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 16, 2001

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The Public Hearing convened in Room 220 South, 441 4th Street, N.W., Washington, D.C. 20001, pursuant to notice at 9:59 a.m., Robert N. Sockwell, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

ROBERT N. SOCKWELL	Chairperson
SHEILA CROSS REID	Vice Chairperson
ANN RENSHAW	Board Member
RODNEY L. MOULDEN	Board Member

ZONING COMMISSION MEMBER PRESENT:

ANTHONY J. HOOD	Commissioner

OFFICE OF ZONING STAFF PRESENT:

Sheri Pruitt, Secretary, BZA
Paul Hart, Office of Zoning
John Nyarku, Office of Zoning

OTHER AGENCY STAFF PRESENT:

John Moore, Office of Planning
Jennifer Steingasser, Office of Planning

D.C. OFFICE OF CORPORATION COUNSEL PRESENT:

Marie Sansone, Esq.

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

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

(9:59 a.m.)

CHAIRPERSON SOCKWELL: Good morning, ladies and gentlemen. First of all, let me first apologize for the delay, but there were some preliminary issues that came in this morning that we had to address. The hearing will please come to order.

Ladies and Gentlemen, this is the January 16th, year 2001 public hearing of the Board of Zoning Adjustment of the District of Columbia. My name is Robert N. Sockwell, Chairperson. Joining me today is Sheila Cross Reid, Vice Chair, Ann Renshaw, and representing the Zoning Commission is its Chairperson, Anthony Hood.

Copies of today's hearing agenda are available to you. They are located to my left near the door. All persons planning to testify either in favor or in opposition are to fill out two witness cards. These cards are located on each end of the table in front of us.

Upon coming forward to speak to the board, please give both cards to the reporter, who is sitting to my right. The order of procedure for special exceptions and variances is, one, statement of the witnesses of the applicant; two, government reports, including the Office of Planning and the Department of Public Works, et al.

Three, the report of the Advisory Neighborhood Commission, the ANC. Four, parties or persons in support. Five,

parties or persons in opposition, all of which would be cross-examined; and six, closing remarks by the applicant.

Cross-examination of witnesses is permitted by the applicant or parties. The ANC within which the property is located is automatically a party in the case.

The record will be closed at the conclusion of each case, except for any material specifically requested by the Board, and the staff will specify at the end of the hearing exactly what is expected.

The decision of the Board in these contested cases must be based exclusively on the public record. To avoid any appearance to the contrary, the Board requests that persons present not engage the Members of the Board in conversation.

Please turn off all beepers and cell phones, or set them to vibrate at this time, so as not to disrupt these proceedings.

The board will now consider any preliminary matters. Preliminary matters are those which relate to whether a case will or should be heard today, such as a request for postponement, continuance, or withdrawal, or whether proper and adequate notice of the hearing has been given.

If you are not prepared to go forward with the case today, or if you believe that the Board should not proceed, now is the time to raise such a matter. Does the staff have any preliminary matters?

MS. PRUITT: Yes, we do, Mr. Chairman. There is quite a few this morning, and so I will start with the easiest one. Application 16658, the Application of Nancy L. Pell, has been withdrawn, and so if there is anybody here wanting to testify on that, you get to go home.

The first case of the morning, 16654, the Application of Sibley Hospital, we have a request for party status from Linda Graves Shaughness. This was filed timely. I believe Ms. Shaughness is here. Please come forward. Would you please push the button and state your name and address for the record?

MS. SHAUGHNESS: Linda Graves Shaughness, 5226 Loughboro Road, Northwest. I live directly opposite the Sibley Hospital campus.

CHAIRPERSON SOCKWELL: And please state your request.

MS. SHAUGHNESS: Yes, Mr. Chairman. My request is that the board defer for 90 days a decision on this application for the reasons --

MS. PRUITT: Excuse me, Ms. Shaughness, but just for procedural reasons. First, we need to deal with your party status.

CHAIRPERSON SOCKWELL: Yes, party status.

MS. PRUITT: And then we will deal with your request for a continuance.

MS. SHAUGHNESS: Okay. To justify party status, I

have included in your packages the petition of 25 residents who are most directly impacted by the Sibley Hospital campus.

I also have included in your package a summary of the negative impact to your property values that has occurred in the period of 1998 to 2000. This was the period during which Sibley has been constructing the prior two variances approved by this board.

I have also enumerated in my letter requesting the continuance the impacts that we are currently experiencing, in addition to the economic harm to property values, and I also have included -- there is one set of color photographs, and the other sets, I'm sorry, are in black and white photographs, documenting the negative impact that we have already experienced.

And also our great concern to have the opportunity to go forward with negotiations to try to reduce these impacts before further variances are granted, and that is the basis for my request to be a party today.

CHAIRPERSON SOCKWELL: Excuse me. Staff, I did not --

MS. PRUITT: We are getting it for you right now. It came in this morning.

CHAIRPERSON SOCKWELL: All right. So it is your belief that some narrowing of the issues can take place with additional time?

MS. SHAUGHNESS: That's right, Mr. Chair. We have

been negotiating in good faith with Sibley Hospital since October, and we have identified the issues that would most -- that if addressed would probably give us the best relief to restore the value of our property, and prevent further demise of property values.

We have gotten pretty far with this, but we have not gotten far enough that those people directly impacted could say that they feel on solid ground, and that the mitigations being tossed around will actually occur.

There are a number of other agencies that are -- and government bodies, that are interested in the related issues, and we think it would be helpful if we could complete the process with some of those other organizations which I have enumerated.

COMMISSIONER HOOD: Mr. Chairman, excuse me, I just have a question that may cut some of the chase. Ms. Shaughness, have you expressed your concerns to the Advisory Neighborhood Commission?

MS. SHAUGHNESS: Yes.

COMMISSIONER HOOD: Was that brought up in their meetings?

MS. SHAUGHNESS: Yes, it was, and our position, or my position, diverges from the position of the Advisory Neighborhood Commission and the Palisades Citizens Association, is that our petition asks that the issues be taken further.

So if you look at what we achieved to date in terms

of negotiations with Sibley Hospital, some of these, they are not resolved fully. But Sibley will -- there was a sense that they will work with us on trying to resolve it.

They are willing to support relocation of the bus route provided that the road tests are acceptable.

COMMISSIONER HOOD: Ms. Shaughness, unfortunately right now, I don't have that in front of me. But once I get it, I will look at it.

MS. PRUITT: Excuse me, Mr. Chair, but we are only dealing with party status. We are really getting into a request for continuance, and we need to stay on track.

CHAIRPERSON SOCKWELL: All right.

MS. PRUITT: So the question is that the Board going to -- needs to make a motion and vote on whether or not party status is granted.

CHAIRPERSON SOCKWELL: Ms. Shaughness, you are directly opposite the hospital?

MS. SHAUGHNESS: Yes.

CHAIRPERSON SOCKWELL: And the persons whose signatures you obtained on a petition have elected you or appointed you to represent them as a group?

MS. SHAUGHNESS: No. What I have collected from them -- if you look at the language on the petition itself, I have collected their signatures to this particular set of statements, which are the conditions that everyone who signed agreed are the

minimum conditions that should be required to allow the variance to go forward.

Those individuals are located on the 5200 block of Loughboro, and Watson -- the back yard properties immediately behind us, and I think there is a couple on the houses that wrap around the corner.

CHAIRPERSON SOCKWELL: All right. I think that here is where this should go. Those petition signatures would stand on their own as they have signed a document which I have not seen, because it was not included in our package.

But that document states their agreement to whatever was written on the petition, and --

MS. SHAUGHNESS: And for it to be used as a public document.

CHAIRPERSON SOCKWELL: And I understand that.

MS. SHAUGHNESS: And you do have a set, one set you do have.

CHAIRPERSON SOCKWELL: But for your status as a party --

MS. SHAUGHNESS: Yes.

CHAIRPERSON SOCKWELL: -- an individual party, regardless of the petitions that you have solicited, you are more aggrieved than others who might live in the general vicinity of this hospital facility based upon your position along the 5200 block of Loughboro directly across from the subject property; am I

correct?

MS. SHAUGHNESS: Correct.

CHAIRPERSON SOCKWELL: And you believe -- now, you are on the -- let's see. Loughboro is running --

MS. SHAUGHNESS: We are on the south side.

CHAIRPERSON SOCKWELL: I beg your pardon?

MS. SHAUGHNESS: We are on the south side on Loughboro, which is the entirely residential side. Our block has 18 homes facing the hospital block, and there are 18 homes on our back yard immediately behind us on Watson Street.

CHAIRPERSON SOCKWELL: So you are at 5200, and that puts you at the intersection of Loughboro --

MS. SHAUGHNESS: Excuse me, but I am in the middle of the block. I am very close to the stop light on Loughboro, and very close to the main entrance to the hospital.

CHAIRPERSON SOCKWELL: Okay. So you are somewhere right in here.

VICE CHAIRPERSON REID: Excuse me. Ms. Shaughness, your house is in about the same place as some of the other houses that are on the petition, and that are similarly affected by the application?

MS. SHAUGHNESS: Yes.

VICE CHAIRPERSON REID: Now, what we have to establish is that -- or what you have to determine for us is to demonstrate how you are more aggrieved, or you are more affected

than the rest of the people who are on that same block, or on the same strip.

Are you uniquely, or is your situation something that is unusual to everyone else, or are you saying that everyone on the petition has a similar type of concern?

MS. SHAUGHNESS: Okay. We have a lot of common concerns. It also varies somewhat based where you are located on the block.

VICE CHAIRPERSON REID: Well, your role in requesting party status, your role today is to demonstrate to us how you are more uniquely aggrieved than anyone else.

MS. SHAUGHNESS: Well --

CHAIRPERSON SOCKWELL: The question I think -- here is the question. There are two things. One, the proposed construction is on the north side of the hospital, which means that the immediate effect of construction will neither be seen nor directly felt by you either from construction traffic or any of the associated activities that may take place, as long as those activities don't generate some extremely high level of traffic or changes on Loughboro Road.

Now, on that basis, I am trying to understand from you the particular problem that you will face from this construction, either during the construction or after such construction, should it be approved.

MS. SHAUGHNESS: Well, first of all, by going

forward with the variance, and giving the hospital carte blanche, without requiring them to mitigate the --

CHAIRPERSON SOCKWELL: Now, the carte blanche part, I will take that as a personal feeling of what that means, in terms of the variance request. But the issues that are being raised, regardless of the number of other people who have raised similar issues, your issues as a party have to be specifically related to the issuance of this variance, and what that element of relief will do to you to hurt you.

For example, in other projects where perhaps there is something being built directly adjacent to, next to, across the street from you, there would be some major impact on your lifestyle, and I am trying to find out what that impact might be.

MS. SHAUGHNESS: Okay. For example --

CHAIRPERSON SOCKWELL: Because your position is clear as being adjacent to the hospital, but the effects of the construction on you directly, I am having some difficulty understanding. That's why I am trying to get you to explain how this construction, this specific variance, will affect you and make your life less pleasant directly, and not peripherally, but directly.

MS. SHAUGHNESS: Okay. Yes.

VICE CHAIRPERSON REID: More than anyone else.

MS. SHAUGHNESS: Directly, because the turnaround of property values, one of the key factors is that Sibley has

offered

CHAIRPERSON SOCKWELL: Ms. Shaughness --

MS. SHAUGHNESS: If you will let me just finish. I will get right to it.

CHAIRPERSON SOCKWELL: Please.

MS. SHAUGHNESS: One direct impact that will be mitigated will be if in the coming weeks if Sibley Hospital, which has specifically offered to relocate the bus stop, a factor in that relocation of the bus stop is that this oncology center is sited to be built over what is currently a separate ambulance access lane.

By doing that without addressing the associated issues, issues associated with whether or not Sibley will be able to go forward with the sufficient road bed for relocating the buses back there, that issue can be impacted by the change in configuration of how the ambulances travel to the emergency entrance.

It would suggest, or common sense would suggest that if you then mix ambulance traffic with the traffic on Little Falls Road back behind the expanded oncology center, that you could have issues with safety, with precluding going forward with the relocation of the bus.

CHAIRPERSON SOCKWELL: I think --

MS. SHAUGHNESS: The hospital itself --

CHAIRPERSON SOCKWELL: But here is --

MS. SHAUGHNESS: -- has offered this as a --

CHAIRPERSON SOCKWELL: Ms. Shaughness, the question is not the mixing of traffic on Little Falls. The question would be the traffic impacts on Loughboro, because that is where you live. It is nice that you want to protect your neighbors. It is nice that you want to assist in mitigating potential traffic issues.

But we are asking for your party status request based upon where you are and what this is going to do to you. Will you not be able to sleep at night. Will the ambulances be coming down your alley. Will they be parked directly in front of your home.

Will there be major construction traffic coming in front of your house. Will there be any kind of specific issues related to your lifestyle that will make it difficult for you to live.

Now, we are not talking about property values. Property values can fluctuate in any different direction, and there are too many factors, and to use the hospital specifically is one. I assume that you have lived in your home for a number of years?

MS. SHAUGHNESS: I have lived in my home since '94.

CHAIRPERSON SOCKWELL: Okay.

MS. SHAUGHNESS: And it is clear from the data when

the trend and drop in property value occurred, and the growth of the hospital, which this oncology center contributes to, that growth and that increase -- we just got another 10 buses.

We now have 180 buses on our street every day, disturbing us from 5:00 a.m. to midnight, and we feel --

CHAIRPERSON SOCKWELL: That 10 buses --

MS. SHAUGHNESS: The additional traffic coming to the Oncology Center, because of its increased capacity, I assume will continue the trend of downward valuation of my property, increased noise and congestion, increased additional 10 bus routes, like the 10 additional bus routes that just got added yesterday, because it is serving 1,400 employees at Sibley Hospital.

CHAIRPERSON SOCKWELL: Now, the 1,400 employees at Sibley Hospital are brand new employees. They just arrived, correct?

MS. SHAUGHNESS: No, but there is a base level of employees and Sibley Hospital --

CHAIRPERSON SOCKWELL: How many employees? You see, here is where you are and here is where I am not. You are trying to bind together existing and new conditions, which I can understand you are attempting to do.

You are looking at an overall situation, but 10 bus routes in themselves didn't come into that hospital because of some oncology center being built. The point is that Metro, if

that is Metro's bus routes, Metro makes its decisions based upon need.

They are also running various sizes of buses, as opposed to those big things that they always ran up the streets now, and so there are all sorts of different things coming down your different streets for different reasons.

And all of that is not sufficient to say that you are aggrieved because of what they are going to build today. You may be aggrieved by what they built yesterday, but you are not telling me why you are aggrieved based on what they are trying to build today.

And on that basis, I don't see a reason for granting party status, and my fellow board members will have to make their own decisions, but I have given you an opportunity to try to bring into focus your place in this.

And certainly we appreciate the fact that you have worked with your neighbors to try to come to some common issues to be resolved. And your neighbors are quite welcome to participate in these hearings, as are you.

But as far as party status is concerned, I don't see it yet, and board members, do you?

VICE CHAIRPERSON REID: Just one second. Ms. Shaughness, what we are saying is that the whole idea of party status is something that is unique about your situation that is different from everyone else.

But so far what we have heard only is how it impacts the neighborhood. Everyone is going to be dealing with or everyone would have to continue with traffic, or noise, or what have you, and also property values is not something that is unique to one property.

So you can't grant party status based upon that, and I concur with the Chair, but what you can do is during the appointed time, you will have an opportunity to testify in opposition, and if you like, you can give us all your reasons why.

But as far as party status is concerned, it is not something that you have demonstrated here today as you being specifically and uniquely affected by this property more so than anyone else. And that is the criterion by which we have to grant party status.

MS. SHAUGHNESS: I guess, first of all, because this complex takes up an entire city block, it is so massive that you would not find every property owner from this house to that house having a completely different and distinct reaction, because we are faced with the same thing. So, the --

CHAIRPERSON SOCKWELL: Ms. Shaughness, I understand that. The hospital is not new. The hospital has been there --

MS. SHAUGHNESS: But it is growing, sir.

CHAIRPERSON SOCKWELL: It may be growing. I think we have all the information that we can possibly get from you that would help to determine your status, or your capability for

achieving party status. So I am going to --

MS. SHAUGHNESS: What about the buses that are currently disrupting --

COMMISSIONER HOOD: Mr. Chair, I would call for a vote.

CHAIRPERSON SOCKWELL: Anything about that will be discussed during -- you will have a chance to speak and express your views as an opposition witness during the course of the hearing. But I do not see party status, and I think that the panel should move one way or the other with regard to your party status.

MS. SHAUGHNESS: Do you have a mechanism whereby I could create a de facto group of all the petitioners who have a common impact interest?

CHAIRPERSON SOCKWELL: Even if you represent the entire group, what you can do is that you can have that, but it would not grant you party status just because you we representing 20 people, because those 20 people are also perhaps all along the Loughboro side, when again the construction is on the north side of the building.

It will be invisible to you, along with everything else, but it will be invisible to you. It is a one-story structure, and it does not project above the rooftops of any other part of the facility. You may not even see the cranes for that matter, because the principal portion of the hospital is facing

Loughboro, and is the tallest structure.

And therefore I am going to require a vote. I move that we not grant party status to this witness for the reasons that she is not in any way more significantly aggrieved than others along her block, and because the project itself is not in the portion of property visible to her home.

COMMISSIONER HOOD: I will second the most.

BOARD MEMBER RENSHAW: Discussion, please.

CHAIRPERSON SOCKWELL: Yes.

BOARD MEMBER RENSHAW: Mr. Chairman, I would like to read Ms. Shaughness' petition. It is not in our packets. I think it is unfair to her and her representation of the 25 people whom she has --

CHAIRPERSON SOCKWELL: Ms. Renshaw, the petition would get into the merits of the case, and this is --

BOARD MEMBER RENSHAW: But I would like to review her material before voting on party status, Mr. Chairman.

CHAIRPERSON SOCKWELL: But it is not her material, Ms. Renshaw. It just happens to be a common statement, but it is signed by other individuals whose particular interests have been expressed there.

MS. PRUITT: Excuse me, Mr. Chair, this might help.

CHAIRPERSON SOCKWELL: Yes?

MS. PRUITT: You have a letter in your file dated January 2nd. It does not have an exhibit number on it. It is

actually a fax, and it is Ms. Shaughness' request for party status, and it is for an individual. Her initial request was for an individual party status.

CHAIRPERSON SOCKWELL: Right.

MS. PRUITT: The petition information that she brought in this morning is to be added to the record.

CHAIRPERSON SOCKWELL: Yes. It says I request to be heard as a party opponent. Okay. And that is the way that it should be.

COMMISSIONER HOOD: Mr. Chairman, let me just add with that second that she always has the opportunity to work with the ANCs, who are an automatic party.

And they will be able to relay some of the questions in which she may not have the opportunity to do in her time, and that goes along with my second.,

CHAIRPERSON SOCKWELL: And she does bring a lot of people to the table with the petition. So, the petition does bring together the views of a number of people, and that makes her voice stronger with regard to what she is requesting and what her concerns are. So I call for the vote. All in favor?

(A chorus of ayes.)

CHAIRPERSON SOCKWELL: Opposed?

BOARD MEMBER RENSHAW: Opposed.

MS. PRUITT: The staff will record the vote as 4 to 1 on a motion not to grant party status to Ms. Shaughness. The

motion was made by Mr. Sockwell, and seconded by Mr. Hood.

CHAIRPERSON SOCKWELL: All right. Thank you very much. Are there any other preliminary matters?

MS. PRUITT: Well, the only other preliminary matter was a request for a continuance, but it was from Ms. Shaughness, and she no longer has party status.

CHAIRPERSON SOCKWELL: All right. So then I suppose we should proceed with the case, with the first case. Please call the first case.

MS. PRUITT: There is just for the record, Mr. Chairman, you do have an OP report. However, there needs to be a waiver for the filing time because it is late. And you do have a report from ANC-3D in support.

CHAIRPERSON SOCKWELL: Then if the Board does not object, I would request that we waive the rules to allow the Office of Planning report to be entered into the record. I would so move.

COMMISSIONER HOOD: I second the motion.

CHAIRPERSON SOCKWELL: All in favor?

(A chorus of ayes.)

CHAIRPERSON SOCKWELL: Opposed?

(No audible response.)

MS. PRUITT: The staff will record the vote as five to zero to waive the filing time for the OP report. Thank you.

CHAIRPERSON SOCKWELL: All right. Will the

applicants come forward.

MS. PRUITT: All those planning to testify, could you please stand and raise your right hands.

(All witnesses were sworn.)

CHAIRPERSON SOCKWELL: Please begin.

MR. ELLIS: Good morning. I am Craig Ellis, and I am here representing Sibley Hospital in this application. It is a pleasure to be before the Board once again.

This matter comes forward where Sibley Hospital is seeking a variance, two variances to be exact; a variance from Section 404.1, the minimum rear yard setback requirements in an R-5-A zoned district; and, two, a variance from Section 402.4, to allow the transfer of excess floor area ratio granted under BZA Order Number 16312, for the construction of a CBRF on the subject site to propose the addition of a radiation oncology unit to an existing hospital use in a R-5-A zoned district.

As has been previously stated, Sibley is seeking today to build its radiation oncology unit. The present unit that they have does not meet the needs of the patients, nor is it sufficient for the new equipment that is required for cancer diagnosis and treatment.

Today, I have with me several witnesses. My first witness will be Jerry Price to give an overall view of the hospital, and why it is embarking on building the radiation oncology unit, and what --

CHAIRPERSON SOCKWELL: Please, just complete your sentence. I have to --

MR. ELLIS: And the hospital's workings in dealing with the community with respect to the radiation oncology unit.

CHAIRPERSON SOCKWELL: Mr. Ellis, before we begin with your first witness, there is an issue that needs to be discussed with regard to your application, and that is the zoning ordinance specifically prohibits construction that crosses lot lines that would be built on two lots, not in single ownership, where there is no encumbrance by a District of Columbia highway plan, which would under that circumstance prevent the issuance of a record lot.

In this case the project proposed is being proposed on property that is currently in the ownership of the Federal Government, and yet although there has been a stated approval for the transfer of that property to private ownership, neither the price has been set, nor a deal actually struck, for that.

In addition, there is the potential that once that property is acquired, and a permit could be issued, there would be no rear yard issue at all, because we don't know what the size or shape of that property is.

And it seems that this board does not have the authority to issue a variance where the final property use is inclusive of the lot in Sibley Hospital's possession, and a lot that is currently in the U.S. Army or Army Corps' possession, and

I wanted you to respond to that.

MR. ELLIS: The piece of property that is presently under the control of the Army Corps of Engineers has been through the years permitted by the Army Corps of Engineers and the government to be used by Sibley Memorial Hospital. Indeed, they have approved the construction on that site by Sibley.

CHAIRPERSON SOCKWELL: That I understand. However, under D.C. law, you cannot get a building permit to build on two lots that are not in single ownership, regardless of the lease.

If I leased the land adjacent to mine, and wanted to build my house on both pieces of land, I would be denied. I would be denied because Section 3103.2 does not allow.

MR. ELLIS: Without me speaking on that issue, because that was not brought up as an issue, and especially when we went downtown for the permit.

CHAIRPERSON SOCKWELL: Downtown is downtown.

MR. ELLIS: I understand.

CHAIRPERSON SOCKWELL: You are really downtown now.

MR. ELLIS: I understand. If we could have a few moments so I could go out and double-check that.

CHAIRPERSON SOCKWELL: Please.

MR. ELLIS: We would appreciate that.

