have indicated as one of your main topics which I believe it's your understanding, obviously, with the agreement that it has been dealt with in terms of the conditions as well as the visitor parking and the bus and bus traffic and of course, controlling the Sunday activities to 41, with 4 additional, making it 45 events and Sundays.

Okay --

MR. AXELROD: Actually, it's 18 Sundays. It's a complicated series of numbers.

CHAIRPERSON GRIFFIS: After 4, all my numbers go out the window.

Okay. There it is then. Anything else?

Questions, Ms. Miller?

VICE CHAIRPERSON MILLER: Do you have an opinion of Office of Planning's recommendation that there should be some condition addressing maintenance or other employee vehicles being kept on site at Hillwood?

MR. AXELROD: It has not been an issue or a concern. I think that if Hillwood were to do any significant new construction, they would need to come

back to the Board at that time and that could be addressed at that time.

VICE CHAIRPERSON MILLER: So you're not concerned about regular maintenance vehicles?

MR. AXELROD: Regular maintenance vehicles have not been an issue.

VICE CHAIRPERSON MILLER: Okay.

MR. AXELROD: In fact, we welcome the most important of Hillwood's regular maintenance vehicles which is the snow plow and we encourage the snow plow to be on the street as often as possible.

(Laughter.)

CHAIRPERSON GRIFFIS: In deed.

VICE CHAIRPERSON MILLER: And also, I just want to clarify, you support the conditions that have been proposed by the Applicant to be in the BZA order?

MR. AXELROD: Yes, we do.

VICE CHAIRPERSON MILLER: And how about the removal of that one provision that I mentioned which is 8C.

MR. AXELROD: I have no problem with the removal of that.

VICE CHAIRPERSON MILLER: Okay. That's all my questions.

CHAIRPERSON GRIFFIS: Anything else?

There was one quick clarification on a condition that went to amplified music, I think it went to. I'll pull up the specifics and then amplified voices was also added in, speeches. Has that been an issue for the surrounding area or is it?

MR. AXELROD: That has never been an issue.

CHAIRPERSON GRIFFIS: Okay, let's start with clarification of just any sort of amplified?

MR. AXELROD: Right, it's not been a problem. The picture does not do justice to the amount of tree canopy and the amount of buffering between the park where the activities take place and the remainder of the neighborhood.

CHAIRPERSON GRIFFIS: Right, okay. Ms. Prince pointed that out at the beginning, but it also is set very clearly, I think in the aerial photographs which I thought I -- I have two different ones somewhere in front of me, that certainly show the growth.

Okay, anything else from the Board?

MR. GELL: Mr. Chairman, in drafting the document, we felt that we ought to leave in as many things as the neighbors had thought was important earlier on. We didn't want to create some conflict

between us and other neighbors. There might have been some had we left out some serious and important points, even if they weren't concerns of ours. So we left that in because it had been in the previous order, but it was not because it was a serious problem for us.

CHAIRPERSON GRIFFIS: Right, okay. And that makes sense. Okay. Anything else?

Mr. Gell, you indicated you wanted to make further statements?

MR. GELL: No, I think enough has been said. We obviously support Hillwood. They've reached an agreement with us and we're happy with that and it's our obligation to ask you to grant them the relief that they need. Thank you.

CHAIRPERSON GRIFFIS: Thank you very much. Ms. Prince, any cross examination?

MS. PRINCE: No cross.

CHAIRPERSON GRIFFIS: No cross. Does the ANC have any cross? Very well. Thank you all very much.

Mr. Axelrod did an excellent job and obviously, I think, the neighborhood benefits from your involvement. Let's move on then and let me ask is anyone here present to give testimony either in

support or in opposition to Application 17229 at this time? Persons. Not noting any persons present to provide testimony either in support or in opposition, let's move ahead to any sort of closings that you might have.

MS. PRINCE: Briefly, in closing, I believe the Applicant has satisfied the relevant standard for the variance relief that's being requested. I think all the hard work has paid off in terms of achieving a win-win situation for the neighbors who enjoy the presence of Hillwood and for Hillwood who has to continue to excel as a house museum in the District of Columbia.

I really would like to ask your action on this application today. Hillwood has been anxious to proceed and be able to operate under its new conditions and I believe the neighbors wouldn't have any objection to our beginning that operation sooner rather than later, so we would like -- we hope for an order as soon as possible.

And just one minor matter, Ms. Miller correctly pointed out that there's no an inappropriate reference in 8C to a carryover provision from the agreement that should be eliminated. But one condition was left out from the previous order that

out of an abundance of caution we should probably just put it back in, even though it's well understood by the parties and that is all parking shall occur on the premises. That has been an underpinning of the entire agreement, so much so that I think it was omitted just in error. So I would just keep it in so it is clear to future generations that what the intent was of this agreement.

But I believe in all other reflects the conditions reflect the true spirit of the agreement among the parties.

CHAIRPERSON GRIFFIS: Good. Thank you for that clarification. So that would be, in fact, condition number 15, as proposed.