CHAIRPERSON SOCKWELL: I would request that you look at Section 3103.0, variances, and in particular Section 3103.2.

And while you are doing that, we can recess this case for -- let's say -- well, would a half-an-hour be sufficient for you?

MR. ELLIS: That's fine.

CHAIRPERSON SOCKWELL: And then we will continue with the next case.

MR. ELLIS: All right. Thank you.

MR. HART: The next case is Application 16656, the Application of Jemal's Gateway, D.C., LLC/Douglas Development Corporation, pursuant to DCMR 3104, for a special exception under Section 214 for the continuation of an existing accessary surface parking lot to serve adjacent retail establishments in an R-1-B District at premises 7820 Georgia Avenue, Northwest, 7830 to 7842 Eastern Avenue, Northwest, and 7800 Alaska Avenue, Northwest, at Square 2960, Lot 17.

Those persons intending to participate in this application, please stand and please your right hands.

(All witnesses were sworn.)

CHAIRPERSON SOCKWELL: Please begin.

MS. SHAW: Good morning, Members of the Board, and Chairman Sockwell. My name is Sarah Shaw, with Shaw Pittman. I represent the applicant, Douglas Development. Also with me this morning from Shaw Pittman is John Epting.

Testifying in this case this morning will be Paul Millstein, of Douglas Development, as well as Cullen Elias of O.R.

George and Associates.

As a preliminary matter, we would like to qualify Mr. Elias as an expert in traffic. I have a copy of his resume. He has been qualified as an expert before this board before, as well as in several suburban jurisdictions.

CHAIRPERSON SOCKWELL: His resume has been submitted?

MS. SHAW: Not yet. I have copies.

CHAIRPERSON SOCKWELL: All right. And just to find out, are there any opponents in the room today? Okay. Two. Have they been sworn in?

MR. HART: Yes.

MS. PRUITT: Excuse me, but just so that everyone remembers, please remember to fill out two little white cards and give them to the reporter either before or after your testimony. Actually, preferably before.

(Brief Pause.)

CHAIRPERSON SOCKWELL: As far as I am concerned, Mr. Elias' resume is sufficient, more than sufficient, that he can be accepted as an expert witness. Board Members, comments?

VICE CHAIRPERSON REID: No objection.

CHAIRPERSON SOCKWELL: All right.

MS. SHAW: Good morning again, Members of the Board. We come before you today to ask for the continued approval to operate an accessory parking lot on Lot 17 of Square 2960.

This is the address of 7820 Georgia Avenue.

The parking lot is located where Kalmia Road, Alaska Avenue, Georgia Avenue, and Eastern Avenue all converge, just to the southwest of the District's border with Montgomery County.

This property has been operated as an accessory parking lot since 1949. It served the adjacent retail establishments that front those streets. It exists solely for the patrons of those retail establishments to park, and we believe that we meet all the standards necessary for the continued operation of an accessory parking lot.

We would ask you once you have heard the testimony of our witnesses to approve this parking lot for a period of 10 years. And with that, I will move forward with my first witness.

CHAIRPERSON SOCKWELL: Before you do that, just one question, and that is that it has been raised whether or not this should be characterized as an accessory parking lot, or whether it should be characterized as the parking lot that it has been called in previous zoning approvals by this board.

MS. SHAW: We feel that it is properly filed under Section 214 as an accessory parking lot. It exists as I said to serve as a parking lot for the retail establishments. It is accessory to the retail establishments.

The most recent CFO refers to it as an accessory

parking lot, as does the conclusions of law section in the most recent BZA order. We feel that it does not exist independent. It wouldn't exist but for the retail accessory to the retail.

CHAIRPERSON SOCKWELL: Okay. Continue.

MS. SHAW: Okay. I would like to introduce my first witness, Mr. Paul Millstein. He is with the applicant, Douglas Development. Mr. Millstein, please introduce yourself, and state your name and address for the record.

MR. MILLSTEIN: Good morning. My name is Paul Millstein, and I am with the Douglas Development Corporation, and we are at 702 H Street, Northwest, Washington, D.C. I am the vice president of the company, and actually a part-owner of this particular property.

I will be very brief in my testimony. We feel that we do meet all the requirements of the special exception for accessory parking. We have owned this property for 4 or 5 years approximately.

It was bought as a strip center, and it had grand plans before us to be a major gateway development into the city by a prior developer. That didn't work out. We kept the scale very low, a very low density, which is what we typically do in our neighborhood strip centers.

We are very accustomed to co-existing in neighborhoods with commercial property abutting residential. We try very hard to do a good job of that. We are not perfect.

We have to the best of my knowledge never had any complaints with this parking lot other than recently, where a letter did come into my office last week approximately, and that I just had an opportunity to read yesterday.

And so I will address that, and I have already made an attempt to reach the writer of the letter, but I will get that resolved. It had something to do with the location of dumpsters, and I am sure that we can remedy that.

We think it is a center that helps the community, and services the community. It is not a large center. The parking is imperative to the center so that people can park and do their thing.

We have the Social Security Administration there, and people come to pick up their checks and get counseling. They need to be able to park and come in, and we try to keep the cars off the neighborhood streets, which we think we do a good job of.

We don't have a barricade there, and we don't charge for parking, and we don't do monthlies for parking. It's where people can come in and park, and do their shopping, leave or pick up whatever they need to pick up.

And on the weekends, if the church across the street or any other neighborhood person needs to use it, it is available for them. We don't shut it down. By leaving it open, we constantly are cleaning up mattresses and broken refrigerators, and abandoned cars, because people do dump on it occasionally

during the nighttime hours.

We send our trucks through there and we clean it up and try to do a good job. Again, we are not perfect, and we have had some lapses here and there, but we try and stay on it pretty well.

So, again, I think we meet all the zoning requirements. We try to be a good neighbor, and we can always be better. If there is any concerns by any particular neighbor, which I understand there is, we will address them immediately.

And I am here as an owner to tell you that we take it seriously, and we take our role in co-existing with the community very seriously, and we want to move forward, and that's really all I have to say, unless there is any questions.

CHAIRPERSON SOCKWELL: Do you want to continue with your next witness, and we can ask questions after?

MS. SHAW: Sure. I would like to introduce Cullen Elias, our traffic expert, with O.R. George and Associates.

MR. ELIAS: Thank you. For the record, my name is Cullen Elias, and I am vice president of the firm of O.R. George and Associates. We are located at 1738 Elton Road, Suite 321, Silver Spring, Maryland 20903.

Our forum was given the task of preparing a traffic and parking assessment in support of the subject application. And we fulfilled the requirement of Section 214.7 of the District of Columbia special exception regulations, Title 11, zoning.

And it is our conclusion, which is also mine, that based on our study that the subject application for the continued use of the parking lot will not become objectionable to adjoining or nearby properties from its traffic access population and parking usage perspectives.

As a matter of fact, we have demonstrated that the elimination or discontinuance of this parking lot would create a significant shortage of parking available to the retail center, and could result in significant neighborhood intrusion. If I could have the benefit of a portable mike, please.

CHAIRPERSON SOCKWELL: We don't have that portable mike available. What I can give you is a light pen, and if you would put your material up on the easel, and you can point to it from a distance. Will that be helpful to you?

MR. ELIAS: Yes. Thank you.

(Brief Pause.)

MR. ELIAS: Just to provide the right setting from a transportation perspective, the subject parking lot is located west of Georgia Avenue, and it falls between Eastern Avenue to the north, and Kalmia Road to the south.

The adjacent intersections are Eastern Blair and Georgia, and you have Alaska and Kalmia, and Georgia to the southeast of the site. As indicated earlier, the subject parking lot serves the adjacent retail center.

The center consists of a mix of planned uses,

commercial land uses, and there is a five-story office building here which has its own parking to the rear of the building. And then this retail is also part of the center.

The site is accessed from two alley ways. There is an alley way off Kalmia Road to the south, and there is another alley way to the west here which runs between Kalmia and Eastern Avenue.

We conducted in order to access the existing uses of the site, we conducted surveys for parking usage, and surveys for user surveys on two consecutive days, the 15th and the 16th of December, between 12:00 o'clock and 5:00 o'clock in the evening.

And we also conducted a survey around the midday period on a Sunday, and why we did the Sunday observations was because this church here, which is called the North Minister Presbyterian Church, it is our understanding that this church uses the parking lot on Sundays.

Now, based on our observations, we found that 80 percent of the vehicles accessing the parking lot do so by the Kalmia entrance way. The other 20 percent obviously would be from the Eastern Avenue entrance way.

Looking at the traffic flow patterns, we formed that the demand is quite moderate, less than one vehicle per minute. In terms of visibility for people for vehicles entering and exiting both entrance ways, we formed that no operational or seasonal deficiencies, in terms of driving along Kalmia Road, and

to the Kalmia Road approach, and in terms of type of distances in both ways along Kalmia, and particularly along the alley way to the west.

In terms of parking usage, we finally decided that the peak parking demand for the site ranges between 41 percent and 65 percent of its total supply of 98 parking spaces. And that ranges between the Friday and Saturday of the survey.

On Sunday, or the Sunday survey, we were able to identify that the church generated some 20 to 30 vehicles which used the parking lot. I should have pointed out that our survey not only included the subject parking lot, but also incorporated the parking areas that are adjacent.

As you can see here, to the north along Eastern Avenue, there is a mixture of metered, as well as -- and it is not shown there by the symbol, but there is some unmetered parking spaces there, and the rest of them are metered.

There is no parking along Georgia or along that section there of Alaska. But then there is residential parking on the south side, and on the north side of Kalmia there is also parking at the parking lot.

This is restricted to Zone 4 permit holders, and then there are three metered parking spaces along Kalmia just between the alley way and Alaska Avenue.

Observations indicated that these parking spaces were usually to capacity during the peak parking demand periods on

Fridays and Saturdays. There was virtually no parking along this area where it is zoned for residential permit parking.

This also was used to capacity. As a matter of fact, in the area here there were some illegal parked vehicles, which indicates in terms of the adjacent on-street parking supply that the demand is greater than the supply.

And with that this parking, the adjacent parking area is definitely not agreed to serve the uses of the retail center. In conclusion, I just want to reiterate the fact that the on-street parking is insufficient to serve the subject parking lot.

The adjacent parking lot, if you are to eliminate the use of this lot, or to discontinue its use, obviously the impact would be negative in terms of the adjacent residential community.

There will be a significant shortage of spaces available for the retail center, and then there is the likelihood of neighborhood intrusion on your residential parking spaces along Kalmia, and 12th Street to the west, and so on.

We feel that based on those conclusions that the subject site should -- that the continued use of the subject site should be approved because it will not create objectionable conditions to the adjacent roads or the adjacent neighborhoods.

We feel, however, and this is mentioned in our study which I forgot to mention, which is Exhibit E of the

applicant's statement, we still feel, however, in the interest of improving the use or enhancing the use of the parking lot that a few improvements should be undertaken.

And one of these relates to signage. We feel that along here there are one or two signs which indicates parking in the rear of the shopping center. We feel that that signage should be enhanced, perhaps with brighter signs.

And also include signage which prohibits parking altogether along Georgia Avenue, and along this part here on Alaska. This will increase the usage of the parking lot serving the center.

Our observations from the entrance way here is not properly defined. It is pretty wide, and leaving the subject lot and traveling this corner here, and we feel that we proper markings that it will properly delineate the access to the side, and access into the site.

We feel that with those improvements that it will enhance the use of the subject lot, and with that, I would like to end and wait for questions. thank you.

CHAIRPERSON SOCKWELL: All right. Board Members.

MS. SHAW: Mr. Chairman, if I might just ask a couple of clarifying questions of Millstein.

CHAIRPERSON SOCKWELL: Go right away.

MS. SHAW: Mr. Millstein, have you read and reviewed Section 214, and the standards therein, as well as the

Office of Planning's report, and do you agree that this parking lot meets all those standards?

MR. MILLSTEIN: Yes, I have.

MS. SHAW: That's all. Thank you.

CHAIRPERSON SOCKWELL: Okay. Then on that basis, I will ask a question. A drawing has been submitted in on 1 inch to 20th scale depicting the parking lot in what I assume to be its current configuration.

And that is in Exhibit Number -- well, exhibit number something. Anyway, it was in your package.

COMMISSIONER HOOD: Exhibit D.

CHAIRPERSON SOCKWELL: Exhibit D. I evaluated the drawing to the extent that, yes, the base plan is drawn at 1 inch equals 20 feet. However, the parking spaces are delineated in a scale relationship that does not meet the city's zoning requirements for parking.

Most of the parking spaces are shown as 4-1/2 feet wide and 10 feet long. That way, they do not extend over the alley line in any configuration way.

And I am concerned that the document being inaccurate would give us an unfair or improper impression of the extent of parking capable on the site, and whether or not any violations of the 214 requirements do in fact exist.

MS. SHAW: Well, these parking spaces are not required, and so it is my understanding that they don't have to

meet the measurements of the zoning regulations for parking spaces.

CHAIRPERSON SOCKWELL: Well, the term, required parking, and parking, are two different things, and this is parking that is being accepted by the Board of Zoning Adjustment.

We cannot review and approve parking spaces that are the arbitrary design of an applicant. If I wanted to put 3 foot wide, and 6 foot deep, parking spaces and they are not required, and I think I can get the Board of Zoning Adjustment to approve that, then sure, I will bring them down. Is that what you are suggesting?

MS. SHAW: I understand your point.

CHAIRPERSON SOCKWELL: But do you understand what the requirements are for parking spaces, except when it is attended parking during a designated time period of 12 hours during the day, and when then a square footage arrangement is provided for the parking, and the attendants place the cars according to the requirements of the ordinance?

MS. SHAW: Yes. Our survey shows existing conditions. If the board feels that those conditions are unacceptable, we can restripe the parking lot.

CHAIRPERSON SOCKWELL: Well, there are two issues. One, the original order, dated July 24th, I think it is, of 1985, and which expired in 1990, which is 10 years out of date for its

renewal, was for 80 parking spaces.

And you have presented to us a 98 car capacity, which would concern me significantly because I couldn't even find the stripings to meet the requirements of zoning. I mean, a parking lot can have as many as 40 percent compact cars in groups of five, and all sorts of nice things like that.

But this is just -- there are two documents that were submitted as part of the information that I received. One is this one, which is similar to this one, but was incomplete. So I was not able to count the spaces up here anyway.

But the question is which one of these is correct, because one of them tends to show spaces right up to, and in this area going over the property line that truly separates a public alley from the private property.

And without knowing which document is correct, and having the other document completely unrealistic, it makes it difficult for the board to act in a manner that we would know what we were acting upon, and that's my question.

MS. SHAW: I'm sorry for the confusion. The survey submitted as Exhibit D to the prehearing materials, the larger survey, is reflective of the existing conditions.

And as I said, we can work to change the size of those parking spaces, and it will obviously reduce the number of spaces.

CHAIRPERSON SOCKWELL: Yes. I think that

regardless how it has been striped, at this point we are 10 years down the road, and many people have painted it. But let's get an accurate document and an accurate parking count, because from what Mr. Elias said, 64 percent or 65 percent of the spaces are used at the maximum utilization.

MR. ELIAS: That's correct.

CHAIRPERSON SOCKWELL: Which would be 64 spaces based on 98. It would be 80 percent if you had only 80 spaces in the lot, and that still gives you 20 percent over capacity based on the traffic consultant's report. But this is going to be corrected, right?

MS. SHAW: Yes. You can make that a condition of any approval.

CHAIRPERSON SOCKWELL: Okay. You can continue. Any more questions, Board Members?

COMMISSIONER HOOD: Mr. Chairman, I just had -- and not necessarily a question, but a statement to Mr. Millstein.

MR. MILLSTEIN: Yes, sir?

COMMISSIONER HOOD: I am just kind of appalled to look and see where I have heard in your statement that you are trying to be a good neighbor now all of a sudden, and I have said this in the past about other applicants.

It seems like a good neighbor policy starts when you have to come down for approval of something. I have a problem also with the letter that you just received yesterday.

But I find that hard to believe that the issues that affect the surrounding area were just available to you yesterday, because if you go from 2 to 7 dumpsters, I'm sorry, but I don't buy that. From what I am reading now, you now have seven dumpsters?

MR. MILLSTEIN: Yes, sir.

COMMISSIONER HOOD: Okay. You were just aware of the issues yesterday?

MR. MILLSTEIN: I just received the letter yesterday that there was a problem from a neighbor. The center had two dumpsters before because there were two tenants. It was vacant for many years.

As we have leased, each tenant puts on their own dumpster, and I have got to tell you, Mr. Hood, or Commissioner Hood, that I wasn't aware of a problem until yesterday.

And I know the Shepherds Park Citizen's Association very well, and I have a letter from them saying what a good job we do. As well, the ANC had no issue. This just came up, and I take care of things when I have a problem.

And I will meet the gentleman who wrote the letter and fix this, but I am telling you under oath that this is a situation that is new to me. And I would love for you to read this letter from the Shepherds Park Citizen's Association.

COMMISSIONER HOOD: It would be good if you could provide that to the staff.

MR. MILLSTEIN: Yes, sir.

COMMISSIONER HOOD: Do we have it? Yes, I have it now.

MR. MILLSTEIN: Okay.

COMMISSIONER HOOD: Also, my other concern is that I believe -- and I can't find it right now --

MR. MILLSTEIN: And there was a construction dumpster, Commissioner Hood, that has been removed as a result of that, and that is gone and cleaned.

COMMISSIONER HOOD: I did notice in the ANC report that it did reference us to deal with the dumpsters as one of the conditions, and so I just wanted you to be aware that they also apparently saw that there was a problem.

This is in the ANC report from James H. Jones, the chairman.

MR. MILLSTEIN: I was not aware of that.

MS. SHAW: Which ANC is that, Commissioner Hood?

COMMISSIONER HOOD: This is 4A. So I want you to be aware that this is -- that the good neighbor policy always seems to start when you are going to be in front of the BZA.

MR. MILLSTEIN: Honestly, Commissioner, I understand that, but also we found out that we were in non-compliance on our own. That was not something where the District came to us and said that you are not in compliance.

We realized that through refinancing and had a

zoning opinion done, and we immediately hired counsel to get this cleaned up. And so it is not that we had violations and we were brought here to come into compliance.

We realized that we had a violation and we were bringing ourselves into compliance, and we want to make it right. And with regard to the dumpsters, since now we are full, and it has taken us 5 or 6 years to get full, what we are going to do -- and I am going to tell the gentleman who wrote the letter as soon as I get an opportunity to -- is that we are going to buy one 30 yard compactor that will service all the tenants, instead of seven individual dumpsters.

And we are going to screen it properly in the parking lot, and make all the tenants use that, which would help remedy this trash situation.

COMMISSIONER HOOD: I just want you to understand, because in 90 degree weather, that is not a pleasant smell.

MR. MILLSTEIN: Oh, I know that, sir.

COMMISSIONER HOOD: Okay. No further questions.

MS. SHAW: Mr. Hood, can I just make a point about the ANC? We did -- I approached the ANC and asked if they needed us to come before them, and when I spoke to then Commissioner, then Chairperson Joseph Hairston, he said they had no problems with the lot.

They felt that it did serve the members of the community and that they would not be writing a letter because they

don't write letters of non-opposition. But they would write a letter of opposition if there were any opposition.

COMMISSIONER HOOD: Well, I know Mr. Hairston, and he is well respected, but I am looking at what was written by James H. Jones, the Chairman of ANC-4A.

MS. SHAW: Okay. That's fine. We did make an attempt to communicate with them.

VICE CHAIRPERSON REID: Mr. Millstein, am I understanding you to say that in lieu of the dumpsters that you are going to be using a compactor?

MR. MILLSTEIN: Yes, Ma'am.

VICE CHAIRPERSON REID: And that it will be much more efficient and more sanitary as well, in particular with the aspect of the smell.

MR. MILLSTEIN: Plus it is sealed.

CHAIRPERSON SOCKWELL: The odors and what have you.

MR. MILLSTEIN: Right. It is not like an open top. It is sealed. It is called a dog house, and it is closed and has compaction.

VICE CHAIRPERSON REID: Well, it sounds like a good solution, and it seems to be what the neighbors were asking for, which is great. And we could also put that in as a condition.

MR. MILLSTEIN: Yes, Ma'am. That's no problem.

VICE CHAIRPERSON REID: The other thing is that Ms. White, and apparently there is someone --

MR. MILLSTEIN: And that is unfortunate. The phone call was made to a Ms. Jean White, who is in property management, but she only worked for us for three weeks, and that's why she was released, because things were falling through the cracks.

VICE CHAIRPERSON REID: Okay.

MR. MILLSTEIN: This never reached my attention, and the only reason we found out was because there was a letter written to Douglas Jemal, the owner of the company personally.

And he got it and said what is this, and I said I don't know what is this, and Jean White is gone, and we didn't have any maintenance records. So it fell through the cracks.

VICE CHAIRPERSON REID: Do you have a responsible person who has replaced her?

MR. MILLSTEIN: Yes. His name is Tim Roberts, and he has been with us for a long time. We actually brought her on to help out, because we have been growing.

VICE CHAIRPERSON REID: Okay. That may be someone that you may want to make that name available to the ANC.

MR. MILLSTEIN: Sure.

VICE CHAIRPERSON REID: So that in the event there is any other problems that you can eliminate these right away since you are obviously amenable to trying to work with the neighbors.

MR. MILLSTEIN: Oh, we don't want any problem with the neighborhood. That's really not what we want to spend our

days doing.

VICE CHAIRPERSON REID: Thank you.

CHAIRPERSON SOCKWELL: Mr. Millstein -- I'm sorry, Ms. Renshaw.

BOARD MEMBER RENSHAW: I just wanted to point out to Mr. Millstein that the ANC-4A had some additional complaints, and they are listed as conditions for the ANC's approval of your request, and it talks about unpleasant odors, debris around the dumpster, which your compactor may erase.

And recent sightings of rodents, and potential health hazards was another, and the unkept appearance of the immediate area. So you have to address these rodents. And also I wanted to ask you, do you have an attendant for this parking lot?

MR. MILLSTEIN: No, Ma'am.

BOARD MEMBER RENSHAW: Are you planning to have an attendant?

MR. MILLSTEIN: No, Ma'am.

BOARD MEMBER RENSHAW: So it is just self-park?

MR. MILLSTEIN: Yes, Ma'am.

CHAIRPERSON SOCKWELL: The previous zoning order stated in its conditions that an attendant would be on site to ensure that the parking lot was properly managed and maintained. So that is a requirement of the previous order.

MR. MILLSTEIN: Okay.

CHAIRPERSON SOCKWELL: Which is one of the things

that I would believe that the community would have a vested interest in knowing was being adhered to.

MR. MILLSTEIN: Okay. So you are not really saying then parking attendants.

CHAIRPERSON SOCKWELL: No, not a parking attendant. It's really a lot management person, and sort of your roving on-site person. You could assign the duties to an individual, perhaps in one of your --

MR. MILLSTEIN: Well, it is cleaned by two individuals on a daily basis that have been with us for eight years. In addition to those two gentlemen who clean it every day, except I think on Sundays, we certainly check it.

From a management perspective, I drive by the property every morning on my way to work, and check at least every other day, as well as this morning. But it never had a full-time person standing there.

CHAIRPERSON SOCKWELL: Right. Because it doesn't take tickets or anything like that.

MR. MILLSTEIN: Right. No, tickets and no money. That's right.

BOARD MEMBER RENSHAW: Do you have a contract with a rodent control company?

MR. MILLSTEIN: I don't know. I will find out. I will get one now though if there has been a problem with rodents.

BOARD MEMBER RENSHAW: It sounds like it is needed.

MR. MILLSTEIN: And what happened, Ms. Renshaw, is that we had food a long time ago with Papa Johns, and then they went out of business. They were only there a very short time. And then we have Gifts Father Catering, and the caterers have produced a lot more food debris or rubble.

And so the sealed compactor will help with that, and we can certainly get a rat management contract. We have a master contract with Western Services, and we will put Western on it.

CHAIRPERSON SOCKWELL: I had another question.

MR. MILLSTEIN: And also just on the odor situation. When we get the compactor, we will put an oxidation system on it, or an ionization system which actually eats the odors. It doesn't mask them. It eats them.

And if you wanted to put that as part of any condition of approval, then that's fine, too, because that helps those go away as well.

VICE CHAIRPERSON REID: What is an oxidation system?

MR. MILLSTEIN: An ionization system.

VICE CHAIRPERSON REID: Oh, ionization system.

MR. MILLSTEIN: Yes, it eats the smell instead of dealing with deodorants. It is much better.

BOARD MEMBER RENSHAW: Is this compactor going to be something that is noisy? Is this a noisy piece of equipment?

MR. MILLSTEIN: When you push the button, it makes some noise. It does. I mean, it is an annnnnnn (phonetic) sound, and it is pushing, and you hear a hydraulic noise.

BOARD MEMBER RENSHAW: And this hydraulic noise would be once a day?

MR. MILLSTEIN: Oh, no. I would assume it would probably be 10 times a day.

BOARD MEMBER RENSHAW: So 10 times a day?

MR. MILLSTEIN: Every time you fill up the dog house, you push the button and it compacts.

VICE CHAIRPERSON REID: How long?

MR. MILLSTEIN: But it is no noisier than a car driving in the parking lot.

CHAIRPERSON SOCKWELL: They don't sound like garbage disposals.

VICE CHAIRPERSON REID: It's not excessive?

MR. MILLSTEIN: No, I don't think it is excessive at all, but it makes a noise.

CHAIRPERSON SOCKWELL: It is a piston action?

MR. MILLSTEIN: It is a piston action. It is a hydraulic machine. That's right.

BOARD MEMBER RENSHAW: But the neighbors, if they are bothered by this, they can get in touch with you? And do they have your telephone number?

VICE CHAIRPERSON REID: The person who has been

hired by the company, and whose name it mentioned previously --

MR. MILLSTEIN: We will make it accessible.

VICE CHAIRPERSON REID: -- would be that person who would be available, and he said earlier that he would make that name available.

MR. MILLSTEIN: I will make it available this morning. There is also an 8 foot tall, one foot thick, concrete wall as a screening wall that masks a lot of the sounds as well.

CHAIRPERSON SOCKWELL: Mr. Millstein --

MR. MILLSTEIN: Yes, sir.

CHAIRPERSON SOCKWELL: The question that I would raise is --

MR. MILLSTEIN: Go ahead.

CHAIRPERSON SOCKWELL: -- the cycle of compacting usually takes what, 20 to 30 seconds?

MR. MILLSTEIN: That's it.

CHAIRPERSON SOCKWELL: So we are talking about 300 seconds divided by 60, which is in a minute. So that is less than 6 minutes a days that it would actually be operating.

By the time most people would know that it is operating, it would be pretty much ready to stop I would think.

MR. MILLSTEIN: It has never been an issue in any other centers of ours.

CHAIRPERSON SOCKWELL: It doesn't sound like a problem.

MR. MILLSTEIN: It works well actually. It is a pretty good machine.

CHAIRPERSON SOCKWELL: But let's ask another question. On page two of the statement of the applicant, it states that the board most recently approved the use of the parking lot, and lists the order. The order has lapsed.

Subsequently, the applicant purchased the subject property and began renovating the retail space and bringing in new tenants. I assume that Jemal purchased or Douglas Development purchased the property when?

MR. MILLSTEIN: I don't know the exact date. Approximately 4 or 5 years ago, or maybe 6.

CHAIRPERSON SOCKWELL: So in reality the major construction of the new building, which is part of your property --

MR. MILLSTEIN: Yes, sir.

CHAIRPERSON SOCKWELL: -- took place before Mr. Jemal took ownership of the property.

MR. MILLSTEIN: No, sir.

CHAIRPERSON SOCKWELL: It did not?

MR. MILLSTEIN: No, sir.

CHAIRPERSON SOCKWELL: That was then started 5 years ago?

MR. MILLSTEIN: Approximately. I am not sure of the exact date. Maybe 6 years. I am not sure.

CHAIRPERSON SOCKWELL: So the term renovation or renovating is really incorrect for the statement, because it was a renovation and construction of a new building.

MR. MILLSTEIN: That's correct.

CHAIRPERSON SOCKWELL: In fact, probably the largest single retail space in that project is that new building?

MR. MILLSTEIN: Well, it is actually -- we in-filled what used to be a gas station.

CHAIRPERSON SOCKWELL: I know what was there.

MR. MILLSTEIN: Okay. But Morris-Miller and that whole site, it is almost a third, a third, and a third. You have the Morris-Miller stretch of buildings.

CHAIRPERSON SOCKWELL: Yes, but yours is a little deep.

MR. MILLSTEIN: And then the building in the center, and the building up Eastern Avenue. But, yes, certainly a new building connected the two.

CHAIRPERSON SOCKWELL: Okay. I think that probably reconstructing and renovating would be appropriate.

MR. MILLSTEIN: Yes.

CHAIRPERSON SOCKWELL: Because it isn't just a renovation.

MR. MILLSTEIN: No, no, it's not.

CHAIRPERSON SOCKWELL: Renovations generally are considered by me to be activities that take place primarily within

the envelope of the existing structure.

MR. MILLSTEIN: I would agree with you.

CHAIRPERSON SOCKWELL: Okay. So just to clear that up. Any more questions?

(No audible response.)

CHAIRPERSON SOCKWELL: All right. Then we go to government reports, and we have the Office of Planning representative. Would you identify yourself and say good morning.

MR. MOORE: Good morning. My name is John Moore, of the development review section at the Office of Planning, and Mr. Chairman, I have made a note about the renovation and reconstruction in my report also.

CHAIRPERSON SOCKWELL: Thank you.

MR. MOORE: I would like to refer the board to page two under the zoning requirements and analysis section of the OP report.

OP believes that the applicant has satisfactorily provided support for relief from the requirements of Section 3104. Do I need to read the section or just our response?

CHAIRPERSON SOCKWELL: Just your basic response would be fine.

MR. MOORE: In response to 214.2, we believe especially when Mr. Millstein provided modification to -- I think it was Exhibit D, where the parking spaces are referred to, that

all the parking spaces will be at the same level.

And I think there was a question raised by the chair regarding the possibility that vehicles may extend beyond the parking. And I think the modified revision of Exhibit D will do that.

CHAIRPERSON SOCKWELL: Yes.

MR. MOORE: Under 214.4, the parking spaces must be contiguous. The parking lot will be entirely on Lot 17, which is contiguous to the lots contained in the uses which are accessory to the function.

And 214.5, the proposed parking lot will satisfy the requirements of Section -- of Chapter 23, and we note those sections under 23, and the response from the Office of Management's perspective, that the subject parking lot will meet the above requirements.

The prior history of the site has been approved as a parking lot by the Board for over 50 years, and the prior issuance of a certificate of occupancy for parking purposes is evidence of that.

And 214.6, the subject property has been zoned, with the strip of approximately a hundred feet deep along Georgia and Eastern Avenues, which is in the C-2-A district, and the remainder of the proper is an R-1-B.

The retail establishment occupied by all the commercial zoned areas and the retail establishments, and the

parking, are all on the same lot, but it is improbable to locate parking spaces in the principal building, because there is no excess space when you take into consideration the retail uses.

Under 214.2, according to the applicant, the subject lot has created no objectionable conditions to the neighborhood. We were unaware this morning, too, of the letter that we just got. And we are comfortable that the applicant is agreeing to work with the community with respect to conditions to make sure the lot is suitable.

We did not get a report from DPW. It is my understanding that it was just assigned, and that they were going to give me a report later. Regarding our recommendation, it is OP's conclusion that the applicant has met the burden of proof pursuant to 11 DCMR 3104, Section 214, a special exception to admit a previously approved parking lot to serve the same purpose.

There does exist exceptional situations and conditions related to the referenced property which create a particular difficulty for the owner to apply. We believe that the application should be approved, and we would recommend a period of 5 years. If there are any questions for the OP, I would be glad to respond to them.

BOARD MEMBER RENSHAW: Mr. Chairman.

CHAIRPERSON SOCKWELL: Yes.

BOARD MEMBER RENSHAW: I would like to point out on page 4 of the OP's report under community comments, where you talk

about Advisory Neighborhood Commission 4A, do not have any objections to this application.

Well, they actually do have an objection and is so stated in their letter. In other words, there are various conditions that have to be met in order for 4A to be in support.

MR. MOORE: I would agree, and I should have pointed that out. We just got this letter from the ANC this morning, too. Our previous condition was that they didn't submit letters unless it was in total opposition, but I do agree with you.

BOARD MEMBER RENSHAW: All right. I would ask that the Office of Planning amend its report to be filed with this application to so indicate.

MR. MOORE: Done.

CHAIRPERSON SOCKWELL: All right. I just want to amend the record that those -- Mr. Renshaw, they weren't objections, per se. They were just conditions.

BOARD MEMBER RENSHAW: Yes, conditions.

CHAIRPERSON SOCKWELL: Thank you.

BOARD MEMBER RENSHAW: However, if the conditions are meant, then the ANC is not going to support.

CHAIRPERSON SOCKWELL: Are there any additional questions of the Office of Planning representative by the Board?

(No audible response.)

CHAIRPERSON SOCKWELL: Does the applicant have

questions for the OP?

MS. SHAW: I would just point out that Mr. Elias did speak with a staff person at the Department of Public Works, and was told verbally that DPW was in support.

CHAIRPERSON SOCKWELL: All right. But without that -- it is irrelevant without anything in writing. All right. We now come to the -- we don't have an ANC report. Well, we do have the ANC person. I'm sorry. Would you come forward, please. Identify yourself and your address, and --

MS. PRUITT: Excuse me, Mr. Chair, before you go forward. You need to waive the record for filing time on this.

CHAIRPERSON SOCKWELL: Oh. Board Members, as we are always appreciative of information coming from the Advisory Neighborhood Commission, is there anyone who would object to us waiving?

(No audible response.)

CHAIRPERSON SOCKWELL: All right. Good. Thank you. I move that we accept the Advisory Neighborhood Commission report having coming in late.

COMMISSIONER HOOD: I second.

CHAIRPERSON SOCKWELL: All in favor?

(A chorus of ayes.)

CHAIRPERSON SOCKWELL: Opposed?

(No audible response.)

CHAIRPERSON SOCKWELL: All right. Thank you.

MS. BROWN: Good morning. I am Jourdinia S. Brown, ANC for 4A-02, but I am here this morning representing the entire ANC-4A. My address is 7820 - 14th Street, Northwest, Washington, D.C.

CHAIRPERSON SOCKWELL: Ms. Brown, have you been authorized by the Advisory Neighborhood Commission to represent them?

MS. BROWN: Yes, at the meeting on January 2nd.

CHAIRPERSON SOCKWELL: And is that included in any ANC letter? If not, it is --

MS. BROWN: Yes.

CHAIRPERSON SOCKWELL: It is?

MS. BROWN: Yes, the first paragraph of the letter. The meeting was held on January 2nd.

CHAIRPERSON SOCKWELL: Give us just a second.

COMMISSIONER HOOD: You know, can I just make a statement?

CHAIRPERSON SOCKWELL: It is a formality that we like to have a letter stating that someone other than the ANC Chair may speak for the Advisory Neighborhood Commission. And you can submit that later.

You don't have to do it now, but I am just requesting that for the record. You have a letter prepared saying that Ms. Brown was authorized to represent the Advisory Neighborhood Commission at the Board of Zoning Adjustment hearing.

MS. BROWN: Is it sufficient that I send you a copy of the minutes which authorizes me to represent the ANC?

CHAIRPERSON SOCKWELL: That would be fine. It should be on ANC stationary.

MS. BROWN: Yes.

CHAIRPERSON SOCKWELL: Thank you. Please continue.

MS. BROWN: I will make my comments very brief, because I think part of the problem has been solved by what has been previously said. I would like to read two things from my testimony, and the first one is that we are requesting approval contingent upon the BZA securing an agreement from the applicant to meet each of the following conditions.

One, that the dumpsters are emptied on a regular basis, or as needed, to prevent them from constantly overflowing and possibly causing a health problem.

And, number two, that the dumpsters be cleaned periodically to prevent odors from spoiled or spoiling food. These odors can become very obnoxious to the adjoining residents.

And, number three, that the tops or lids on the dumpsters remain closed at all times to curtail rodents or either animal usage. And may I just add that it has only been recently that we have received complaints about rodents. That was after the caterer moved in, and another restaurant that serves food in that particular development.

And, number four, that the area surrounding the dumpsters be cleaned and/or swept daily, or as needed to prevent debris from being scattered in the parking lot, or to adjacent properties.

And the last statement is that if the applicant agrees to meet these conditions, then ANC-4A approves the application. However, if the applicant refuses to meet these conditions, then ANC-4A withholds its approval and recommends that the BZA provide a similar ruling. Thank you.

CHAIRPERSON SOCKWELL: Thank you. Ms. Brown, since Mr. Millstein, representing Douglas Development, has offered a 30 foot closed trash compactor or refuse compactor, to represent the seven dumpsters that have been in question, what I would want to get from you -- and perhaps in your representation of the ANC, you would have to determine whether in going back to the body is required.

But I would represent that, number one, that we would change the word from dumpster to compactor.

MS. BROWN: Yes, I will agree.

CHAIRPERSON SOCKWELL: And that, number two, we would again change the name dumpster to compactor, which is cleaned periodically. That would be required, even though there is an ionizer, and that is about odors, and the draining refuse or draining residue from garbage and things like that is something that in a long term build-up, of course, causes problems.

So that would there again accrue over to the compactor solution, and if you have to go back to the ANC, since you have to get -- since you are going to fax something, if that requires another meeting -- and it may not.

We are just changing -- we are changing something that is really not material, per se. But we are changing physically what is being provided. So you may have to talk with your ANC to determine whether or not a revote or another meeting would be necessary, because this is an improvement over what -- a grand improvement over what has been requested.

VICE CHAIRPERSON REID: Mr. Chair, I would recognize --

CHAIRPERSON SOCKWELL: Well, let me finish.

VICE CHAIRPERSON REID: But the thing that I am going to suggest and will maybe help with that --

CHAIRPERSON SOCKWELL: Go right ahead.

VICE CHAIRPERSON REID: It has been mentioned that to change a document like that, that they have to have an official vote, and go back to the ANC. And rather than have to go through all those gyrations, then if in fact in our conditions we could then stipulate just what you said.

CHAIRPERSON SOCKWELL: Then we can do it that way.

VICE CHAIRPERSON REID: And it would therefore be done more expeditiously, and they would not have to go through a

meeting and all of that.

CHAIRPERSON SOCKWELL: All right. So the BZA's conditions will just exceed the conditions of the ANC, and then --

BOARD MEMBER RENSHAW: Mr. Chairman.

CHAIRPERSON SOCKWELL: Let me finish. That there is top or lid to remain closed because it is a closed system, and so number three would go away. But number four, we would change it to compactor so that the area surrounding it would be kept clean.

And in addition, I believe that we would probably require that the developer issue a warning to the tenants, the food service tenants, that their manner of placing garbage and trash within the dumpster be done cleanly and neatly, because that contributes to the problem when they are dumping the stuff all around the compactor, as opposed to in it.

BOARD MEMBER RENSHAW: Mr. Chairman, I would recommend that our language be dumpster/compactor, because there may be --

CHAIRPERSON SOCKWELL: No, no, there will not be any dumpsters on this site.

BOARD MEMBER RENSHAW: Mr. Chairman, please.

CHAIRPERSON SOCKWELL: There will not be any dumpsters.

BOARD MEMBER RENSHAW: Mr. Chairman, I have the floor. I am suggesting it because I did not get an idea here how

fast this compactor is going to be moved into place.

Moreover, if there is one refuge unit and it fails, then the owners or the managers of the lot may have to move into place temporary dumpsters while their big compactor is fixed.

So that to cover all bases, it seems to me to be prudent to just have the language of dumpster/compactor.

CHAIRPERSON SOCKWELL: Ms. Renshaw, if we place the language, dumpster/compactor, then this owner has the option of using a dumpster or compactor. I do not give -- we would not want to give the applicant the option, because if it is in the language, who is going to interpret the language, and who is going to enforce the rule.

MS. SANSONE: Mr. Chairman, maybe I could help out here. Perhaps the board can ascertain when the compactor will be in place.

CHAIRPERSON SOCKWELL: That was suggested by the Vice Chair to me and I had not asked that question.

MS. SANSONE: And also there could be a requirement relating to dumpsters until such time that a compactor is installed and in place, and it would also kick in then in the event a temporary dumpster would be required.

CHAIRPERSON SOCKWELL: What is the lead time for a dumpster, Mr. Millstein, or rather for a compactor?

MR. MILLSTEIN: For a compactor? It can be up to 30 days, and it can be as quickly as two days, depending on

whether waste management has one available.

CHAIRPERSON SOCKWELL: Okay. So it is a leased product, just like everything else?

MR. MILLSTEIN: Yes, sir.

VICE CHAIRPERSON REID: So within 30 days.

CHAIRPERSON SOCKWELL: Yes, within 30 days. So within a couple of weeks of any BZA order, it would be up and running?

MR. MILLSTEIN: Yes, sir.

VICE CHAIRPERSON REID: So in actuality, and the way you bring it, Mr. Chair, is that it is a given that until such time as the compactor is put in place that the dumpsters would be there. So it is a moot point.

MR. MILLSTEIN: And if the dumpster fails, then we will get it repaired immediately.

CHAIRPERSON SOCKWELL: And we will say temporary dumpsters, and permanent compactor.

MR. MILLSTEIN: Right. It is being ordered today, regardless of whatever the BZA does. We would order it anyway.

CHAIRPERSON SOCKWELL: Okay. Thank you.

MS. BROWN: Will those conditions be in effect as long as the dumpsters are there?

CHAIRPERSON SOCKWELL: Those conditions would be in effect as long as the BZA order remains in force, although it appears that the 5 year cycle can run 15, depending upon how

quickly the applicant responds once the order is about to expire.

And in this case, we would request the vigilance of the community once you know when the order has been ordered and that you ride herd on that as well. Any questions?

MR. MOORE: Mr. Chair, if it is appropriate, could you state the conditions so that I could modify my report?

CHAIRPERSON SOCKWELL: We will state it at the end.

MS. PRUITT: Actually, Mr. Chair, that is a deliberation, and we still have the rest of the hearing to go through.

CHAIRPERSON SOCKWELL: All right. Okay. Any questions of the ANC by the applicant?

MR. MILLSTEIN: No, sir.

CHAIRPERSON SOCKWELL: Okay. Then that completes the -- oh, that's right. Do we have any parties in support? I'm sorry. Any persons in support other than --

MR. MILLSTEIN: Other than the letters that we have provided from Shepherd Park Citizen's Association.

CHAIRPERSON SOCKWELL: All right. Then we note for the record that the Shepherd Park Citizen's Association did write a strong support letter for this special exception.

MS. SANSONE: Before we leave this portion of the hearing and go on to the closing statement, I feel that it is important to point out that I had raised previously this question of whether this application is properly before the Board under

Section 214 or 213.

And I still feel that this is an important question for the board to resolve. The previous order was issued under Section 213 for parking lots, albeit for an accessory parking lot.

The Board's analysis in that order tracks the requirements of Section 213 for parking lots, and not for accessory parking spaces. In addition, the Court of Appeals has previously upheld the Board's decision that the accessory parking space provision applies when the parking spaces are accessory to a residential use on a lot, and not when they are accessory to commercial uses on another portion of the lot.

That Court of Appeals' opinion is consistent with the uses of the term of accessory parking spaces in other parts of the zoning regulations. For example, the SP district and the commercial districts, all of their accessory parking space language requires the parking spaces to be accessory to the SP or commercial uses.

And so to interpret Section 214, we can look at these other sections, and the parking spaces would have to be accessory to a residential use. There is no residential use here.

CHAIRPERSON SOCKWELL: Ms. Sansone, how would you interpret the fact that the parking lot has been in existence since 1949, and therefore predates the zoning ordinance, and would be grandfathered in under that historical designation of sorts,

that history?

MS. SANSONE: Mr. Chairman, the historical -- the board's previous order in this case treats this as a parking lot under Section 3101.48 of the zoning regulations. That section has been since renumbered as 213, parking lots.

And the use of the lot is described as a parking lot, and one that is accessory. It is not described as parking spaces. So consistent with the previous history of this parking lot for zoning purposes, I believe that the previous -- that the board's previous decision was to approve it as a parking lot.

There does not seem to be any change in the law or in the circumstances here that would require treating it any differently. And that would be the recommendation from the Office of Corporation Counsel.

CHAIRPERSON SOCKWELL: All right. Under that recommendation then, how would the staff suggest that we go forward if that recommendation is accepted?

MS. PRUITT: I would defer to Corporation Counsel on this.

MS. SANSONE: Yes, I should have added that the analysis for parking lots and parking spaces and the conditions required in the regulations is not substantially different.

The Board has already heard about the traffic impacts, and the adverse conditions. So there would really be no different issues before the Board. The notice describes it as the

continuation of a longstanding parking lot and public notice is adequate.

So therefore I wouldn't see any requirement or any need for additional notice or procedural requirements.

CHAIRPERSON SOCKWELL: So do you believe that we could suffice to amend the application and change the word accessory parking to parking lot?

MS. SANSONE: Mr. Chairman, I believe that you can change the wording to parking lot, or even say accessory parking lot under Section 213, as 214 talks about accessory parking spaces.

CHAIRPERSON SOCKWELL: Right. So we can leave the wording the same as long as we change the section reference to 213; is that what you are saying?

MS. SANSONE: That's what I am saying, yes.

VICE CHAIRPERSON REID: Mr. Chair, you may want to just check with counsel for the applicant and make sure that they concur with that.

CHAIRPERSON SOCKWELL: Ms. Shaw, do you have any problem with that?

MS. SHAW: No, no problem.

CHAIRPERSON SOCKWELL: Then I would move that we amend -- well, let me get around to it. Well, the application falls under 213. All right. We will deal with that issue specifically at the end of the case.

I believe that we have had any questions necessary to be asked of the Advisory Neighborhood Commission representative, Ms. Brown. So we would have no one other than the letter from the support of the Shepherd Park Citizen's Association as support.

So it would be time to begin the opposition case or opposition part, the second section. And the opponents who wish to speak, raise your hands again.

(A show of hands.)

CHAIRPERSON SOCKWELL: There is just one person who wishes to speak before the body? Then we need to make way for that individual.

MS. BROWN: Excuse me, but may I make one request, please.

CHAIRPERSON SOCKWELL: Yes, you may.

MS. BROWN: That the owner of the property put in writing to the ANC the name of the person and telephone number that is responsible for the parking lot maintenance.

CHAIRPERSON SOCKWELL: Okay. You may identify yourself and your address.

MR. REVIS: My name is Lamar Dwayne Revis, and I live at 1129 Kalmia Road, Northwest, Washington, D.C. 20012.