MS. PRINCE: Correct.

CHAIRPERSON GRIFFIS: Number 15 --

MS. PRINCE: It's a carryover from the previous order. It simply says "all parking shall occur on the premises."

CHAIRPERSON GRIFFIS: I see what's happening here. So your chart actually doesn't go numerically with the conditions in your submission. That's where I'm getting confused.

MS. PRINCE: No. The chart captured -- it was more done on a conceptual basis.

CHAIRPERSON GRIFFIS: Right. So if you look at the chart condition 4, you're saying that that just -- that fell off somehow, parking on the premises, I mean even with agreed upon, parking on the premises only with the exception of capacity --

MS. PRINCE: We felt it was subsumed by the other conditions. And it really was, but I think to be very cautious, we should just directly state it again. We felt it was subsumed by all the language that directs where the parking shall be and the 110 limit, but probably best to just state it directly.

CHAIRPERSON GRIFFIS: Nothing wrong with being direct and clear.

And 6 then takes care of the overflow events.

MS. PRINCE: Correct. The language of the overflow events contains the time limitations.

CHAIRPERSON GRIFFIS: Good. Anything further? Clarifications? Excellent.

VICE CHAIRPERSON MILLER: Could you just -- it might be in the application, but could you just remind us where the overflow parking is going to be and how that's going to work with the other institutions --

MS. PRINCE: Certainly. And Mr. Fisher

could address this as well so that I'm not a witness, but there has been a longstanding arrangement between Hillwood and the Dutch Embassy right up the street and it's anticipated that that relationship would continue such that the Dutch Embassy could absorb the overflow parking on an as-needed basis and the reverse actually. There have been occasions where Hillwood has helped out the Dutch Embassy and that's an institution that doesn't create the concern and polarization in the neighborhood that some of the other institutions do.

So that's the institution we've been working with.

VICE CHAIRPERSON MILLER: But if that one is not available for some reason, you also have the possibility of using like The Burke School or the Levine School?

MS. PRINCE: The language is neighboring institutions. Perhaps Fred can address that. I think the Dutch Embassy has really -- the Hillwood calendar is one of the more complex, logistically planned exercises and I think the events really are coordinated such that that wouldn't happen, but if Fred would like to address what would happen in the event that the Dutch Embassy weren't available, I can

have him do that.

I think that would be not likely.

VICE CHAIRPERSON MILLER: Okay, if that's not likely and this is a pretty established mechanism that you have, then that's fine. Thank you.

CHAIRPERSON GRIFFIS: Good. A walk down memory lane there.

(Laughter.)

Okay, is there anything else that you have for us in conclusion?

MS. PRINCE: Nothing further.

CHAIRPERSON GRIFFIS: I had something, but now it's lost.

Oh, indeed. Let me just say, I think all those involved should be applauded for the hard work, actually, that happened outside of these proceedings and it brings, of course, important aspect for us and that is a clear, concise and very complete record in application on any sort of relief that you're requesting and specifically in this.

In addition to that and in addition to the importance of the community aspect, it doesn't do away with this Board's responsibility and I think that, in fact, the limit of the relief that's being asked here is based on the fact that the prior proceedings have a

well-established history and in fact, an order that gets us through a substantial amount of what would have been a rigorous, frankly rigorous review by the Board in terms of a use variance. Of course, that is one of the highest, if not the highest threshold to cross by this Board.

I guess directly stated, we always applaud communities getting along, neighbors and functioning aspects within a neighborhood. That should be strived for in all cases, but it doesn't remove our responsibility and our oversight and our review and therefore approval or denial of the applications.

However, in this situation, I think the record is completely full. We do have ample time this afternoon, if the Board is ready and prepared, I think we ought to move forward with this, unless there's any objection to that.

I think the most expeditious way is to move ahead under a motion and let me start it off then. I would move for approval of Application 17229, the Hillwood Museum and Gardens for a variance as it has been advertised and has been addressed in this application which would allow for the modifications of conditions governing the operations at 4155 Linnean Avenue, Northwest and I would ask for a second.

VICE CHAIRPERSON MILLER: Second.

CHAIRPERSON GRIFFIS: I'm sorry, and that motion, of course, will be conditioned -- I'd like to run through all those conditions, Ms. Miller.

Actually, do you want to take on the conditions?

VICE CHAIRPERSON MILLER: Okay. I first want to --

CHAIRPERSON GRIFFIS: You could do it faster.

VICE CHAIRPERSON MILLER: You could probably do it faster, but I just want to also compliment the Applicant, as well as the other parties, in the manner in which they presented these conditions for our evaluation. They basically have shown us what's the same as what was before in the previous orders and also the rationale, so I think it makes it fairly easy for us to go through them.