CHAIRPERSON SOCKWELL: Go ahead.

MR. REVIS: As I said, I live at 1129 Kalmia Road, and my back yard is adjacent to this parking lot. And I am sorry,

as I have never done this before, and so I don't know your procedures, but I have photographs here that I would like to submit.

CHAIRPERSON SOCKWELL: You may submit them to staff at the end of the table, and they will make copies of them for us, or pass them down to us since we are not going to have time to get them copied.

BOARD MEMBER RENSHAW: Mr. Chairman, while Mr. Revis is doing that, could I ask that he also point out his home on the map?

CHAIRPERSON SOCKWELL: It is probably -- his home is not going to show on that map exactly.

BOARD MEMBER RENSHAW: Mr. Revis, does your house show on the map?

MR. REVIS: My home would be right in here.

CHAIRPERSON SOCKWELL: But you are on the other side of the street from that?

MR. REVIS: No.

BOARD MEMBER RENSHAW: Are you on the side of the parking lot?

CHAIRPERSON SOCKWELL: Oh, I'm sorry, you are the same side as the parking lot?

MR. REVIS: Yes.

BOARD MEMBER RENSHAW: Yes.

MR. REVIS: This is the entrance to the parking

lot.

CHAIRPERSON SOCKWELL: Then you have to be -- that's not where your house is then. Your house is at the top left. Go up, go up. You have got to be right there, somewhere in there. Do you see where the alley is?

Do you see where the entrance is to the parking lot? Orient yourself, and if you are coming off of Georgia Avenue, and going west --

MR. REVIS: This is the entrance to the park.

CHAIRPERSON SOCKWELL: Right.

MR. REVIS: And this is my house here.

CHAIRPERSON SOCKWELL: Right. It has got to be beyond that. So you have to be in that upper left-hand corner.

MR. REVIS: Probably Lot 11.

CHAIRPERSON SOCKWELL: Okay. How many houses between you and the wall?

MR. REVIS: There is nothing. It is just my house and my back yard, and then the brick wall.

CHAIRPERSON SOCKWELL: Okay. So then you are right there, and that's where you are.

MR. REVIS: Yes.

CHAIRPERSON SOCKWELL: You are right at that brick wall. So I assume this is your house or part of it?

MR. REVIS: No, sir.

CHAIRPERSON SOCKWELL: That's not your house?

MR. REVIS: The house immediately adjacent to that wall is my neighbor, and my house is four houses down.

CHAIRPERSON SOCKWELL: Oh, okay. So you are not next to the wall?

MR. REVIS: Not next to it, but the back yard is.

CHAIRPERSON SOCKWELL: But your back yard is not next to that wall. Your back yard is next to that other wall.

MR. REVIS: Right.

CHAIRPERSON SOCKWELL: How far are you from the intersection or from the public alley that is between your house and 12th Street?

MR. REVIS: One house separates mine from the public alley.

CHAIRPERSON SOCKWELL: And you are on the east side of the public alley?

MR. REVIS: I am on the side of the public alley nearest Georgia Avenue.

CHAIRPERSON SOCKWELL: Exactly. Okay. I see your house. Okay. You are four in, next to the trapezoid. Okay. Go right ahead, please.

MR. REVIS: I would like to say that this is not -- my letter is not the first time that I contacted the Douglas Properties. I mean, I have contacted them -- I can't tell you how many times, innumerable times, and I spoke specifically to Tim Roberts at least half-a-dozen times.

And I know also that my neighbor, Johnnie Jordan, whose house is directly adjacent to that brick wall, has caused more times than I have. We are constantly, constantly, constantly picking up trash. You know, beer bottles from Morris Miller, and trash that is blown off the parking lot on to Kalmia Road, and down Kalmia Road and into our yards.

It is a constant nuisance. The pictures that I took last August I think clearly show what we lived with for quite a long time, and what inspired my calls to Douglas Properties that went unanswered.

As I said, the number of dumpsters grew from 2 to 7. They were constantly overflowing, and food all around. Meatballs from the catering business, and old rolls, and salad, all around the dumpsters.

And for the first time in the 7-1/2 or almost 8 years that I have lived in that house, there are rodents running around in the parking lot. And I understand what preceded my testimony here has perhaps answered some of those problems.

But still there are problems, and my point is that they have been totally unresponsive, totally. And Ms. White, as a matter of fact, was the only one who did respond, and she is the reason that the dumpsters were moved from where they were initially on the side of the wall.

And that is the first thing that you see as you enter Kalmia Road, the very first thing that you see as you enter

Kalmia Road, and that is to the rear of the parking lot, but now behind my house. But at least, you know, she did something, and no one else did.

CHAIRPERSON SOCKWELL: So you are saying that Ms. White, who is no longer with the company, was the bright light?

MR. REVIS: Was the responsive one.

CHAIRPERSON SOCKWELL: That's interesting.

MR. REVIS: So of course there are obvious ramifications for this. One is mine and my neighbor's diminished quality of life. You can't use the back yard because there is constant odors.

Again, it was the first time that I saw rodents running around the place, and I had never seen that before. It affects obviously my property value. If this doesn't change, you know, who would want to buy my house with seven dumpsters, and lids always open, and trash always around.

And we won't even speak about the constant traffic, and the delivery trucks, and the constant noise when they empty the dumpsters. It is not a pleasant place to be, and it has been this way for the last two years since they fully leased -- I guess it is fully leased -- you know, this property.

CHAIRPERSON SOCKWELL: Anything more?

MR. REVIS: No, sir.

CHAIRPERSON SOCKWELL: Okay. Any questions from the Board? I will withhold my questions. Ms. Renshaw, I am sure

that you would like to start.

BOARD MEMBER RENSHAW: I would like to see Mr. Revis' pictures.

CHAIRPERSON SOCKWELL: Oh, well, while she is looking at those, let me state one thing. From the pictures, it appears that there is a recycling of paper products, and those are bundled separately as boxes from the -- I guess it is Morris Miller?

MR. REVIS: Yes, sir.

CHAIRPERSON SOCKWELL: And the --

MR. REVIS: Oh, I forgot the grease recycling. I guess they are recycling it. But there are grease containers, and half-a-dozen of them. And initially they were sitting out as I said, and the first thing that you would see when you turned on to Kalmia was grease all around them.

It is as if the people who run these businesses don't just care. They obviously don't care about the neighborhood.

CHAIRPERSON SOCKWELL: Would you -- there are two things that I wanted to look at separately. And, number one, food products which were apparently not present previous to the caterer and restaurant are now the principal reason for the rodent traffic. They are following the food.

MR. REVIS: Right.

CHAIRPERSON SOCKWELL: Before -- and how long have

you lived in the neighborhood, sir, in that house?

MR. REVIS: For 7-1/2 years.

CHAIRPERSON SOCKWELL: And for 5-1/2 years it wasn't nearly the problem that it has been for the last two; is that correct?

MR. REVIS: It really wasn't a problem. Trash has always been a problem.

CHAIRPERSON SOCKWELL: Yes, with the blowing of trash and things like that.

MR. REVIS: But the rodents and the food, no, that has been the last two years.

CHAIRPERSON SOCKWELL: So it seems that the significant deterioration of neighborhood quality has come from the food service establishments that have been brought in, and that is just from what you are saying and from what your pictures appear to describe.

And so I just wanted to get that time period clear and the issue sort of clarified. Ms. Renshaw.

BOARD MEMBER RENSHAW: Yes. Thank you, Mr. Chairman. I would like to ask Mr. Revis when does the truck noise start in the morning? In other words, do the trucks start arriving at 7:00 or 8:00, or do they start coming into your neighborhood at 6:00 in the morning?

MR. REVIS: Well, the delivery trucks I see around 8:00 in the morning. Probably a little earlier, but I know 8:00

because I am walking to work by that time.

BOARD MEMBER RENSHAW: All right.

MR. REVIS: And the emptying of the dumpsters occurs I think earlier than that according to my next door neighbor, because she said it always wakes her up.

BOARD MEMBER RENSHAW: So 6:00 in the morning do you think?

MR. REVIS: Yes, Ma'am.

BOARD MEMBER RENSHAW: Have you had in your many correspondences with the management company asked for the dumpster company to come at a later time?

MR. REVIS: No, Ma'am, I haven't. And the only written correspondence is the letter that you have. But as I said, I made many phone calls.

BOARD MEMBER RENSHAW: But the phone calls have not elicited any response?

MR. REVIS: No, Ma'am.

BOARD MEMBER RENSHAW: All right. And you have heard about this compactor that is being proffered. Do you think that is going to be any better? There is going to be some noise attached to this compactor about 10 times a day. Does that sound like something that you can live with?

MR. REVIS: Well, I think -- well, I really don't know what this thing is. I can't really envision it. But hopefully it is better than the seven dumpsters with the lids open

that we have.

BOARD MEMBER RENSHAW: Would you suggest another location for these dumpsters/compactor?

MR. REVIS: Yes, Ma'am. As I stated in my letter, there is a public alley that is between my neighbor's house and 12th Street, and it seems to me that if you are going to place the dumpsters in that area that they should be adjacent to the area alongside the public alley, as opposed to areas adjacent to my back yard and adjacent to my neighbor's back yard.

BOARD MEMBER RENSHAW: Mr. Chairman, we have seen the photographs that Mr. Revis has supplied. I would just like for him to point out on the map where these dumpsters are now located, and the location where he would suggest the compactor be positioned?

MR. REVIS: My house is here, Lot 11, and so the dumpsters presently are on the other side of this wall here, behind my house and behind my neighbor's house. These two houses here.

BOARD MEMBER RENSHAW: And they take up how many parking spaces?

MR. REVIS: Oh, Ma'am, I really don't know. I don't know.

BOARD MEMBER RENSHAW: And where would you like to see the compactor at?

MR. REVIS: And I am suggesting that they be placed

in this area over here. That is the furthest area away from these houses, and this is a public alley here. So there is nothing on the other side but the alley.

BOARD MEMBER RENSHAW: Thank you.

CHAIRPERSON SOCKWELL: Mr. Millstein.

MR. MILLSTEIN: Yes, sir.

CHAIRPERSON SOCKWELL: In that the entire parking lot is under the control of Douglas Development, are there any overriding reasons that would prevent you from having the compactor located elsewhere than directly opposite the residential property separation wall?

MR. MILLSTEIN: I don't think it should be a problem. It is just a convenience issue for the retailers on the far side of the center, but they can get over it.

CHAIRPERSON SOCKWELL: As long as it can be that way, I think it would be helpful to all the residents to move the dumpsters at least a distance away.

MR. MILLSTEIN: That's fine.

CHAIRPERSON SOCKWELL: That would to some degree might affect any noises that occur during pickups, and just as with the dumpsters themselves, it may force some delivery traffic to the opposite side.

MR. MILLSTEIN: That's fine.

CHAIRPERSON SOCKWELL: But I think the neighbors, and in particular perhaps Mr. Revis, could live with a little more

noise and a little less odor more effectively I would hope.

But there again it is up to you as representing management to try to assure that the delivery vehicles are placed advantageously, of course to the retailers and commercial businesses that they support.

But at the same time so as to cause as minimal disruption as possible to the residential owners who happen to share that parking lot border with the commercial establishments.

MR. MILLSTEIN: And I agree with that, but the only thing I want to be clear about is that we are talking about the dumpsters themselves and not the deliveries. Like Morris Miller would still want to be able to receive their deliveries in the rear of their store.

CHAIRPERSON SOCKWELL: Oh, sure.

MR. MILLSTEIN: Okay. That's not a problem at all. We can push it to the far side.

CHAIRPERSON SOCKWELL: I mean, the businesses have been there for a long time.

MR. MILLSTEIN: Yes, sir.

CHAIRPERSON SOCKWELL: And anyone who purchased a house since 1949 knew that those businesses existed there. This is not something that grew up in the community, and separate from the community. It grew up as part of the community.

So are there any questions by other Board Members of Mr. Revis? Does the applicant have any questions of Mr. Revis?

MS. SHAW: No, sir.

BOARD MEMBER RENSHAW: I have an additional question, Mr. Chairman. Mr. Revis makes the point in his letter in the second paragraph that it has been within the last two years that most of the spaces in your gateway development have been leased.

Is that a problem with these spaces being leased, or all of the spaces leased; or is it just for day traffic?

MR. MILLSTEIN: Ms. Renshaw, I don't want to speak for Mr. Revis.

CHAIRPERSON SOCKWELL: No, she doesn't means parking spaces. She means the buildings.

BOARD MEMBER RENSHAW: Yes, the buildings. Thank you for clarifying.

MR. MILLSTEIN: Yes.

CHAIRPERSON SOCKWELL: Are there any more questions?

MR. REVIS: May I add one more thing?

CHAIRPERSON SOCKWELL: Yes. Please go ahead.

MR. REVIS: Just one more thing. I know that this parking lot is important to these businesses, and I am a reasonable person, and I am not trying to deny anyone a livelihood. And I am not trying to deny Douglas Properties their money.

But all I am saying is that they have to coexist in

this neighborhood, and they can be more sensitive to it.

CHAIRPERSON SOCKWELL: Proactive perhaps?

MR. REVIS: Yes, sir. And I think it is a small thing to ask, that at the end of the day that they do all that they can to ensure that this lot is clean, and that it's -- well, clean.

CHAIRPERSON SOCKWELL: And, Mr. Revis, since you brought this up. Is there any benefit in your estimation to locking the lot at night? Is there a benefit or is there a liability to the community having the lot locked at night?

Is there any traffic that you have seen in the lot late at night that is particularly detrimental to your feelings of safety or comfort?

MR. REVIS: No, and I don't know how they could do that without it being -- I don't know how appealing they could make that, you know. It is okay that it is open.

CHAIRPERSON SOCKWELL: I just thought that I would ask.

BOARD MEMBER RENSHAW: Just a further question. Now I take it that the dumpster trucks come in from Kalmia Road into the public alley, and then swing around; is that the way that they do it?

MR. REVIS: Yes.

BOARD MEMBER RENSHAW: Would it be better for them to access off of Eastern Avenue and come into the alley? Is there

an opening at the top?

MR. REVIS: Yes, Ma'am. There is an opening into the parking lot from Eastern Avenue.

BOARD MEMBER RENSHAW: And would that be better for the residents to have the trash trucks come in that way?

MR. REVIS: It would be better. I really don't know why they don't.

BOARD MEMBER RENSHAW: Can they do that?

MR. MILLSTEIN: Let me say that the width of the entrance is much narrower off of Eastern Avenue, and trucks would have a hard time making the swing of the radius.

And also, Ms. Renshaw, I think it is important for you to also know that on the other side of that 10 foot or 12 foot public alley is back yards to homes all along there as well. So there is a 12 foot buffer, but those are residences as well.

So we don't want to push one problem on to another problem, but we want to make it better for everybody.

BOARD MEMBER RENSHAW: But these folks are closer to the problem right now.

MR. MILLSTEIN: Yes, by 12 feet.

BOARD MEMBER RENSHAW: By 12 feet?

MR. MILLSTEIN: That's right.

BOARD MEMBER RENSHAW: But that is significant?

MR. MILLSTEIN: That's right. But it would be very difficult for our trash truck to make the swing into that alley

off of Eastern Avenue, as opposed to Kalmia. It is not the same width of the radius.

BOARD MEMBER RENSHAW: I take your word for it.

MR. MILLSTEIN: I appreciate that.

MS. PRUITT: I would just like to bring to the Board's attention that it is 12 o'clock and you still have another case this morning.

CHAIRPERSON SOCKWELL: Yes, I understand that. It has been brought to our attention. Thank you. From this drawing the mouth of the Kalmia access point, if we are talking about the same access point to the parking lot, which alley entrance are we talking about? I want to make sure that I understand.

MR. MILLSTEIN: This is the Kalmia Road entrance here.

CHAIRPERSON SOCKWELL: So they both are 20 foot wide alleys.

MR. MILLSTEIN: When you swing in here, it is tighter here to make this turn.

CHAIRPERSON SOCKWELL: Oh, I see what you are saying. Coming out of the parking lot into the alley.

MR. MILLSTEIN: Yes.

CHAIRPERSON SOCKWELL: So your loader comes in and exits the same way?

MR. MILLSTEIN: Yes, sir. And also a 30 yard compactor would need to have a bigger truck, a roll-off truck,

which is considerably longer.

CHAIRPERSON SOCKWELL: Yes, a roll-off truck is a significant vehicle. There is a overhang over the rear wheels, and it could present trouble.

MR. MILLSTEIN: Yes.

CHAIRPERSON SOCKWELL: Because the vehicle does not have -- it is not an articulating body truck. It is actually a flat bed truck.

MR. MILLSTEIN: Yes.

CHAIRPERSON SOCKWELL: So I know what the issues might be. So I think that I can be somewhat sensitive to the situation. Well, Eastern Avenue is quite wide. It is wide enough, more than wide enough.

MR. MILLSTEIN: The street itself, but what happens is you come down a narrow strip of alley before you actually enter into the parking lot.

CHAIRPERSON SOCKWELL: Okay. Well, at least what might be requested is that you have your truck drivers or whomever you are using consider which way they can enter and/or exit.

If they can enter one way and exit the other way, but not enter the other way, then that might take some of the pressure off as well. If they can do a straight through motion -- because your angle going back towards Eastern Avenue doesn't seem to be that bad from what I am looking at with these drawings.

And I have seen a lot of truck backing diagrams and

what not, and things like that.

MR. MILLSTEIN: Yes, we will pose it to them.

CHAIRPERSON SOCKWELL: Yes, pose it to them and see what you can get out of them. But anyway that is just something to think about at this point. Having exhausted all of our questions, we would like to get closing remarks by the applicant. Ms. Shaw, would you want to make those closing remarks.

MS. SHAW: Yes, sir. In conclusion, based on the testimony of our witnesses, as well as the Office of Planning, the Shepherd's Park Community Association letter, and the discussion that has taken place here, and the conditions that the applicant has agreed to, which I can go over right now, we would ask that the Board grant a 10 year approval of this continued operation of this accessory parking lot.

And we would submit a revised survey regarding the compactor, and we would install the compactor as described by Mr. Millstein in his testimony. Temporary dumpsters will be in place until the time that that compactor is in place.

The compactor will be moved as described in testimony. Rodent control will be contacted and contracted with. The name of a community liaison, who works for Douglas Development, will be given to the ANC for disbursement to the neighbors for anyone who has a problem, and that person will also respond.

There will also be an on-site roving parking

attendant making sure that the parking lot is well maintained, and cleaned on a more regular basis. And food providers who have retail spaces in the development will be alerted that there have been issues with the community as to how they are disposing of their trash, and they will be warned.

So, with that, I would just ask that the Board approve the parking lot operation for a period of 10 years.

CHAIRPERSON SOCKWELL: All right. Board Members, do you feel that we need to spend more time deliberating this case?

VICE CHAIRPERSON REID: I think we should call for a vote.

COMMISSIONER HOOD: No, Mr. Chair. I think we have exhausted the subject. What I would like to do if it is appropriate is to make a motion to approve Application 16656, and also to add the conditions, the previous conditions, along with the new conditions that we went over.

But we just need to make it plain exactly what the conditions are, and with that, I would move for approval.

VICE CHAIRPERSON REID: I second it.

CHAIRPERSON SOCKWELL: Okay. Discussion?

BOARD MEMBER RENSHAW: Yes. I would like to amend the motion that the term be for a period of five years as recommended by the Office of Planning.

COMMISSIONER HOOD: I accept that, because I left

that out. Thank you.

MS. SANSONE: Mr. Chairman, did you wish to consider the conditions recommended by the traffic experts relating to signage?

CHAIRPERSON SOCKWELL: The traffic reports and conditions, can you repeat those?

MS. SANSONE: Mr. Chair, they are stated in the report at page 11; one or more signs along Eastern Avenue and Georgia Avenue, faces of the retail center, indicating customer parking in rear or a similar message.

The Kalmia Road access should be better defined through the use of pavement marking and curving as necessary to delineate the pass of vehicles and minimize inappropriate vehicle and pedestrian conflicts.

And then he also recommends signage along Georgia Avenue and Alaska Avenue adjacent to the retail center to be enhanced to prohibit stopping and standing at all times. And he has a note that this could compliment the informational signage that he is recommending along Eastern Avenue and Georgia Avenue.

CHAIRPERSON SOCKWELL: Board Members, do you have any problems with that?

BOARD MEMBER RENSHAW: Does the -- well, the ANC did not make a statement about those conditions. Is there an opportunity for the ANC to say anything at this point or are we beyond that?

CHAIRPERSON SOCKWELL: I think the Advisory Neighborhood Commission voiced its specific issues very clearly, and that any additional conditions will just be enhancements, and that the Advisory Neighborhood Commission should appreciate, as they will in fact --

BOARD MEMBER RENSHAW: Well, the ANC, Mr. Chairman, did not speak to signage, and I just wondered had that report been sent to the ANC for review.

CHAIRPERSON SOCKWELL: I don't think we got a copy. Oh, you are talking about --

MS. PRUITT: Mr. Sockwell, maybe I can help. This report was filed timely, and so it has been in our office files for at least two weeks.

CHAIRPERSON SOCKWELL: Okay.

MS. SHAW: I would like to make one point as far as signage. The applicant is happy to instruct the retail tenants to put signs saying parking in rear, et cetera. But it can't control what signage would be put --

CHAIRPERSON SOCKWELL: Well, that's true. You would have to approach the Department of Public Works regarding any signage changes, and those are certainly up to DPW to approve.

And without a report from DPW assessing the traffic impacts around the site, we can only assume that if such a report did come in outside of our time period here that it would just

have to be incorporated in separately into anything that might be desired by the applicant at that point.

And that it would not be then our responsibility to condition. Let's see. I was looking to see if there were any other --

MS. PRUITT: Mr. Chair, this is also where you have to amend the application.

CHAIRPERSON SOCKWELL: Right.

MS. PRUITT: To change it from Section 214 to Section 213.

CHAIRPERSON SOCKWELL: The first thing I would want to do is to amend the application, and move that we amend the application to reference Section 213 as the applicable provision.

MS. SANSONE: You can roll that into the one motion.

VICE CHAIRPERSON REID: Yes.

CHAIRPERSON SOCKWELL: Well, then a friendly amendment --

BOARD MEMBER RENSHAW: Another friendly amendment.

COMMISSIONER HOOD: I will accept a friendly amendment, and let's move this along.

CHAIRPERSON SOCKWELL: Do we have any other conditions that we haven't dealt with?

(No audible response.)

CHAIRPERSON SOCKWELL: And the record would remain

open for the submission of the redrawn parking lot plan, and what else? Under the circumstances, I am going to go along with a five year approval, because first of all this vote will be taken 10 years out of cycle, because the original order expired in 1990. It has been 10 years, and so they have had 10 years of freedom from us, and anything.

VICE CHAIRPERSON REID: Who has?

CHAIRPERSON SOCKWELL: The applicant.

VICE CHAIRPERSON REID: I don't think they have had the property for 10 years. They have only had it for 5 years.

CHAIRPERSON SOCKWELL: Well --

MS. SANSONE: They only became aware of the parking issue when they refinanced the property, and immediately moved for a variance.

CHAIRPERSON SOCKWELL: But they have owned it since --

BOARD MEMBER RENSHAW: Mr. Chairman, I would call for the question, please.

COMMISSIONER HOOD: I would second it if that is a motion, Ms. Renshaw.

CHAIRPERSON SOCKWELL: Well, that's fine. All right. Then all in favor?

(A chorus of ayes.)

CHAIRPERSON SOCKWELL: Any opposition?

(No audible response.)