CHAIRPERSON GRIFFIS: Let me put it this way because I think it's the most expeditious and frankly, relying on one, that obviously we've digested completely the conditions and also on the agreement. It's obviously been aired and gone through. I think what we should do is establish that the motion would include those 15 conditions that are listed in the

body of the application that begin on page 5 with the exception of 8C which was to be removed, based on the Board's reading of that particular aspect, and therefore obviously Condition 8 would be A, B, C and D. So the condition C would be removed, so we would reletter that. I know it's confusing, isn't it, but nonetheless.

Anything else on that?

VICE CHAIRPERSON MILLER: No, what I find confusing is I only see 14. Do you mean the addition of all parking on premises --

CHAIRPERSON GRIFFIS: Yes, 15 would be very concise and I think -- frankly, if we wanted to spend a lot more time, well, I'll let that go. Okay, yes, 15 is just the direct condition that all parking is to be provided on premises.

COMMISSIONER MANN: With the special overflow event exception.

CHAIRPERSON GRIFFIS: Right, we're going to have to put some language in for that so that one condition doesn't counter another.

Okay, anything else then? Is everyone clear on that? Are there any other of the conditions that need deliberation or discussion from the Board?

Good point, Mr. Mann, as he brings it up.

The Office of Planning indicated condition 19. Let's do have some brief discussion on condition 19 which is going to mitigate construction and the vehicle delivery or parking and equipment and materials.

Good, then it's a consensus.

(Laughter.)

My opinion actually on that aspect is this Board has felt it appropriate to step away from conditioning construction management aspects. In this particular case I would also not necessarily support adding condition 19 back in. I note and I think it is well stated by Mr. Jackson just out of undue caution if they ever happen to have that. However, if they propose construction they're coming back to this Board and then it would be an appropriate condition to look at and in fact, it may need further substantive nature for an actual condition to go.

So rather than I think just tacking it up without the direct substantive basis, I don't see the real need to put it in.

Yes, Ms. Miller?

VICE CHAIRPERSON MILLER: I would agree that we don't need to put it in, but for a different reason and that reason would be that I think the new language that we're adding saying that all parking

shall occur on the premises covers any maintenance trucks or anything like that.

CHAIRPERSON GRIFFIS: Right, and that's an excellent point too, I was thinking. Well, there it is. Good.

Okay. Yes? Any disagreement with that? If there's no disagreement, then we obviously have the conditions before us.

Yes, Ms. Miller?

VICE CHAIRPERSON MILLER: Just in the same vein as we give Office of Planning great weight, we give the ANC great weight. I think we did discuss this, but it won't hurt to say that we're rejecting their -- I would propose that we reject adding that condition notifying them in accordance to the agreement, the neighborhood agreement because they're covered by the neighborhood agreement. We went through this.

CHAIRPERSON GRIFFIS: Right, indeed we did.

VICE CHAIRPERSON MILLER: But I just want to flag it.

CHAIRPERSON GRIFFIS: That's fine. That's well said and actually in condition 10 as proposed in the motion, Hillwood would maintain the liaison

committee which is made up of the ANC.

What's added in the agreement is the notification of additional residents which may not get distribution for that liaison committee.

Okay. Anything else? Well then.

COMMISSIONER PARSONS: I just have to reflect back. I was here for the 1988 case, the 1995 case and the 1995 case, the citizens were panicked because it was a major expansion program and although we've congratulated for negotiating out today's circumstance, the reason they were able to do that is they fulfilled their promises of 1995. They built what they said they would. They managed it the way they said they would and I assume that's why the neighborhood so easily -- easily negotiated with, if you will. I don't know how -- I think we got that hearing over in one day, but -- three? It was as nasty as they come.

CHAIRPERSON GRIFFIS: I don't know. We've seen some nasty stuff.

COMMISSIONER PARSONS: Well, other institutions in this city, museum houses should look at -- of course, they've got 24 acres which a lot of them don't, but I mean how many hours we spend with other museum houses. I've seen abuses of the

neighborhood. Well, no, no. I'm sorry, it's time to go.

(Laughter.)

CHAIRPERSON GRIFFIS: Perfectly fine and we appreciate that.

Okay, is there anything else then? We have a motion before us. It's been conditioned and seconded and so let me ask for all in favor signify by saying aye.

(Ayes.)

Opposed? Abstaining?

(No response.)

Very well, why don't we record the vote, Ms. Bailey?

MS. BAILEY: The vote is being recorded as 5-0-0 to approve the application. Mr. Griffis made the motion. Ms. Miller seconded. Mr. May, Mr. Etherly, Mr. Parsons are in agreement.

CHAIRPERSON GRIFFIS: Excellent. Is there any other business for the Board today?

MS. BAILEY: Summary order with conditions, Mr. Chairman.

CHAIRPERSON GRIFFIS: I see no difficulty in issuing a summary order in this. We can waive our regulations and do so.

MS. BAILEY: Thank you, sir. No other business that I'm aware of, Mr. Chairman.

CHAIRPERSON GRIFFIS:Excellent, then let's adjourn the afternoon session of the 25th of January.

(Whereupon, at 4:24 p.m., the public hearing was adjourned.)