MS. PRUITT: The staff will record the vote as five to zero to approve; motion made by Mr. Hood, and seconded by Ms. Reid, including traffic conditions as stated on page 11, and the conditions as stated by the applicant.

CHAIRPERSON SOCKWELL: And OP will amend its report as required and as necessary.

MS. SHAW: Thank you.

CHAIRPERSON SOCKWELL: The Board will recess at this point and return at 12:30.

(Whereupon, a luncheon recess was taken at 12:10 p.m)

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

(12:33 p.m.)

CHAIRPERSON SOCKWELL: We are back on the record. Mr. Ellis, have you had an opportunity to at this point come to some conclusions of your own, because I have some ideas of my own.

MR. ELLIS: Yes. If you want to go with your ideas or do you want me to begin first?

CHAIRPERSON SOCKWELL: You go first.

MR. ELLIS: Thank you. Mr. Chair, in looking at the regulations, and I understand from where the Chair is coming from in the position that you have taken, but what we propose, Mr. Chair, is that we are only asking the board to permit us the building of the 20 feet in the rear yard that we have requested in the application.

To the extent that it extends over the 20 feet, that is a whole another -- we would have to get a building permit somewhere else, and we would have to get it approved somewhere else. That is not something that is actually going to be before the board.

Indeed, since it is on Federal property, we would first have to get the Federal Government to approve it, and then we would have to get a building permit.

So therefore it is not something that we were -- we

were in showing the Board what the overall look of our project is, and not so much as asking the Board to permit us to go beyond that limit, because the board really cannot, nor does it have any authority over the property outside of the limits of ours.

We are only asking the Board today to approve the 20 feet that we are asking in the rear yard of the hospital to build the radiation oncology unit. We are not asking the board to go beyond its authority by permitting something that the board truly does not have authority to do.

CHAIRPERSON SOCKWELL: One of the questions that I had, Mr. Ellis, is that if Sibley Hospital is in fact going to request to purchase, or is requesting a purchase of land that will be from this Army site, then if that purchase is to go through, and a subdivided lot is created from the component of existing land and acquired land, then under those circumstances there may not be a request needed for a variance from 20 feet of rear yard, because your new site -- unless you are only going to buy 10 or 15 feet of depth -- will have or will far surpass the minimum requirements for rear yard.

And therefore I don't see how we can or whether we should deal with the issue, not knowing what we are really approving, because to approve -- let's say we approve a variance from the 20 foot rear yard.

You acquire the new property, and now you are going to create a new lot. That lot now has an 80 foot rear yard in it.

Where will we have dealt with the issues regarding rear yard for your true property? I mean, we will be more or less saying, okay, you can go back 20 more feet here, and then you buy a piece of property that is a hundred feet deep, and you are only building 15 or 20 feet into it. So then you have an 80 foot yard.

So in knowing what is being requested and that there is a large piece of property involved than the one that we are presented with in terms of effective boundaries, it troubles me that we are in this 20 yard issue at all.

MR. ELLIS: I understand. First, we are here because, one, that purchase, although there is certain legislation that has gone through, it has not been finalized. We don't know what is going to happen with that.

There is a whole process that this must go through, and it would be remiss for us to sit back and wait. We are dealing with some very serious issues, and with people in need of treatment. We are trying to move ahead to deal with the problems that the hospital has.

We could be down the road well over a year before we find out the finality of it, and then at that point we would be starting this process. We have -- and as I stated, and I laid it all out for the Board in my brief, that yes, we did start to apply and to start to try to purchase this land.

I mean, I didn't want to come in here and not tell the Board the honest facts here, but the reality of the situation

is that we have no idea to know what is going to ultimately happen.

So we are now at the point where we need this variance now to move ahead with the project, and that we need to move ahead with now. And so to move ahead with it now, we need the variance.

And it is in reality this -- it would be very costly, because one, as you well know, the machinery that we are talking about putting into these vaults, you go out and you purchase this machinery, and you get contracts on this machinery.

And then you start talking about, well, we don't know when we are going to be able to do it, the price of these things as you negotiate goes up, and it makes certain things prohibitive for the hospital to do.

And so what we are doing is that we are saying to you in so many words is that we are looking at this project, and we are trying to move forward with the project now.

Now, if we knew that we had this land, and as you can see, you have read everything, and it would be a matter of record, if we knew that we were going to have this land -- we would not have paid the thousands of dollars, the $1,600 for an application, and we would not be coming here, and we would not be doing this if we knew that we had the land, because we would be doing it as a matter of right.

CHAIRPERSON SOCKWELL: Okay. Well, let me ask you

this question. With regard to the FAR, which is .9 versus 1.8, we grant you the additional FAR, and you buy the bigger site, and now you have 1.8 on this site, and you now have more land, and you are going to build that to the maximum FAR allowed possibly. So we have all these issues that we have to face.

MS. PRUITT: Excuse me, Mr. Sockwell, but I believe this is Mr. Ellis' submission on -- under Exhibit 1, there is a letter from the Army Corps of Engineers, which states that they are not going to purchase it, but they are leasing the land. Is that correct, sir?

CHAIRPERSON SOCKWELL: Currently.

MR. ELLIS: We are currently leasing the land --

MS. PRUITT: And that you have approval on the land.

MR. ELLIS: -- from the Army Corps of Engineers.

MS. PRUITT: Subject to NCPC approval.

MR. ELLIS: Subject to NCPC approval, yes. Although there is a push to purchase it, because if they surplus it, and it has been surplused, then we would push and move for legislation that has been signed. But there are still other steps that you have to go through.

MS. PRUITT: I am just trying to understand. So in reference, if we were to take this as this is how it is going to go, and it is going to be leased, you are asking for a variance from your property on the rear yard?

MR. ELLIS: That's correct, not from the government's property.

MS. PRUITT: Right. It doesn't matter what you do on the government's property if they give you approval.

MR. ELLIS: That's correct.

MS. PRUITT: And so the FAR would stay on your property?

MR. ELLIS: The FAR would stay on our property.

MS. PRUITT: So the increase in FAR would all be on your property, and whatever happened on the government's?

MR. ELLIS: That's correct.

CHAIRPERSON SOCKWELL: Well, remember this. If the government sells the property to Sibley Hospital, the property becomes zoned. The property would more likely acquire the zoning of the rest of the lot.

MR. ELLIS: That's a safe assumption.

CHAIRPERSON SOCKWELL: You think that it is reasonable to say that?

MR. ELLIS: Yes.

CHAIRPERSON SOCKWELL: And then that would allow you .9 FAR on that property?

MR. ELLIS: Correct, with the additional land, and yes indeed it would.

CHAIRPERSON SOCKWELL: And so we would have granted twice the FAR allowed on the one site, and then the FAR fully

built out on the adjacent site to whatever its capabilities are. I mean, the question is --

MR. ELLIS: Mr. Sockwell, if I may for a second. You are saying twice the FAR.

CHAIRPERSON SOCKWELL: We are allowing you or you are requesting 1.8 rather than .9; is that correct?

MR. ELLIS: No, that's not quite right. We have --

CHAIRPERSON SOCKWELL: Well, a maximum of 1.8, I'm sorry. You are asking --

MR. ELLIS: No, 1.08.

CHAIRPERSON SOCKWELL: Is that 1.08?

MR. ELLIS: Yes, 1.08 is the FAR that we are looking for. We are going from .9 to 1.08, which is -- you know, technically, if you --

CHAIRPERSON SOCKWELL: Well, I looked at it from the square footage standpoint.

MR. ELLIS: Well, the square footage is 460 something thousand square feet.

CHAIRPERSON SOCKWELL: The full build-out as I saw it in your brief was that there was 566,819 total. Your new proposal, inclusive of everything that has been built and what you are requesting, would only be for 541,508.

MR. ELLIS: That's correct.

CHAIRPERSON SOCKWELL: And that included the previously approved construction and the requested FAR transfer.

MR. ELLIS: No, no. We would have had -- if I understood you correctly, the --

MS. PRUITT: Mr. Chair, based on the calculations, wouldn't that be less than one FAR increase, from .8 to .18?

CHAIRPERSON SOCKWELL: Well, we will forget the points, because I looked at it more in the square footage. What I wrote down was the R-5-A,

R-5-B differences.

MR. ELLIS: Actually, Mr. Chair, if you look on the computation sheet, and I will have our architect, Mr. Oudens, speak to that. But if you look on the computation sheet, 541,508 square feet is what we are asking for now.

CHAIRPERSON SOCKWELL: Correct. That's what I said.

MR. ELLIS: And that is 1.04, which is actually even less than what we just originally stated.

CHAIRPERSON SOCKWELL: Okay.

MR. ELLIS: So we are not asking for that much in terms of overall FAR, all right? So if you were -- you said a moment ago that we would be doubling it, and --

CHAIRPERSON SOCKWELL: I'm sorry, that was in error. I retract that. It was just that the actual square footage numbers I had absolutely on point. I just mis-wrote down what I was looking at as your maximum allowed FAR and I apologize for that.

MR. ELLIS: Okay. And even if we bought the --

CHAIRPERSON SOCKWELL: But that doesn't change anything.

MR. ELLIS: Okay. Even if we bought the new site, it doesn't mean that you have doubled or even substantially increased on one site, because if we combine the two sites, the FARs for the two sites combined together, and not one as opposed to the other.

So the FAR would still be utilized throughout the whole site. So you would not have bunched it up on one site.

CHAIRPERSON SOCKWELL: Yes, that's true. You would wind up back here again.

MR. ELLIS: I'm sorry, I don't follow that.

CHAIRPERSON SOCKWELL: I'm just kidding that you might find yourselves back up here again, but the point is that it is the rear yard issue that I am most concerned about, because if we are granting a rear yard variance, and usually when we grant a rear yard variance, we know exactly what is being proposed to be built.

In other words, we know the dimensions of the building, or construction, or structure. In this case the dimensions that have been provided to us extend on to property that we have no control over because it crosses the property line.

And yet rather than what I think personally is a variance of the rear yard requirement, to me is an abandonment of

the rear yard requirement because the construction goes beyond the normal lot control issues and crosses on to the adjacent site.

MR. ELLIS: Can I address that issue for a second, please?

CHAIRPERSON SOCKWELL: Yes, please.

BOARD MEMBER MOULDEN: Mr. Chair, I have a pretty important question to ask the applicant. The National Capital Planning Commission received a submission from the Army Corps in lieu of zoning to build an addition for Sibley Hospital?

MR. ELLIS: Yes.

BOARD MEMBER MOULDEN: But a few minutes ago, you said that you are not requesting any zoning relief for the portion to be built on the Federal Government property?

MR. ELLIS: Not here. We are requesting it, but not here, because here is not the appropriate forum to request zoning relief to be on Federal property.

BOARD MEMBER MOULDEN: I know that, because I work with the Commission.

MR. ELLIS: I know you do. I know you do, and so that's why I was making that distinction.

BOARD MEMBER MOULDEN: And in this application, you are asking for a transfer of excess floor area ratio, and this is for the entire site. Am I correct?

MR. ELLIS: You are correct. Technically, if we had known that this was going to be really an issue, we would have

reduced the -- to the extent of being 541,000 square feet, it would be even reduced from that.

MR. OUDENS: No.

MR. ELLIS: Yes, it would, because it would not all be on that same site.

CHAIRPERSON SOCKWELL: The appearances that --

MR. ELLIS: Well, my architect disagrees with me, and so let me just --

BOARD MEMBER MOULDEN: Well, I am talking about the process point. It may appear to me that you are putting the card before the horse. There are a number of processes that you have to go through at the Federal and local government levels.

If we approve the zoning today before the Federal Government's approval in lieu of zoning, and not counting the transfer or sale of the property, because as I understand it this is just a lease agreement on the land.

MR. ELLIS: Correct.

BOARD MEMBER MOULDEN: So I am a little confused as to --

MS. PRUITT: Mr. Moulden, what would happen is that if the Board approved this and NCPC did not, it couldn't go forward and so it would be moot.

BOARD MEMBER MOULDEN: Well --

MS. PRUITT: So you are not taking away the Federal's rights or any of its power to rule over its particular

portion of the land.

CHAIRPERSON SOCKWELL: The 521,880 square feet shown in the computations as a lot area includes what?

MR. OUDENS: I am Gerald Oudens, the architect for the hospital; of Oudens and Knoop Architects, 2 Wisconsin Circle, Chevy Chase, Maryland 20815.

The 521,880 square feet is the area and square footage of the 11.98 acres that the hospital currently owns and upon which most of this addition for radiation oncology will be built.

Back in 1998, March of 1998, the Board of Zoning Adjustment authorized an increase in the FAR to 1.08 in order that the hospital might build assisted living and skilled nursing facilities on their property.

In fact, that increased the permitted gross floor area on the property to over 569,000 square feet. That project, as constructed, totals about 530,000 square feet. So in effect the FAR required to build this radiation oncology has been granted, but it was not granted for this project.

So what this application is for is for the transfer of previously permitted construction to a different use. Now, this different use, the radiation oncology addition is about 14,000 square feet, and 11,000 square feet of that resides on hospital owned property.

And 3,000 square feet is on Federal property. The

11,000 square feet is what we are asking for to be transferred from the original FAR use to this new use, and when you add 11,000 square feet to the 530,000 square feet that currently exists on the property, we are at 541,508 square feet. That is what the application is for.

The Army Corps of Engineers, because they own the Federal property upon which we propose construction, the Corps of Engineers has submitted and requested from the National Capital Planning Commission authorization to permit Sibley to build this 3,000 square feet on Federal property.

But the application before the Board is to build 11,000 of that within the existing situation, which is hospital owned property. Eventually there is the matter of the acquisition of this property, and if and when that happens, we would have as you point out a very different case.

But the case as it exists right now, in order for the hospital to proceed with this project, they do need several things. One is a transfer of FAR to a new project. The second is relief from the 20 foot rear yard, since in the existing circumstance we are building into that rear yard.

And third is permission from the Government to build on Federal property for which a zoning permit and so forth authorization is not required.

We are speaking of the situation as it exists today, because the hospital has a project that they simply have to

get on with.

CHAIRPERSON SOCKWELL: And, Mr. Oudens, that was very clearly stated. I think that it is probably more clearer in your statement than it was in the brief. But one of the issues that has been placed consistently throughout the brief is the fact that the property would be sold, or is intended to be sold, to the hospital by the Army Corps.

And that Congressional legislation has been approved -- and I think it said signed by the President or whatever -- for that purpose. So the ultimate is that this will become a part of the property holdings of Sibley Hospital.

As far as we know, we have no idea how much property is involved, and what issues are involved, and what you are saying is that -- or what I believe you are implying is that the rear yard relief requested is a stop gap measure in the best of worlds where the property is assessed.

And that the hospital can afford to purchase it, and in the worst of worlds, that long lease and covenant will be provided running with the Federal portion of the land if such covenants are even legal with Federal land, which I don't know, because you are getting into an area where Government liability is sort of a gray area to me in the detailed area of such covenants.

So we are looking at something that doesn't conform to the normal zoning review and approval process, and that there are elements that are somewhat different.

MR. OUDENS: Let me respond if I may, Mr. Chair.

MR. ELLIS: And I would like to respond, too. We both would.

MR. OUDENS: Hopefully the hospital will own the Federal property, but it doesn't at the moment. If and when the hospital does own the Federal property, then two things will happen, vis-a-vis variances that have been already accorded.

If you were to approve the rear yard variance and the hospital gained that property, then that variance would no longer exist, and it would not be required.

Similarly, the Board has approved an increase in FAR for the hospital property. Should the additional property be purchased, acquired, and consolidated, that original and earlier variance of 1.08 times the hospital property area, would be subsumed into the new area.

In other words, the credit that the hospital has been given in terms of additional space would now --- that the hospital would own the property necessary to create that space by right, and in fact they would no longer have a variance for FAR, and they would no longer have a variance for the rear yard.

CHAIRPERSON SOCKWELL: Right. They would be working strictly on a matter of right for those things.

MR. OUDENS: Right. But the issue is one of time. As I said, hopefully the hospital will eventually own that property, and we are talking about the present, which necessarily

at the present, since the hospital doesn't own that property, is that the hospital comply with the zoning regulation.

And if we look to build in the rear yard as it currently exists, then we need to seek a variance for that construction, and that really is what this application is about.

If we were to wait until the property is acquired, consolidated, a map amendment issued to convert it from a Federally owned zoned property to a District of Columbia zoned property, the time involved in each of those steps is extensive.

We could be talking about starting a project a year-and-a-half or two years from now, as opposed to hopefully six months or so from now.

CHAIRPERSON SOCKWELL: All right.

MR. ELLIS: And if I may add to the mix one other thing, and that is that the assumption is that because the President signed that this is a done deal.

CHAIRPERSON SOCKWELL: No, that's not our assumption here.

MR. ELLIS: Okay. It is not, and so we have to move ahead. If we knew -- and to be clear, if we knew that this land was in our bank, and we knew that we were going to have it very shortly, we would not be sitting here. We would not be wasting the board's time. And so we are moving ahead because this is something that we need to move ahead with.

CHAIRPERSON SOCKWELL: Well, I think based on the

discussion that we have had here, I think we can move forward with the case on the basis of a rear yard variance, knowing and realizing that there will be reviews and approvals at other agency levels which may restrict or may guarantee your ability to build prior to purchasing and creating a single subdivided lot of record for this construction.

BOARD MEMBER MOULDEN: But I guess the anchor is that there is a lease agreement, and the lease agreement makes it more official, because when this goes to NCPC next month, they may ask has the zoning board, has the BZA made all the approvals, and vice versa, and we are asking that now.

To me it may have looked better if the NCPC had made all its approvals, and then it came to the BZA.

CHAIRPERSON SOCKWELL: The covenants won't be in place for any construction. I believe that under DCRA's rules that it would be interesting to see how they approach the permit process.

But from the standpoint of granting or considering a rear yard relief variance, while I do think it is a very complicated set of circumstances, I think we probably can go forward with that and see how the case is presented. Board Members.

MS. SANSONE: Mr. Chairman, if I may ask one question of the applicant, of Mr. Ellis. Since the Board, if they grant these variances, the order is considered to also approve the

plans for the facility.

Is there any likelihood that as a result of your NCPC or other reviews that you would be needing to come back to the Board for modification of those plans?

MR. ELLIS: If NCPC were to tell us that we could not build on the Federal land, then essentially we would have to scale back to be totally within the boundaries of what we have now, and we would have to do some scaling back.

MS. SANSONE: So your intent would be to come back to the Board and request a modification of the plans in response?

MR. ELLIS: If NCPC were to reject it, we would have to have some modification of the plans, yes, we would. But I think what we are talking about is something that would be fairly minor.

CHAIRPERSON SOCKWELL: Ms. Sansone, based on your question, do you believe that it would be more appropriate that we hear the case and withhold an issuance of an order until it is clear what will be built?

The issue is again whether or not we are approving plans that are accurate to what can be built, or whether they are plans that are contingent upon other than the normal review and approvals that would -- because normally we would come as a building permit application referred often.

It comes as a building application referred. In this case this is going to have to go through other agencies

before it can become a building permit, because it is a straight referral is it not?

MR. ELLIS: No, we filed for a building permit, and they have sent us over from the zoning administrator's office. So it came as a regular course.

CHAIRPERSON SOCKWELL: So it did come in regularly.

MR. ELLIS: And let me just say this. This is not the first case that has been before this Board that needed NCPC approval or some approval of some other board.

CHAIRPERSON SOCKWELL: Oh, I would not hesitate to believe that at all, but my issue is more that we are dealing with a boundary line between properties, one of which in particular is Federal, the issues of which are particularly different from those of typical private property.

And the issue of granting relief for construction outside of the property line that is not on public space, and without first having something to really hang our hats on that says that this can be built one way or the other.

And that again relates in part to the issue of the fact that it is Federal property, and in part to the fact that it is not in single ownership to the sites that are involved, and in part because there are no covenants in place that would grant this approval. The only thing that is in place is a lease.

MR. ELLIS: It is a lease and a letter saying that they approve us doing this. And let me be clear about something.

CHAIRPERSON SOCKWELL: Right. But the letter approving does protect the government, and the covenant protects Sibley Hospital.

MR. ELLIS: Right. But let me just say that in may of these cases where we have come before the Board, and parking has been an issue in some of the cases, we park a considerable amount of our cars off-site on this Federal land.

Approvals have been forthcoming and what we are saying here now is that this is the beginning of a process that we are trying to do, as most applicants that have to go to multiple jurisdictions for approval.

If the Board gives us the approval here that we are seeking, NCPC does have to pick up the ball, but so does SHPDA, and there are others that are out there that have to. I mean, when you deal with a hospital, you have lots of approvals that have to be gotten.

And in our case now we have NCPC, but I think if the Board were to give us a decision, NCPC has before it that at least this Board has given its approval, and it takes a look at it from the Federal interests, which is what they are supposed to do, and they will say if there is a problem with it.

And they are going to look at what the Army Corps of Engineers' position is on it, and then they will deal with it using their regulations, and they will come to a decision.

And as I stated earlier, if they for whatever

reason decide no, we have to come back. But if any group decides no in the process, there has got to be a change.

So that happens and any time that you have multiple jurisdiction cases, along the line one person or one organization says no, or you must change this, it means that somewhere you have to go back to somebody and say I need to change this. It just so happens that it is this board here.

CHAIRPERSON SOCKWELL: All right. I understand that you have to step sell this. The question is not what step you use first. It is how we build the step if we buy what you are selling.

MR. ELLIS: And I fully understand that.

VICE CHAIRPERSON REID: Mr. Chair, if I may.

CHAIRPERSON SOCKWELL: Yes.

VICE CHAIRPERSON REID: I think the fact that this particular application appears to be one of those that is not unsimilar to the ones that we have had with George Washington Hospital, we had an applicant who is basically a multiple tracking type of thing, wherein there are various and sundry permits and licenses, and the like to obtain prior to anything being operative.

And I think that this is just one step in a series of steps, and whether or not we grant approval here or not is really irrelevant to the whole process, in the sense that if we did grant approval -- let's say that we were inclined to do so,

that does not automatically mean that we will go forward.

This is just one of the steps within the process, and whether you get approval here, that would not negate them the necessity of them having to go to these other various stages.

And at any point in time when that is assessed or analyzed, regardless of what track they are in, it could be turned down on its own merits based upon whatever those requirements are.

CHAIRPERSON SOCKWELL: Yes, it could. The relevance of our approval is in that it builds the momentum for approval, and you said that it may not be irrelevant.

VICE CHAIRPERSON REID: I don't agree with that.

CHAIRPERSON SOCKWELL: Well, let's say if we did not --

VICE CHAIRPERSON REID: May I?

CHAIRPERSON SOCKWELL: Yes. I was responding when you had stopped.

VICE CHAIRPERSON REID: But I wasn't finished. No, I didn't stop.

CHAIRPERSON SOCKWELL: Well, then continue, and I will wait.

VICE CHAIRPERSON REID: Because if in fact an application receives BZA approval, then it has to go further, and we have seen applications approved here and not be able to get approved --

COMMISSIONER HOOD: Let me just echo Vice Chairman

Reid's issue, and with that I would make a motion, colleagues, if it is in order, that we proceed with this case.

VICE CHAIRPERSON REID: Okay. Right.

CHAIRPERSON SOCKWELL: And I will second the motion. Any discussion?

COMMISSIONER HOOD: I did that because the dialogue seems to be going back and forth, and I think that everybody is in agreement to move forward. If we are in agreement, then I would take the motion off the table.

CHAIRPERSON SOCKWELL: Okay. Let's move forward. Go ahead.

VICE CHAIRPERSON REID: But I think the question that we are trying to ascertain and the question to Counsel Sansone is can we proceed.

MS. SANSONE: Yes, Ma'am Chair. I was just trying to follow a little bit on Mr. Moulden's concerns.

VICE CHAIRPERSON REID: Okay.

MS. SANSONE: And ascertain that the plans, if there are any changes that come down the pipe, that the applicant would come back.

VICE CHAIRPERSON REID: If they have to.

MS. SANSONE: If they have to.

VICE CHAIRPERSON REID: Okay.

CHAIRPERSON SOCKWELL: Please present your case.

MR. ELLIS: For the record, Mr. Chair, again I am

Craig Ellis, and I am counsel for Sibley Memorial Hospital. As I stated earlier, we have several witnesses here. With me to my right is Jerry Price, who is the chief operating officer for the hospital, who will give us an overview of the program, and what is intended to be achieved here.

Next to Mr. Price, we have Dr. Irene Gage, and next to Dr. Gage, we have Mr. Gerald Oudens, who you have already meet. As I stated earlier, we are here for two variances; a variance from Section 404, the minimum rear yard, which we have talked so much about.

And lastly a variance to allow the transfer of excess floor area ratio under BZA Order 16312 for the construction of a CBRF on the subject site to a proposed addition of the radiation oncology unit.

I would just proceed with Mr. Price. Mr. Price, can you state your full name for the record, please?

MR. PRICE: I am Jerry L. Price.

MR. ELLIS: And can you tell us what your position is, please?

MR. PRICE: Chief Operating Officer at Sibley Hospital.

MR. ELLIS: And can you tell us about the radiation oncology program that you are proposing?

MR. PRICE: Sure. Let me just first of all thank everyone for allowing us to go forward to present our case. We

think we will be able to do so quickly and succinctly.

And you will agree with us that it wouldn't be wise for us to wait. Let me also say that we have our first hearing with the State Health Planning Development Agency this week.

The project review committee will hear our request for a certificate of need. The staff of the State Health Planning Development Agency has already produced their report, where they recommend approval of our project.

So that is one of the regulatory hurdles that we anticipate clearing. We are building this radiation oncology project to better serve the community where the hospital is located.

We were approached probably 3 or 4 years ago by a number of our physicians who said that your radiology oncology services are not good enough, and they need to be upgraded.

This related to technology and it also related to the physicians that we had. I might say at that point that we terminated the contract with the physicians that we had in the department and hired a new physician by the name if Irene Gage.

We hired Dr. Gage from Hopkins, and she is with us here today, and she will speak specifically concerning the need for this project. But as a result of hiring top quality physicians, the workload in this area has more than doubled.

We are left with some untenable situations, in terms of where people wait, and the way that people are mixed with

our in-patients, some things that don't enable us to procure the kind of technology that we now need to have.

Our technology in this area is about 14 years old. These learning accelerators, the new ones, do not work in the vaults that we currently have, and you will hear more about that from Dr. Gage.

What I would like to just address for a couple of minutes is our working relationship with the community. We have several residents who live in the 5200 block of Loughboro Road who are supportive of this project, and who have gone on record to say so.

There is one of those residents who is here today. As a matter of fact, the individual who lives directly across the driveway from the hospital is here today to indicate his support.

We also have the support of the Palisades Community Association and the President of the Palisades Community Association, Penny Pagano, is here with us today, and I think her statement is a part of the record.

Ms. Pagano, about two months ago, appointed a task force of representatives from the community to deal with the hospital on issues of concern to the community, and residents of the 5200 block were included.

In fact, Ms. Shaughness was included in that, and we have agreed -- and as you can see from the documentation that came from the ANC-3D that we have agreed to work with the

community to discuss the idea of providing bus, boarding and layover bays for metro buses and ride-on buses on the Little Falls Road behind the hospital if the road bed is suitable.

And we are checking that out right now. We have agreed to a number of other things, in terms of relocating bus stops in the community, and I might also say that the 1400 employees that do work at Sibley Hospital, far greater than probably 95 percent of them drive their automobiles, as opposed to ride the metro buses.

So the metro buses exist for the community as a whole, and not just for our hospital. We also have agreed to install landscaping to ameliorate some of the issues that you will probably hear about a little bit later on from the neighbors.

And we have just received some information back from our landscape architect, and we will be setting up a meeting with this community group that Ms. Pagano has appointed to present our landscaping, our comprehensive landscaping plan for that.

We have also agreed to try to find ways to ameliorate some of the concerns that they have with the parking lights at our skilled nursing facility. We have agreed that the construction traffic for this project will enter and exit off of DeCarlo Parkway so that there will be no -- and we can control this, but that there will be no dump truck and construction traffic on Loughboro Road.

We have also agreed that all of their workers will

park on our site, as opposed to parking on neighborhood streets, which is something that we always do for our projects.

So I might also point out that Mr. Patrick Shaughness is here with us today. I don't know if he is going to be giving any testimony, but he was the ANC Commissioner that actually sponsored the resolution which led to the five to nothing approval by the ANC-3D of this project.

We had a total of seven meetings with the community, and with the combination of ANC and Palisades Community Association, and this was discussed with the community at length.

And as you see from the documentation that you have, it was eventually approved unanimously by the ANC. We have always acknowledged our neighbors, and we have always done the very best that we could to work with them, and we will continue to do that.

You can find testimonies from neighbors who live directly across from the hospital of what a good neighbor the hospital has been, and hopefully you will hear some of that today.

So that is really the end of my statement, and I would be available to answer any questions that you may have.

MR. ELLIS: Mr. Chair, can I move on to my next witness?

CHAIRPERSON SOCKWELL: Yes, go right ahead.

MR. ELLIS: My next witness is Dr. Gage, and Dr.

Gage, would you state your name for the record?

DR. GAGE: Irene Gage.

MR. ELLIS: And where do you live?

DR. GAGE: I live in Chevy Chase, 7905 Glendale Road.

MR. ELLIS: And where do you work?

DR. GAGE: Sibley Memorial Hospital, Department of Radiation Oncology.

MR. ELLIS: All right. Can you tell us specifically about the radiation oncology unit that is proposed to be added to the hospital?

DR. GAGE: Sure. Thank you for the opportunity to speak on behalf of -- I really represent my patients. The impetus for this project really stems from our inability to provide the best care for our patients in the present physical plan on a couple of levels.

One is that there is not the physical space for patients to have any measure of privacy, and to have independent changing areas. Mr. Shaughness actually came to tour the department and said that he felt that we might be able to apply for a variance because of really significant problems that he found in our department.

The other issue is the lack of our ability to get new technology in the existing space. We have space that was designed 20 years ago for technology that was 20 years old, and we

need to update this equipment.

And those are really the issues, in terms of providing for a new space for the department. The existing space can't be modified. There is shielding requirements and space requirements, and some of the newer technology as well. So I am really here to appeal for my patients.

MR. ELLIS: If there are no questions, I would move on to our next witness, Gerald Oudens.

MR. OUDENS: Good afternoon. My name is Gerald Oudens, and I am here to testify about the physical facts of the application as they relate to the zoning regulation on the site plan, and the hospital property, bounded by Loughboro Road and residential neighbors to the south; McArthur Boulevard, and the Delcarlia Treatment Plant to the west, and the Delcarlia Parkway to the east; and Federal property of the Delcarlia Reserve owned by the U.S. Army Corps of Engineers to the north.

The comments that Mr. Price made about landscaping and so forth have to do with the project that is currently under construction and nearing completion, and have no direct bearing on our proposed project here behind this Hays Hall facility.

The current radiation oncology department as Dr. Gage has noted was designed in 1987, really as an adjunct to the Department of Radiology, which occupies this part of the building. It is in basement space.

It has vaults that will not accommodate current

equipment requirements, and it is impractical to try to expand that department in place to accommodate the service. The space needs simply cannot be met in that location.

I would further note that as basement space, it is relatively inaccessible to 95 percent of the people who use the service; that is, outpatients. Five percent of the people using the service are in-patients.

A better answer -- and we had explored renovation opportunities in this location, but a better answer is a one-story addition behind Hays Hall, which offers the relationships, the space, subject to the required variance and the required approvals by NCPC behind the Hays Hall building over here at the north side of the site.

The project includes approximately 14,000 square feet of new construction, of which 11,000 is on hospital property, and about 3,000 is on Federal property. Here is the boundary line between the hospital owned property and the lease property.

The hospital property is about 12 acres, and the lease property is about 8-1/2 acres, and as I mentioned earlier, an FAR variance was approved in the amount of 1.08 for the hospital owned property, permitting us to build approximately 570,000 square feet, permitting the expansion, the major expansion of the hospital for these assisted living and skilled nursing facilities to the west.

During the development of the project that FAR was

not required, and we were able to complete that project for 530,000 square feet of the 569,000 feet plus that had been or would have been permitted.

We are now seeking to use that authorized FAR to construct a different project than the one for which the FAR variance was originally proposed, and that is this radiation oncology addition.

As I mentioned earlier, this portion of the project has to be approved by the National Capital Planning Commission and the Army Corps of Engineers has submitted the necessary application and back up for that review process.

In all likelihood in our estimation that will be approved because the Army recommended and the National Capital Planning Commission recommended construction of tiered parking over here on this leased property here at the west side of the property, and over here to the east.

This addition, I believe, will be considered dominius and I would hope that we would achieve approval for it. As noted earlier, we have a service drive now that is on our property and comes into the property, and swings through here and back out to Loughboro Road.

Our project will span that service drive, closing it. The proposal is that we shift that -- and that service drive accommodates both service vehicles and ambulances, all of which either enter from Delcarlia for traffic coming from the east, or

from Loughboro Road for traffic coming from the west and south.

Our proposal is that in closing this road that we shift that traffic, such that the route is back here on Little Falls, and we provide a cut through drive directly to the emergency department here, and then beyond the dietary service dock, and the medical supply service dock.

There actually would be no change in traffic, except to the extent that ambulance approach would be improved. Ambulances arriving from the north on McArthur Boulevard now have to come down and manipulate this intersection, and come into the site here, and up through the service drive, and around behind to get to the emergency department.

By providing this cut through, ambulances will be able to enter the site here from McArthur Boulevard, move along Little Falls Road, and then into the emergency department at this point. Beyond that there is no significant difference in the way service or ambulance traffic will enter the site and move through it.

I would like to tell you briefly about the plan to help you understand why the shape, the configuration, the need for the variances are required. Literally, the plan is organized in four zones.

We have outpatient reception here from the current Hays Hall entrance door to a reception area here, or from parking to the north through this aisle to this reception area.

This portion of the plan is patient reception and staging. The core of the plan is a nurses station, and examination and consultation rooms. Over here on this side of the project, we have the backup support space of offices and so forth, and here along the north the treatment facility, et cetera.

Now, each of these interrelates. It is important that the patient reception area relate to the diagnostic and consultation area, and to the treatment area. It is important that the backup support relate to these two areas. It is important that patients be able to access office and consultation facilities in an easy manner.

So you can see that that set of relationships -- the patient, and nursing corps, and support corps, and treatment corps -- sets up a geometry for the project that results in this configuration, and that is a product of the function and its relationship to the site.

Hopefully the National Capital Planning Commission will approve these vaults in these locations because any replanning to reorganize this complex would inevitably result in a facility that is less effective.

I noted that this is a one-story addition, and with a maximum height that these vaults would have is 18 feet, and that concludes my testimony. Thank you.

MR. ELLIS: Mr. Oudens, just to be clear, is there any other place within the property or on the site plan that you

have there that you could have placed this property and still have it useable for the hospital?

MR. OUDENS: Well, I think that this is the ideal location, in terms of access to 95 percent of the patients who use it are here from the visitor parking side or from this parking that would be dedicated to radiation oncology use.

It is very easy access for outpatients, but at the same time the vicinity has plans that we get easy internal access for the five percent of the patients who come from the hospital and need access to the facility.

I can conceive of no other location on campus that gives you that good set of circumstances. Furthermore, I think that the location from the standpoint of not only the hospital and its internal relationships, but the community and the impact, I can't imagine that this would have an adverse impact on the community visually.

But nevertheless it is here over here on the north section of the site, and the construction will be contained, and the building will be contained, and in fact away from the community and for the residents who would have a concern for the project.

MR. ELLIS: No further questions. Thank you.

CHAIRPERSON SOCKWELL: Board Members.

VICE CHAIRPERSON REID: I have one question very quickly. In regard to some of the issues that have been raised

with regard to obvious impact by persons and community, how do you perceive that actually being mitigated if necessary as to the issues in regard to noise, or traffic, or congestion, and things of that nature?

MR. OUDENS: Well, this facility, the current facility, was planned in 1987 for 30 patients a day. That caseload. as Dr. Gage has testified, has now increased to approximately 70. This proposed facility does not intend or does not look to expand that caseload, but simply to handle it in a more responsive facility.

It is estimated -- and I think that Dr. Gage and Dr. Sibley now could address this, and that it is estimated that the caseload in this facility will stay on the order of 70 or 80 patients a day.

The additional traffic -- in other words, what I am saying is that the patients who are here now, we don't see this project adding to traffic, or noise, and we don't see that the project use would have an adverse impact on the community.

VICE CHAIRPERSON REID: So in other words, even though the space is expanding, the intended us remains the same?

MR. OUDENS: Yes.

VICE CHAIRPERSON REID: Thank you.

BOARD MEMBER MOULDEN: I would like to know -- well, I guess this is maybe taking a question away from the ANC rep, but what was your community outreach process, or what is your

community outreach process when the hospital plans to expand?

MR. PRICE: I can address that. What we usually do is that we go to the Palisades Community Association first, because we like them to be in a position to provide a recommendation to the ANC.

And usually we meet with the Board first, and so back in September, we met with the Board of the Palisades Community Association, and laid out our plans.

And we usually always go to them actually without a plan, saying here is what we want to do, and do you have any input before we put our plan together, and they usually come up with some concerns.

And then the next step is to go back to the full Palisades community in one of their meetings at the community center there in Palisades, and we did that twice. Dr. Gage and I, the architect, we were all there and answered questions.

We went back a third time, and then we hoped that they will then give us a letter of recommendation so that we can go to the ANC. Actually, in this process, in the meantime we had gone to the ANC for their first meeting, saying, hey, we are not asking for anything tonight.

Here is what we are planning though, and we want to give you a heads up. We are still working with Palisades. As soon as Palisades was finished, and had provided their letter, then we went to the ANC for our final time, and had a lot of the

same players that you see here today, and listened to their concerns.

And I might say that most of the concerns that we heard at the ANC were not about this project. They were about what they don't like about previous projects, and what they don't like about the metro buses, and all of those other things, just as they probably will be today.

But we listened with patience, and we are doing what we can to work with them on those things. But that is pretty much typically our process, and we are committed to that, and I think that has served the hospital and the community well.

And as I said, Ms. Pagano has set up this community group now that we will continue to meet with on some of these issues that you heard Ms. Shaughness talk about earlier and no doubt will hear her talk about in a few minutes.

CHAIRPERSON SOCKWELL: A couple of questions. One, the existing -- you stated that the existing level of patients is at about 70 per day; is that correct?

MR. PRICE: Yes.

CHAIRPERSON SOCKWELL: And that will probably remain somewhat stable, and under what circumstance is one to believe that that stability will ensue?

MR. ELLIS: For the record, we have now with us Dr. Gregory Sibley. Dr. Sibley, would you please introduce yourself.

MR. SIBLEY: My name is Gregory Sibley, and my

address is 326 Senagard Place, Great Falls, Virginia, and I work at Sibley Hospital. Your question about the patient numbers. When I was first recruited to come here, about 20 patients were being treated a day, and soon after Dr. Gage and I arrived, the numbers were up to 40, and have gone up to 60.

And the highest that we have been is about 80. We have now kind of settled back down at around 60 to 70 as our typical number. I think that there is a chance that our business could grow over time, but that wouldn't be anything that we would have control over.

That would be how the community views our services and desires to come here. But we don't expect it to keep going up. As I said, it hit a high of 80, and it is now down to about the 60 to 70 range, and I think that's probably where it is going to stay.

CHAIRPERSON SOCKWELL: Okay. I'm glad that you are not the man after whom the hospital was named, because I thought that maybe those radiation treatments were really working.

(Laughter.)

CHAIRPERSON SOCKWELL: But one other question. It is apparent that the vaults are actually all on the government property, and --

MR. SIBLEY: Not totally, but yes.

CHAIRPERSON SOCKWELL: -- I thought that was a very interesting situation. But the under utilized and authorized FAR

that is being requested for reallocation here, it states in your brief that this was the result of value engineering.

And my question is, first, what is the square footage of the project that is being completed now, and Mr. Oudens, is that one of your projects as well?

MR. OUDENS: Yes, it is.

CHAIRPERSON SOCKWELL: And you are qualified to answer that question?

MR. OUDENS: Yes, I think I am. Well, let me state that value engineering I think was a part of it, but back when we applied for the necessary variances for that project, we were in preliminary design.

And the design at that point included a parking structure, that as the project proceeded that we and the hospital determined that there was a more cost effective way of doing that parking on grade after the gross square footage of that facility came out of the project.

And then with respect to each of the buildings, there was about a 10 percent reduction in area, and a part of that was simply design refinement, and we started with a fairly conservative request for area.

But understandably the area came down, and a part of it was looking to contain the costs of the project by minimizing the amount of square footage constructed.

But to answer your question the building gross

square footage for the assisted living facility -- and let me give you these in round numbers. The assisted living facility is about 129,000 square feet, building gross square feet.

The zoning gross square feet I think is about 118,000. The skilled nursing facility, the number is about a hundred-thousand square feet. Now, I say about because as one determines an area for floor area ratio purposes, the skilled nursing facility is an addition to the hospital.

And, of course, when we recompute the hospital area, we have to view this as an addition, particularly with respect to proration of cellar space, versus space that counts against the FAR.

CHAIRPERSON SOCKWELL: Very often when original construction was done those economies weren't recognized or utilized effectively, and you go in and recalculate.

MR. OUDENS: Right. Well, I think one has to recalculate every time one adds area to a building, particularly at the lower levels obviously, because if you are prorating cellar based on permanent wall, which is what we do, you could add a hundred percent cellar space and have some of that count against FAR, based on the fact that it is an addition to an existing building.

CHAIRPERSON SOCKWELL: All right. That was really the answer that I was looking for, because I felt that value engineering 14,000 square feet out of that facility just seemed a

little steep.

So I assumed that it was a reprogramming, and perhaps even some consideration that perhaps some of that FAR might have a future use other than where it is not necessarily needed in the projected requirements for that.

MR. OUDENS: I would add to that my own view of FAR is that it is accorded for the project for which it is -- I mean, we applied for FAR to do a project, and if we don't need it, it seems to me that we have to give it back.

CHAIRPERSON SOCKWELL: With a schematic design or a preliminary design, you don't know the exact number. You can't know.

MR. OUDENS: That's correct.

CHAIRPERSON SOCKWELL: All right. The service drive that has been closed by the addition of this new oncology center pushes the traffic that would have been internal to the site coming from the east. It pushes that traffic back out on to Little Falls, and what is the adjacent property on the north side of Little Falls?

MR. OUDENS: This is the Delcarlia Reservation. That is all watershed for the reservoir.

CHAIRPERSON SOCKWELL: Okay. So there is actually no negative impact pushing ambulances, which would have probably turned off their sirens unless there is traffic that they have to deal with anyway going back out on that street.

And as well coming in from the other side, and you are saying that the ambulances will follow or traffic will follow a more typical pattern inside the site again, but along that north end, as opposed to coming down to the south, and turning up into the site on Loughboro; is that correct?

MR. OUDENS: That is correct.

CHAIRPERSON SOCKWELL: Okay. That's all I wanted to ask.

MR. PRICE: Just another little comment about that. Sibley Hospital is not a trauma center. We do not have a lot of serious ambulance traffic. Like you said, they usually turn their sirens off well before they get there.

And we have on average about 18 to 20 ambulances a day. So it is very light compared to what you might see at a trauma center, or a busier type of emergency room.

Most of the people that come to our emergency department are driving in their automobiles, and dropping their loved ones off at our ambulatory entrance. So I just wanted to let you know that.

CHAIRPERSON SOCKWELL: Thank you. Any other questions, Board Members?

BOARD MEMBER RENSHAW: Yes. If I could bring this up at this time, although perhaps when Ms. Pagano testifies -- and I am assuming that she is going to say a few words.

But I would like to just discuss Sibley's responses

regarding the residential quality impact issues that is on the letterhead of the Chief Executive Officer. And perhaps I could wait until that time, or I could do it right at this time.

CHAIRPERSON SOCKWELL: All right.

BOARD MEMBER RENSHAW: Well, number one, where it states that Sibley will continue to discuss the concept of providing bus boarding and layover bays with Metro.

VICE CHAIRPERSON REID: Where are you reading from?

BOARD MEMBER RENSHAW: I am reading off of an undated sheet marked Sibley Responses Regarding Residential Quality Impact Issues. I would just like to ask if --

MR. ELLIS: Do I need to provide the board with another copy?

BOARD MEMBER RENSHAW: If Sibley and the neighborhood would consider shortening that to the fact that Sibley will provide bus boarding, and not Sibley will continue to discuss the concept of, but Sibley will provide bus boarding and layover bays with Metro.

MR. PRICE: Okay. That came up at the ANC meeting, and here is my response. It is the same as it was then. Metro has given us a specification for what that road bed needs to be. We have done geotechnical borings of the existing road from a heliport, which is just an integral part of the roadway, and all the way down to McArthur Boulevard.

It is our understanding that perhaps, because we

don't have the report back, that it may cost a great deal of money to upgrade that road in order to make it available for metro buses.

The hospital is a non-profit community hospital, and our operating margins now -- and you probably see this same thing in the news, but a very good hospital like Sibley now has an operating margin on the order of two percent.

We could not commit to upgrading a road that would maintain or that would accommodate metro buses if indeed the road bed already won't do that. A further concern is that this road actually belongs to the Federal Government now.

And if we do purchase the property, then the road conveys to us, and we have to maintain it, and we also have questions about what does the metro bus do to that road.

There is a very, very steep incline coming from McArthur Boulevard up to the top of Little Falls. And I don't know if you have ever seen what Loughboro Road looks like going down to McArthur Boulevard, but the metro buses peel the asphalt off of that road on a regular basis and it has to be replaced.

And so we are leaving this open, and I will be honest with you. We are not going to commit to it. We are going to continue discussions with the community, and we will continue to get more information about what this road bed is like.

But we did not discount it outright. We think it is something that would be good for the community, and if we can

do it, and we can do it without spending a lot of money, then we are amenable to it.

BOARD MEMBER RENSHAW: And it states here that it would be constructed -- if you do it, if you can afford it, it would be constructed as part of the oncology project?

MR. PRICE: That's right.

BOARD MEMBER RENSHAW: But yet you are now experiencing more buses to the hospital?

MR. PRICE: No, that was Ms. Shaughness' statement. I do not know the reason why there are more metro buses. I do not personally know if there are more metro buses. But very few of our employees arrive, and even fewer still of our patients arrive via a metro bus.

And so I know that the metro buses are certainly used by others in the community. I certainly would not deny that our employees enjoy the use of metro, but most of our employees drive to work.

BOARD MEMBER RENSHAW: Have you discussed with metro the possibility of sharing the costs of that roadway?

MR. PRICE: There have been no discussions with metro and the hospital other than an initial meeting that was held -- it would probably be about 3 months ago -- with Ms. Shaughness, representatives from metro, representatives from Ride-On, and the hospital, where everybody was sort of like saying, okay, let's see where this goes.

And let's explore this, and let's see if this could be done. So there are many, many hurdles to be overcome, and we are committed to proceeding with this.

BOARD MEMBER RENSHAW: Could you give us some feeling of a time line here? In other words, do you expect your reports back?

MR. PRICE: I expect those reports back any day.

BOARD MEMBER RENSHAW: Any day?

MR. PRICE: Yes.

BOARD MEMBER RENSHAW: And then you will meet again with Ms. Shaughness?

MR. PRICE: Well, I will look at those reports, and depending on what they say, our chief executive officer certainly has to have some input. And Sibley is governed by a board of trustees from the community that has a building and grounds committee, and that has a lot of say over these things.

And so I would say that the results of these reports would be given to the board of trustees, and the building and grounds committee before the committee, and then, yes, I have already committed to Ms. Shaughness that she could have a copy.

BOARD MEMBER RENSHAW: Very good. All right.

MR. ELLIS: And by the way, Ms. Renshaw, my experience is that metro does not typically even offer monies to help.

BOARD MEMBER RENSHAW: I would agree with you, but

it doesn't hurt to suggest and to ask. Some other questions regarding having to do with the construction of this facility, I would like to hear from you about -- and perhaps it is a little premature, but I would not say that it would be premature from the standpoint of the community.

And that is the kind of hours of operation, and how long is it going to take you to construct this facility, and whether or not any blasting is going to take place.

What kind of restrictions are you going to put on truck traffic in the area, and truck covers, and checking the licenses of drivers, and that kind of thing.

MR. PRICE: Well, hopefully I can get them all. First of all, there is no blasting. Secondly, we will do as we have always have done, that work will not begin on the site until 7:00 a.m., and no weekend work, so that it disturbs the neighbors who are trying to sleep in.

We intend to implement the same kind of control measures that we did when we were doing these other projects. We have already agreed that all construction traffic will come and go off of Little Falls Road, either Delcarlia Parkway, and maybe those workers that come in off of McArthur Boulevard, and would come up Little Falls.

We will provide the parking for them on the site. Now, this does not mean that we can guarantee that all the construction workers will park on our site. What it means that we

will provide parking and they kind of do as they please.

We went to great lengths to keep people out of the neighborhood with this last project. We actually hired an individual to go over on Sherier Place in the morning and dissuade people, and mostly ironworkers who had it in their mind that they wanted to park over there as a matter of right.

And they can also park as a matter of right on McArthur Boulevard, but we can provide the parking on-site and we will do so. One of the other things that we always did with our dump trucks is that we stationed an individual with a broom so that each truck is sweep off before it leaves the site so that dirt does not get on to the neighborhood streets.

So we will do all of those things to ameliorate those things. And one of the other things that we do is that individual with the broom, he is sort of the last person to make sure that the dump truck driver has covered his load.

And Mr. Oudens has testified that this is on the north side of the Hayes Hall building. Honest to goodness, this project ought to be as invisible to the neighbors on the 5200 block as it could possibly be.

I mean, they will literally have to walk around the hospital building and the Hays Hall building to see it going on. And this is small in comparison to the project that we have just completed.

And while I won't say there weren't issues and

problems with that, but I think that may in the neighborhood would say that we worked hard to do the best that we could to minimize those. So you have our commitment that we will continue that.

VICE CHAIRPERSON REID: Thank you.

CHAIRPERSON SOCKWELL: Any more questions, Ms. Renshaw?

BOARD MEMBER RENSHAW: Not at this time.

CHAIRPERSON SOCKWELL: All right. Mr. Price, thank you.

MR. PRICE: Thank you.

MR. ELLIS: That concludes our presentation.

CHAIRPERSON SOCKWELL: If that concludes your presentation, then we will move to government reports. The Office of Planning report.

MS. STEINGASSER: Yes. My name is Jennifer Steingasser, and I am with the D.C. Office of Planning, and I will be giving the report this afternoon.

I would like to just point out for the record that the Office of Planning report was timely filed, and it was filed on the 9th, and I just wanted to state that for the record.

CHAIRPERSON SOCKWELL: Jennifer, how do you spell your last name?

MS. STEINGASSER: S-T-E-I-N-G-A-S-S-E-R.

CHAIRPERSON SOCKWELL: Thank you.

MS. STEINGASSER: The Office of Planning reviewed

the application for two area variances, and we agreed that the property was faced with peculiar practical difficulties due to the existing arrangement of the building on the lot.

We considered the written statements that the new equipment is larger than the old equipment. That to shut down the old and existing equipment would impose a peculiar difficulty on the hospital's ability to provide, and the patient's ability to receive the necessary medical care.

We felt that the location of the unit at the rear of the building may have been dictated by the existing function of the hospital, but also resulted in an addition with a variance that had a minimal impact on the residential neighborhood.

And we felt that both of the requests could be granted without substantial detriment to the public good, and that neither request impaired the intent, purpose, or integrity of the zoning district.

We felt that the applicant had done a good job at mitigating those impacts, and we recommend approval of both variances.

CHAIRPERSON SOCKWELL: Thank you. Questions of the Office of Planning? Board Members?

(No audible response.)

CHAIRPERSON SOCKWELL: And, Ms. Steingasser, I believe this is the first time that you have appeared before the Board since I have been here, and so we welcome you. Applicant,

questions for the Office of Planning?

MR. ELLIS: None.

CHAIRPERSON SOCKWELL: Then the ANC report. Is there a representative from the Advisory Neighborhood Commission who is authorized to speak for it?

MR. FINNEY: Yes, newly elected.

CHAIRPERSON SOCKWELL: Please just step forward.

MR. FINNEY: Thank you. Good afternoon. My name is John Finney, and I live at 5275 Watson Street, Northwest 20016, and that is at the corner of McArthur and Watson, and it one block from Sibley.

CHAIRPERSON SOCKWELL: And you represent ANC-3D?

MR. FINNEY: Yes, ANC-3D04.

CHAIRPERSON SOCKWELL: Thank you.

MR. FINNEY: I am here in my own individual capacity as an ANC Commissioner. I was not a member when the resolution was adopted supporting Sibley's application. I endorse the prior Board's action.

I might have attached some other conditions along the line that Ms. Renshaw was raising, but I accept it. There is no question that this oncology center is going to be a net asset, in terms of health care, and improve the capabilities of our fine Sibley Hospital.

The question that confronts you is whether this is going to have an adverse impact upon a residential neighborhood,

which starts right across the street from the hospital.

And that is a very difficult judgment to reach in this case. I think the Chairman is quite correct when he says it is unobtrusive, and it is in behind, and it will not really be seen, and I can attest, as Mr. Price said, that Sibley is really quite cooperative when it comes to making sure that neighborhood concerns are met.

We had our problems and they cooperated in meeting them, and I think that will surely be the case here on a much smaller project. The difficulty of judging whether it is going to have an adverse impact is the difficulty of putting this project in the context of the whole of what is happening at Sibley Hospital in its expansion.

We have had, with your approval of course, a considerable expansion of Sibley in the past few years, and it has become a large institutional presence looming over Loughboro.

And I think that one of my neighbors will say that one of the results has been a decline in house values, at least on Loughboro, but not on my street a block away. They are still going up I can tell you.

We have done this expansion incrementally. It is sort of the house that Jack built. We approve the assisted living and we don't really realize then how tall it is going to be, how big, and it is quite large.

And then we didn't quite know that connected with

this was a skilled nursing unit, and that really fronts upon Loughboro much more than the hospital itself. Then we come with this, which is going to provide a very good service.

But there are all kinds of questions coming up now. For example, there is the third bay on here. Are they going to use the third bay? They probably will over time as they build up patient load.

So the traffic which is now said to be 80 patients, that will probably increase by one-third.

And along with the people who come, we may have an increase in traffic. Not significant, but part and parcel of this whole expansion of traffic we have gotten as Sibley has expanded.

Another question about this facility. I believe, and it is worth checking with the Sibley officials, that while it is now a one-story structure, it is being designed and built so that another story can be added.

What is going to be done with that second story? Similarly, we have now discovered with the skilled nursing unit, it is a four-story building now, but we are told now, and we learn now, that it was built in a way that another four-stories could be added to it. What is that and what is involved there.

And also the parking terraces of Babylon as I call them over there, I understand that they were built so that other stories could be added. What does that all mean?

I think what I am coming to, Board Members, is

this. That the time has come to stop this piecemeal approach. And I suspect that my comments are directed more to Mr. Hood than to you, Mr. Chairman.

That we really need for this kind of campus institution -- and it isn't just Sibley alone, but campus institutions which have -- and a new expression which I picked up today, FAR, and I am still trying to learn what it means, where we should have at least some idea of where they are going so that we can judge the impact upon the quality of life in our residential area.

And so I know that you deal in the specifics, but I do wish I could plant this idea with you, Mr. Hood, and maybe with the other board members, that we begin to think of it in the long term. Let me just give you another example if I understand floor area ratio.

When Sibley acquires the additional 8 acres, and I have lost the exact figures, from the Army Engineers, does it then have enough FAR under the ratio that you have approved to put in a medical office building over there in the northeast corner.

And if you put in a medical office building, what does that mean in terms of traffic, and what are the social implications of a non-profit organization putting in a medical office building that competes with private real estate operators of medical office buildings? You are getting into a very tangled kind of situation.

CHAIRPERSON SOCKWELL: Mr. Finney, the one thing that we are forced to do in these cases is respond at this time primarily to the immediate and not to the potential future.

MR. FINNEY: I understand.

CHAIRPERSON SOCKWELL: However, I am well aware that the stairs in the new building all go up. So there is a different meaning to us architects as to what may or may not occur in the future. But it is not presented to us today.

So what I do want to say is that we are aware of the potential impacts, but we can't discuss those today, and while I understand your concerns, your principal reason for speaking to us today was in support of the Advisory Neighborhood Commission's decision as it was presented to us.

MR. FINNEY: As well as just in the process to try to plant the seed of thought about the need of long term plans.

COMMISSIONER HOOD: Let me just say, Mr. Finney, if I can just respond. If you look at the avenue in which the zoning commission is proceeding now, you will see that we are looking at changing the name of the things in this city.

For examples, campus plans to master plans, and I think that is exactly going down the lines in which you responded.

MR. FINNEY: Yes.

COMMISSIONER HOOD: I heard you loud and clear. I think that is a direction that the zoning commission is going, and you had better believe that I will take it back.

MR. FINNEY: Thank you. It makes my whole day worthwhile.

CHAIRPERSON SOCKWELL: And we appreciate you coming before us, and as a newly elected member of the Advisory Neighborhood Commission, we feel that this is your forum.

MR. FINNEY: Thank you. Thank you. I appreciate the opportunity.

CHAIRPERSON SOCKWELL: And just to enumerate the issues the way the Advisory Neighborhood Commission wrote its support letter, dated December 18th, at their regularly scheduled meeting on Wednesday, December 13th, 2000 at the hospital's Ernst Auditorium.

A quorum of three was present, and by a vote of five to zero, with no abstentions, the Commission voted to support granting the application.

MR. FINNEY: That's correct. That's correct, Mr. Chairman. I was there.

CHAIRPERSON SOCKWELL: And Items 7, 8, and 9 on the Sibley responses regarding residential quality impact issues were intended and recommended to become conditions for the order. In this case, it says building permit, but for the order that might be written should this be approved, and recommended that great weight be given to the advisory neighborhood commission.

And that is signed, "Sincerely, Eleanor Roberts Lewis," who is the Chair.

MR. FINNEY: I was the author of those conditions, the original author, and I endorse them.

CHAIRPERSON SOCKWELL: All right. And thank you very much then, sir.

MR. FINNEY: Thank you.

CHAIRPERSON SOCKWELL: All right. Now, parties and persons in support. Who do we have that would like to speak before us? Please come forward.

Please identify yourself and your address, please.

MS. PAGANO: Yes. My name is Penny Pagano, and I am President of the Palisades Citizens Association, which is a group in Northwest Washington which represents about a thousand homes in the Palisades community.

I have sent you a letter which includes the resolution that our task force drew up, and it was sent back to our board for approval. It includes -- it gives our approval and includes five conditions. Two of them essentially deal with construction traffic and parking. The other deals with on-site parking for patients.

There are two other provisions that deal with landscaping, lighting, and D.C. buses, which are there to address neighbor's concerns about previous situations as well.

I would ask that these be included as conditions in the BZA order, and what might be easier is to go back and mesh them with what the ANC has suggested for conditions, and also the

conditions that Sibley, or the responses that Sibley have of things that they would agree to do.

I think that in some cases that they may overlap, and so I would just sort of go back and pull them all together, and ask that they be included as conditions in the order, and pull them all together.

And then I just have a couple of other quick comments.

COMMISSIONER HOOD: Mr. Chair, or Ms. Pagano, if I could just cut you off for just a second.

MS. PAGANO: Sure.

COMMISSIONER HOOD: Mr. Chair, I don't believe we have that letter, or at least I don't.

MS. PAGANO: Did it not arrive?

COMMISSIONER HOOD: If you could just give us a copy.

MS. PAGANO: I will give you my copy right now. Absolutely. I will give it to you right now. I'm sorry, but it should have been there.

(Brief Pause.)

MS. PAGANO: Sorry about that. I thought it was here, and it should have been. But what I wanted to just basically say is that, one, the community does have a very good working relationship with Sibley. We have had it for many years, and we have also been able to work together on issues that have come up.

I think that one of the things that we are all experiencing in the city, and I have lived in my neighborhood for 20 years, and in the city for longer than that, is that for many years the city was very quiet. No one really wanted to come here except for those of us who lived here.

And we are seeing an extraordinary amount of growth. You can see it by the number of times you have seen me here, whether it was on Mount Vernon College, the Field School, St. Patrick's. Every institution in our neighborhood that can expand is expanding.

And at one point it will be done over with, and maybe there won't be any more land. But it has been very difficult for communities to learn to live with this, because for many years we have not had any of this. So it becomes very troubling.

So it become even more important for communities and these institutions who live here to have good relationships, and we are trying really hard to do that.

It takes a lot of time and effort on everybody's part. We don't always get what we want on both sides, and we know it, and we know it from going through mediation with Mount Vernon and G.W. But we are trying to work together.

But what happens though in cases that we see now is that we are much better five years -- today than we were five years ago when a lot of things were coming before the BZA. We are

all kind of much better educated.

So I think what we have here is that we have some concern on the part of some neighbors for things that happened before. These are neighbors that actually lived on the street when these issues were before the BZA and didn't participate.

But none of us were very good at that, and so we now have some things after the fact that we are concerned about. And I really hope that the Board will stay focused on the radiation oncology center for which there has been very little opposition as a center in the community. In fact, there is great community support for it.

But we also need to address some of these things, but I think we are trying that through a neighborhood task force, and we can deal with some of these issues of landscaping and all.

May people would like to have a street without public buses on it. Many people moved into streets and they were there when they were there, and they are still there.

We have now to deal with a situation of whether it is fair to ask an institution to move public buses off a public street on to their private land at their expense. Sibley is willing to discuss it and move forward.

And I think Commissioner Renshaw's suggestion that we work with the parties on that, and that it may be an unfair burden to ask a private institution to do that. But they are continuing to talk about it, and we will continue to work with

them on that.

So that's all I really had to say. I rally speak for the community and the association in urging you to approve it with these conditions, and with the understanding that Sibley will continue to work with us on those issues.

And that if you wanted to write that in the recommendations in some way for a quarterly meeting or something like that, I would be happy to agree to that.

CHAIRPERSON SOCKWELL: Thank you, Ms. Pagano. Are there any questions by the Board Members?

(No audible response.)

CHAIRPERSON SOCKWELL: Any questions by the applicant?

(No audible response.)

CHAIRPERSON SOCKWELL: Ms. Pagano, we certainly appreciate you coming before us and we appreciate your comments. They are very well taken, and I believe that by your statement it seems to be apparent the intent of Sibley Hospital to communicate with the community in every aspect of their development program, which is different from some applicants, and certainly is probably much more appreciated by those who don't get it at all from applicants because they don't have the experience that you have had.

MS. PAGANO: I would just thank you very much. I would say one other thing, which is that Sibley does have to go on

its good will because any future growth, or anything that it did want to do if it didn't act in good faith or in good will now would certainly be remembered by the community.

CHAIRPERSON SOCKWELL: And the specific condition again that you suggested was?

BOARD MEMBER RENSHAW: A quarterly meeting.

MS. PAGANO: Yes, a quarterly meeting. We could do a regular quarterly meeting, which we do with Mount Vernon and some of the other schools.

CHAIRPERSON SOCKWELL: Thank you.

BOARD MEMBER RENSHAW: Ms. Pagano, just for the record, would you give us a little thumbnail sketch of the Citizens Association, and how many members are in your association?

MS. PAGANO: Right now currently between a thousand and eleven hundred.

BOARD MEMBER RENSHAW: Thank you.

CHAIRPERSON SOCKWELL: Okay. Thank you very much.

MS. PAGANO: Thank you very much.

CHAIRPERSON SOCKWELL: All right. Are there any other parties or persons in support?

MR. DIEM: Yes. Thank you. My name is Andrew Diem, and I live at 5230 Loughboro Road, directly across from the main entrance to Sibley Hospital. I have lived there since 1986.

And I have been a member of, and still am, the neighborhood task force that was dealing with the issue of expansion with regard to the Palisades Citizen's Association, one of about 7 or 8 members.

I am a proponent of the oncology facility. I feel that it is something that is very, very necessary. Probably all of us in one way or another have had our lives touched by either personal or dear friends that have suffered from cancer, and I think we need everything that we can have done to provide quality medical service available.

Sibley has done a wonderful job in all of the other aspects of medical care that they have provided. I have had a personal opportunity to use the hospital, and I have known a number of friends that have also, both in the community and outside of the community.

I think it is something that is going to be extremely beneficial to us. There may be some inconvenience during the course of construction, but in the long term I think the benefits will far outweigh any small inconveniences that we may see. Thank you very much for the opportunity to listen to my statement.

CHAIRPERSON SOCKWELL: Thank you very much. And are there any questions, Board Members?

BOARD MEMBER RENSHAW: No, thank you.

CHAIRPERSON SOCKWELL: Applicant, any questions?

MR. ELLIS: No.

CHAIRPERSON SOCKWELL: Thank you very much, Mr. Diem.

MR. ELLIS: Mr. Chair, we have one last person in support, but she was not here at the time when they were swearing people in.

CHAIRPERSON SOCKWELL: She needs to be sworn in.

(Whereupon, the witness was sworn.)

MS. ABATE: My name is Mary Abate, and I have lived in the District for over 20 years. I live on Reno Road, a highly traffic street, and so I know what traffic concerns are all about, and I have learned to live with them.

I am here today as a patient of Dr. Gage. I hadn't planned any remarks because I just found out about the hearing a short time ago. But I am strongly in support of this projected facility because of the experience that I had at Sibley as a patient.

The doctors, the nurses, and the technicians at Sibley are fantastic. And so even if this facility does not get built, if I ever have to have radiation again, I will return to Sibley. But I really would hope that it would be a more pleasant experience than the experience than I had because of the physical conditions.

I am a trial attorney. I work at the Department of Justice, and I speak advocating positions all the time, but my

voice is shaking now because this was such a traumatic experience for me, and I just finished my treatment November 14th. So it is still quite recent.

I just would like to tell you what it is like now. First of all, you just don't go and get a couple of treatments. You have to go and get your body all marked up so that they know where to aim the radiation.

Then when that is done, and the radiation is planned, you have to go every single day, five days a week, for six weeks. I was lucky. I only had to go for six weeks, and this is of course after the surgery. For some other people, it is after the chemo. I didn't have to have chemo thank goodness.

All right. So you go every day. I didn't tell the people that I work with. They thought I was on vacation time when I had my surgery, because I didn't want them to start feeling sorry for me.

So the staff arranged it so that I could have my treatments every day early in the mornings so I could get to work on time, which is what happened. But then I was confronted with the physical facility. I had to find a parking space in the parking lot, and usually that was way in the back of the lot.

And so I had to walk all the way across the lot and all the way through the hospital to the elevator, and down to the basement, and then retrace my steps back to the far corner of the basement where the radiation oncology facility is.

And basically all it is really is a little rabbit worn, a corridor with a few little rooms in the corner, and to get there, every day I had to walk past the in-patients who were lined upon gurneys in the hall waiting for their radiation treatments, some of them looking as though they were near death, and some of them moaning.

And I am sure that a lot of them were wondering who all these other people are in their nice street clothes walking by them and looking at them. So then I get back to the little rabbit worn, and there are two teeny dressing rooms the size of coat closets that I can't immediately go in to take my clothes off.

I have to wait because patients are lined up to get into the dressing rooms. I get into the dressing room, and I am lucky again because I had breast cancer, and so I only had to take my clothes off from the waist up and put on that dinky little hospital gown.

Well, then I had to go sit in a teeny tiny waiting room with other patients, friends and relatives of other patients. Some of the other patients were men with prostrate cancer who had to sit there in their little short gowns with their bare legs sticking out.

And then I got called for my treatment. Then I would have to repeat the whole process again, and come back out, and wait for a dressing room, and wait for the one that my clothes are in by the way, because you leave your clothes in a little

locker in the dressing room.

And then make the long trip back through the hospital, and past the in-patients on the gurneys waiting for their treatments, and back out to the parking lot every single day for six weeks.

It is not fun, and as I am sure you are aware, one of the elements that makes treatment for cancer successful, and if it can be determined if it is or not, is the attitude of the patient. And I have to say that I felt that my dignity was taken away from me having to have treatment under these conditions.

I am still a pretty optimistic person, and so I didn't let it get me down, but you can hear in my voice that just having to talk about it is very stressful.

But I feel so strongly that other patients should be able to have better physical conditions available to them that I made myself do this today. Thank you very much.

CHAIRPERSON SOCKWELL: Thank you very much for coming before us. I certainly believe that we can understand the effect of conditions and privacy, and the treatment facilities themselves on the way you may feel towards that treatment.

And that under the circumstances that you support the hospital and their attempts at doing a good job in adverse situations. Thank you. Are there any questions, Board Members?

(No audible response.)

CHAIRPERSON SOCKWELL: Any questions from the

applicant?

MR. ELLIS: No questions.

CHAIRPERSON SOCKWELL: Thank you very much. And you spell your last name?

MS. ABATE: A-B-A-T-E.

CHAIRPERSON SOCKWELL: Thank you. All right. That completes the applicant's case, and we now need persons or parties in opposition, and that's what I was getting to. Will you all come up together, please. I assume that you are each representing yourselves individually.

MR. MAHAN: That's correct.

MS. SHAUGHNESS: That's correct.

MR. SHAUGHNESS: That's correct.

CHAIRPERSON SOCKWELL: Thank you. Who would like to start. The man in the middle.

MR. MAHAN: I'm always in the middle. Good morning. My name is Val Mahan, and I live at 5266 Loughboro Road, and that is directly across from the industrial entrance to Sibley Hospital on Loughboro Road.

CHAIRPERSON SOCKWELL: You said 5266?

MR. MAHAN: That's correct, sir.

CHAIRPERSON SOCKWELL: Continue, please.

MR. MAHAN: I feel a little reluctant to be up here in opposition to this oncology center, but I think that is the only way that I can be in front of you and have my case heard.

I think that Sibley's characterization that there will be no increase of traffic as a result of the oncology center is a little bit over- optimistic.

The actual construction as planned is built to house an increase in physicians, offices, and treatment facilities, that would take it at least 50 percent above what there is now.

Beyond that, when that oncology center is built, there will be vacant space in Hays Hall, and I have no doubt that that will be applied towards patient services, and to some degree that will have to increase the traffic of both patients and medical and service personnel into the hospital.

It is not entirely clear to me whether I have a right to sit before you and talk about remediation of deleterious effects on the neighborhood resulting from the previous two variances that went forward.

However, if you will bear with me a little bit, I would argue that remediation of potential problems with regard to Sibley's traffic would also work to serve to rectify damage to the neighborhood under the previous two variances.

I would like to show you -- and this photograph has been provided to you in the package that Linda Graves Shaughness has provided. This is a view from my front yard into Sibley Hospital.

When I bought that house in 1980, there was a

parking lot over there with a little gate to it, and a double row of relatively sparse pine trees covering up the parking lot. In retrospect, it was bucolic, a bucolic view.

And in fact I cannot tell you, because I cannot remember, what was slightly to the east of that parking lot. It was not the hospital proper, and I can't tell you what it was. It was not at all intrusive.

Right now we have an entirely intrusive building sitting there, and I have an industrial aspect in front of me. Not only are the lights a problem, but there is a stretch of highway that I suspect a good pilot could get an STLO airplane down on.

That is meant to be, I am told, egress for service vehicles and I have seen on the weekends at various times tractor trailers parked up there, and that is just really tearing up my enjoyment of my property, and certainly damaging my property values.

Now, I would say that none of this has to happen, and that the recommendations that have been put forward and spoken to by Ms. Pagano, and rectified at, particularly the recommendations that will be presented to you in the package that Linda Graves Shaughness has presented, will and can rectify that.

But that includes the rerouting of buses, and that includes amelioration of lighting, covering up the parking areas, and other things that I would like to address. I would like to

talk also about amelioration of this aspect, which seems to me to be not at all necessary in its present form.

And the problem -- and I should say that I am on the task force that has been appointed by the Palisades Citizens organization to deal with this, but my concerns have not been in one instance not incorporated into those recommendations.

And furthermore the recommendations seem to me to be so vague in execution, and dependent entirely on whether Sibley decides that they will accept what not only the community in general, but the adjacent neighborhood wants, that it worries me that there is no power to enforce anything.

Sibley can say that they are going to landscape, and if they put a couple of bushes in, that doesn't cut it. It might cut it for them. And that's because the truth of the matter is that whatever they do is going to cost money, and I can tell you that what I had in mind for ameliorating this situation will cost a lot of money.

Now, what has not come out -- and maybe Ms. Shaughness will speak to that in more detail -- is that a plan was developed whereby the costs of upgrading Little Falls Road to the extent that it could handle those buses would represent a economic wash for Sibley.

And Sibley as I understand it has just turned that off, turned that option off. I think that needs to be explored. I think Sibley needs to know that it has to ameliorate the damage

that it is costing the neighborhood.

I for one would like hard language in there that it will through additional creative landscaping do away with this broad avenue of industrial aspect that faces my house.

I would like to see regulations put in that preclude them as a regular fact lighting the various patios on the corners of the skilled nursing facility which serve no practical purpose, but only seem to --

MR. ELLIS: I'm sorry, but I would like to make an objection because this has nothing to do with the site that we are dealing with now. This is for something on a previous application, and we have been meeting with them, and we are more than welcome to meet with them, and we are more than welcome to deal with them.

But it has nothing to do with the radiation oncology unit, and even if the board were to take it, it would be sitting here putting in this order to tell us to do something that the Board had previously approved.

CHAIRPERSON SOCKWELL: I think your objection can be sustained in this case because I was expecting and waiting for Mr. Mahan to discuss the radiation oncology addition and its impacts upon him.

And because what he is discussing and what you are discussing, as it should be first person to you, is other issues, and in particular the principal thing that you have been

discussing is this particularly unpleasant view that you have.

And I believe that the hospital has responsibilities in that area, but those responsibilities are not before us today because the construction that is before us today is not on that part of the property.

MR. MAHAN: I understand, and I will close succinctly if I may.

CHAIRPERSON SOCKWELL: All right.

MR. MAHAN: I understand that you are considering some conditionality as part of your approval, and if that is correct, I would like to offer that it is useful to have a continuance for the people working on that conditionality to arrive at some concrete aspect. Otherwise, we have conditionality that is vague and in the extreme.

MS. PRUITT: Excuse me, Mr. Chairman, but I believe the conditions that he is referring to don't actually relate to this particular aspect, but to the previous, and so the Board would have no jurisdiction.

CHAIRPERSON SOCKWELL: Well, I understand that, and if you will let me do this, then you won't have to do bring that up.

MS. PRUITT: Okay.

CHAIRPERSON SOCKWELL: The issue that I am bringing forth is that the conditions that the board will impose are specific to the project that is before us. Those conditions can

include landscaping, but they wouldn't necessarily include landscaping in the area that is not near the project.

Those conditions may have to do with traffic, and they may have to do with other elements of this particular application. I can only suggest to you that for the things that concern you, that at this time the neighborhood and the hospital are working together to solve and complete this latest initiative, and that you work through your recognized neighborhood representatives and make sure that these things come before the hospital people in power.

Because this is really an excellent time to talk those issues out, but unfortunately we just can't spend a lot of time here at the Board.

COMMISSIONER HOOD: Mr. Chairman, let me just interject.

CHAIRPERSON SOCKWELL: All right.

COMMISSIONER HOOD: Being that the zoning cases were scheduled for the morning cases, I do have a previous appointment, and actually I was just supposed to be here for the morning session, but I want to be considerate and make sure I hear from the other two witnesses before I leave so that I can leave my proxy.

But I would ask that we kind of move a little expeditiously so I can hear from the other two witnesses so I can make a contentious and a good effort in my proxy.

CHAIRPERSON SOCKWELL: Yes, and because I think you have heard much of Ms. Shaughness' initial discussion, I would go with the gentleman to my right first, and that way if you have to leave, you will have first-hand information.

COMMISSIONER HOOD: Thank you, Mr. Chairman.

CHAIRPERSON SOCKWELL: And your name, sir?

MR. SHAUGHNESS: Thank you, Mr. Chair. My name is Patrick Shaughness, and I served as the ANC Commissioner up until the beginning of this year for the area surrounding the hospital. My wife is Linda Graves Shaughness.

I would like to address several specific references to some positions that I have taken with regard to this matter. Technically, I am on the agenda as an opponent to this application, and I, however, take second place to no one in terms of my support for the hospital and its mission.

Every one of my family has been a patient at the hospital, and we live right across the street from the hospital. When I had a CAT scan done on my head four years ago, I was a patient in the basement also, and the conditions there four years ago are much as Ms. Abate reported to you.

It is unfortunate that the hospital has not yet corrected these conditions within the property that it already has, and now must come before you in order to upgrade and modernize its facilities.

Two specific points. Back on December 13th, I

believe, I on my motion, the Advisory Neighborhood Commission passed the resolution and sent the letter that you have before you. I not only moved the resolution, but I authored it.

Since then, particularly worked on by my wife, I believe that she has brought to the force some new issues, especially as far as property values are concerned.

And if I had access to that information back on December 13th, I am not so sure that I would have made that motion, or asked for that resolution to be approved.

Furthermore, I would point that if you look at the entire language of that letter, it refers not only to the hardship that would be suffered by the hospital by the denial of this variance, but it also goes to the second legal standard which has to do with the public good, and has to do with the integrity of the intent of the zoning regulations.

And that's why we have language in there and attach that letter from Sibley Hospital that went to the representations about upgrading the road, and about the landscaping and that sort of thing.

I never thought that a month later that I would still be before you, and we would still be talking about what the hospital intends to do. I didn't think that we would still be talking about what they would be willing to discuss.

I thought that we would have more closure on these issues. So I think that the statements that I have made, I think

the letter from the ANC should be viewed in that context.

I think it is proper for the board to consider some of these issues, because what we are looking at here is the third phase of development for Sibley Hospital, and it is proper under the law for you to consider whether it would be in the public good to grant yet another variance when there are very serious questions about the conduct of the hospital, and the combatability of the institution which under the zoning regulations the hospital is required under R-5-A regulations, that it is required to operate in a manner that is compatible with the adjoining residential neighborhood.

I think that some very serious questions have been raised about that, and that it is proper for the Board to consider if it is in the public good to grant yet another variance when these questions are still outstanding.

The bottom line is that I favor having an oncology center, a modernized oncology center, and I favor having it today. But I believe the board's actions should be delayed until the hospital has addressed these other issues which are referred to in the attachment to the letter from the Advisory Neighborhood Commission.

As far as I am concerned, if the hospital resolved those issues today, then the Board could act, and we could move forward. If the hospital took the PCA resolution, a very good resolution incidentally, and if it took that resolution and in

some binding and enforceable way committed itself to meeting the conditions of that resolution, then I would say approve this today.

But we have seen that the hospital is not yet ready to do that. Incidentally, when you go to that PCA resolution passed by the Board of the Palisades Citizens Association, the language in there is very finely turned. No one has -- or at least I have never insisted that the hospital put all the buses on Little Falls Road.

The PCA resolution says -- and I think that this is the proper way to approach it -- that if that is not practical, and if that is not doable, and if that is not a reasonable cost of doing business, then the hospital should propose other measures that would mitigate the impact of the traffic that it is generating.

If the hospital would agree to that in some enforceable way, if it was incorporated in the zoning order as Ms. Pagano has suggested, I see no problem.

But we should move forward only when we have hard, enforceable language to remediate some of the conditions that caused the hospital in my view to be incompatible with the residential neighborhood and remedy some of the conditions that have been created by the construction that was improved in the first two phases of development by this Board. Thank you.

CHAIRPERSON SOCKWELL: Thank you. Any questions,

Board Members?

MR. ELLIS: I just have a quick statement, and that is that --

CHAIRPERSON SOCKWELL: No, you have --

MR. ELLIS: Well, I have an objection to some of what was just said, and the objection is that it seems to be that everybody is pushing towards this conditioning a variance.

CHAIRPERSON SOCKWELL: Well, let's not talk about everybody.

MR. ELLIS: Okay. Mr. Shaughness' conditioning wants the board to condition if it grants the variance to condition a variance. Special exceptions can be conditioned. Variances --

CHAIRPERSON SOCKWELL: We can condition variances. We don't often, but we can.

MR. ELLIS: All right. There has been -- all right. Fine. If that is the Board's policy, then that's fine.

CHAIRPERSON SOCKWELL: Actually, it is Corporation Counsel's judgment that variances may be conditioned in some instances.

MR. ELLIS: In some instances. All right. I will defer to the board on that.

CHAIRPERSON SOCKWELL: Thank you. Now, if there are no other questions of you, Mr. Shaughness, we will move to Mrs. Shaughness. Mrs. Shaughness, you cannot cover the same

issues that your husband covered, and he took one of your issues from you, and so you have to pick the other ones now.

VICE CHAIRPERSON REID:

VICE CHAIRPERSON REID: Let me say, Mr. Chair, that we ask that they not be redundant or repetitive in their testimony.

CHAIRPERSON SOCKWELL: Proceed, please.

MS. SHAUGHNESS: This is kind of a tough spot to be in. My husband and I are on very fine terms, and my husband worked like a dog as an ANC Commissioner, and I have worked very hard on this project trying to get relief for the community.

A couple of things become real clear. It is clear that it is within the discretion of this board to not act today. It is clear that they could come back later.

What would be the benefit of doing that? First of all, a little history on how we got to that list of things of wishing well agreements from Sibley Hospital. I met with Sibley Hospital -- and I have a planning background -- and the bus people, and we walked the site.

We looked at what in fact -- we jointly identified the problem areas on this site. You have got a situation where there is really an admission of serious impact resulting from phase one and phase two, and now before we can even finish discussing it, and getting negotiations to the point of concrete -- okay, we can do this, and we can't do that.

But before we even get to that point, we are going to pick up that excess, which would have been an even greater disaster FAR, and we are going to give it away on the hope that they will do better on phase three than what they have done on phase one and phase two? It doesn't make sense.

Now, there are solutions that have been put out there, and I want you to have the sense that there real and pragmatic solutions available, which given time we could arrive at, and I don't think we need a lot of time.

But sometimes you need a key piece of information to go forward, and in our case one of the key pieces of information is what is it going to cost to upgrade that route, or does that road have to be upgraded.

But you know what? I have got a win-win solution for that, too, if we can negotiate it that far. However, I disagree with the point of view that they don't gain momentum with every approval they pick up as they go.

Every approval they pick up as they go before all of the outstanding issues are resolved makes it harder for the citizens, for the 18 homes on our block, and the ones who signed petitions behind, including by the way Bruce Babbitt and his wife, Patti. They are the first signatures on your package of signed petitions.

Here is a man and his wife who know a great deal about intelligent land use planning and development. They were

wholeheartedly behind this petition. And the difference is that this petition has concrete language.

It is not we will work with you for how long. There is a solution that we would like the opportunity to try to reach, which is that if we get data back that that road cannot carry buses, we will then --

CHAIRPERSON SOCKWELL: Ms. Shaughness --

MS. SHAUGHNESS: Would you like to know what we would be able to do if you don't pull the rug out from under us now?

CHAIRPERSON SOCKWELL: Ms. Shaughness, was your petition ever submitted to this board?

MS. PRUITT: It was submitted this morning.

COMMISSIONER HOOD: Mr. Chair, I believe it is in the back of yours. The one with the red tabs. And let me just say that my concern of someone who has looked through that, I only saw 7 or 8 homes that signed. I didn't see a petition.

MS. PRUITT: Mr. Sockwell, you have one right in front of you.

BOARD MEMBER RENSHAW: Ms. Pruitt, I don't have a packet.

MS. PRUITT: Okay.

COMMISSIONER HOOD: I don't have one either, Ms. Renshaw, but Mr. Sockwell does.

MS. SHAUGHNESS: I only provided one copy with the

signatures, but each packet has a blank one so that you can see the language signed. on its own.

(Brief Pause.)

COMMISSIONER HOOD: Mr. Chairman, if somebody could inform me on the amount of signatures, because when I looked through it earlier, I only saw 7 or 8 signatures.

CHAIRPERSON SOCKWELL: I think reference was made to 25 wasn't there?

COMMISSIONER HOOD: And that is what I was looking for, the 25 signatures.

MS. SHAUGHNESS: Well, some pages have more than one signature, husband and wife, and it adds up to 25 if it is complete.

CHAIRPERSON SOCKWELL: But the 25 signatures represent a number of households, as opposed to one signature per household?

MS. SHAUGHNESS: In some cases it was a single person in the household.

VICE CHAIRPERSON REID: Are you saying that these four conditions be incorporated within any order that may be forthcoming?

MS. SHAUGHNESS: That's correct, but you know, another way of looking at this -- because I understand that there are certain conditions that are normally beyond your perview. So in a way what would be more practical would be to let us have time

to go forward.

What is interesting is that these are conditions that Sibley agreed to do in linkage to oncology.

VICE CHAIRPERSON REID: Ms. Shaughness, the fact of the matter is that the only people who can request a continuance are parties in the case. So that is a moot point, and so carry on.

MS. SHAUGHNESS: Okay. That part is moot, but that does not abrogate the fact that you have discretion based on the discussion that I heard to choose maybe this isn't the best time to vote this one.

And to show you kind of the opportunities that are available here, let's say that they can't do the road --

CHAIRPERSON SOCKWELL: All right. Here is the issue. Let's look at this.

COMMISSIONER HOOD: Mr. Chair, if I could just put this on the record. Ms. Shaughness, I am not trying to slight you in any way. I heard you earlier, and I hear you again. I will have to leave because of a previous engagement.

MS. SHAUGHNESS: I understand.

COMMISSIONER HOOD: And, Mr. Chair, I just wanted to put that on the record, and no disrespect, but I do have another appointment.

MS. SHAUGHNESS: Thank you.

CHAIRPERSON SOCKWELL: Here is the thing. There

are five elements that --

VICE CHAIRPERSON REID: Four.

CHAIRPERSON SOCKWELL: Well, there are five on this petition.

VICE CHAIRPERSON REID: Right.

CHAIRPERSON SOCKWELL: And one of them says support change in D.C. law to require long term site plans for all significant institutional landowners and request the hospital to voluntarily comply in the meantime.

That is not a condition that we can deal with. That does not have anything to do with this board. On top of that, how can a hospital comply with something that hasn't been set down at least for them to know about specific language requirements, et cetera, et cetera.

So we can't deal with that. Exterior lighting, erect a sign, screen parking lots, facilitate, and where necessary, meet the costs for rerouting buses to Little Falls Road, some of that you can't do and some of you can do it, and some of it you certainly wouldn't be able to -- well, I don't really have too much problem with the other four, and maybe neither would the hospital.

But the point is that the fifth one takes us out of the realm of doable, and therefore it reduces the validity of the petition for the purpose for which it was intended.

And what I do want you to do specifically is stay

succinctly on the subject of what you are supporting. The petition in this case, because you were not elected to represent these individuals, and it is nowhere stated on this that you are the person who represents their viewpoints.

And in fact some of these -- one or two of them -- have been slightly hand annotated. Let's just hear what your concern is as different, or concerns are as different from those of your husband, who has at one point supported the proposal, and now is in opposition to the proposal.

So I want to know what you have to say specifically, and things that you either didn't say earlier or can say clearly now. But different from what your husband said, please. We have these petitions in the record.

MS. SHAUGHNESS: Obviously if Sibley had volunteered to do a campus plan approach with us, that condition would have been met voluntarily, and that's all I will say on that one.

It is my understanding that there have been precedents by this board to intentionally delay decision making to allow other related information to be obtained, and to be deliberated in other appropriate bodies.

CHAIRPERSON SOCKWELL: And the board makes that decision on its own.

MS. SHAUGHNESS: I could request it perhaps?

MS. SHAUGHNESS: No, not really. I mean, we

haven't -- first of all, you can ask for -- any time you ask for a continuance, there is a time for it. Any time you ask for a postponement, there is a time for it.

That is usually at the beginning of the process and not at the time of the opposition's statements with regard to the hearing. So preliminary matters include requests for continuance, party status, and issues like that.

VICE CHAIRPERSON REID: At this point in time, I think we have exhausted quite a bit of patience with Ms. Shaughness and this request for a delay or continuance.

And it has been said to her on many, many times as lightly as we know how that we cannot do that, and will not do that. So I would suggest that if in fact she has no further statements that we move on.

MS. SHAUGHNESS: The last point which I think goes to the credibility of Sibley Hospital to deliver all the conditions they claim they will deliver on is that credibility is important and their future credibility is important.

They don't have a lot of credibility based on what happened in phase one and phase two. For phase three, it has a very different sound to it. If Sibley Hospital were to say, Linda, that is a great win-win solution to get around the problem of what it might cost to fix that road.

In fact, I publicly proposed this, and Jerry Price was present, at the last ANC meeting in December. And it goes

like this. The city does not have money to buy that road and fix it.

But what if the community when the contract -- if the contract is not worked out at all, and you have heard that today, for the conditions and the boiler plate that will go in that real estate transfer from the Corps of Engineers to Sibley Hospital, and if the community were to support an offset, a dollar for dollar offset against the fair market value price that Sibley Hospital must pay for that land, a dollar-for-dollar offset on what it will cost them to upgrade that route, and given that they have already said that we are willing to move that massive bus transit activity to the back of our hospital -- and believe me that nobody on my block is using those buses at 5:00 a.m.

It is their people, and we want their people to use buses, and we believe in mass transit. So what does that say; that they are not willing to say? They didn't even want you to hear about that, that there is a way to solve that, and they don't want it made a condition.

And we are saying that good will towards the community is proven every day. You know how you got this list of the conditions? It is because in one of your packages, the one dated November 6th, those are my proposals based on my understanding of the site to Sibley Hospital, and please respond to each of these, and what is your answer.

The answer is that short list. No one else in the

community was willing to do the leg work to get to that point. I would just like the chance to finish the job for the community to do its then normal --

CHAIRPERSON SOCKWELL: Ms. Shaughness, the problem is that you don't represent the Advisory Neighborhood Commission. You don't represent the Palisades group. You represent yourself as a homeowner.

You have collected signatures from other individuals whose willingness to attest to five conditions, one of which is sort of out of our realm completely, was supported perhaps in part by your strong feelings about this, and your ability to get them to agree.

The point is that we just can't stop the process on the particulars that you are using. You are asking for a great deal from this board without being able to provide us, unfortunately, with significant meat for us to take this truly under advisement in the most critical manner that you would wish us to.

I do appreciate the fact that you have gone out of your way to present your views, and certainly your views have been received by this board, and we understand where you are on this.

We also understand from the others who have represented themselves as being opponents to the process or to the particular application. We understand what has prompted that opposition.

If anything, when you present your views publicly and openly in a forum such as this, if anything, first it goes on the record. Second, the persons who need to hear this hear it.

They know that there are people out there who are not only strongly proponents of quality neighborhood environments, and property value retention, and increases, and all the other good things, but they also know that you are willing to go out and organize to get something accomplished.

If that does not do anything, then nothing will change their minds. The point is that there is much more process, and there is that process, and there is this process. We don't even know at this point whether or not the land will be purchased by the hospital, or whether or not some complex legal arrangement will complete the deal.

So some of the things that you are suggesting are not based on fact that we even have. So let's move forward with this. Again, I think you have presented all the possible views that you can have on this, and I appreciate it.

I appreciate Mr. Shaughness, and I appreciate Mr. Mahan, and I appreciate all of you having come before us, but we have to move forward.

MS. SHAUGHNESS: Can I say just one last thing? You know, I realize that there were problems with the scope, and power, and discretion. But, you know, maybe there is one thing that you could say that would make us all feel better.

I don't know how many of you were on the board at the time of phase one and phase two got approved. But you know what? If you just look at my color photos with the captions, and if some day any one of you would give me a call and say you are very sorry this got approved.

You are very sorry that this impact had to happen on my street, because people couldn't quite comprehend the scope, and magnitude, and impact of what was being proposed on a preliminary site. I would feel better after all of my zillion hours of effort I got a "I'm sorry."

CHAIRPERSON SOCKWELL: Thank you very much.

VICE CHAIRPERSON REID: I have a question. Ms. Shaughness, in regard to one of the conditions that you had proposed, possible conditions, landscaping, the screening of the parking lots, and nursing facilities. Do you see that on the architectural rendering there?

MS. SHAUGHNESS: This is the parking lot that runs from Loughboro all the way back to Little Falls Road, a completely unobstructed view. Solid asphalt. The width of this asphalt extends from this access road across here is 90 feet.

That is the view of these three properties. That is a very much asphalt in your face view.

VICE CHAIRPERSON REID: No, what I am asking is do you see that particular condition being addressed within the architectural renderings I'm asking.

CHAIRPERSON SOCKWELL: We are talking specifically about the oncology center now, and not phase one or phase two. You see, the problem that we have here is that from where you are located on Loughboro, you are looking at those conditions.

Those conditions are not before the Board. The conditions that are before the Board are actually from a side where nobody will view anything because there is reservoir across the street, and the only people who will see that are the people driving by and the people driving in, because there are no houses.

Unfortunately what you are asking us to look at, and what you are asking us to consider perhaps should have been considered in phase one by this board, and perhaps should have been considered in phase two by this board.

I wasn't here then, and unfortunately for you and your point of view, what we are looking at is from the other side of the property, and doesn't relate to where you are coming from.

And I apologize for the fact that any mistakes made or any issues that may not have been mistakes weren't even enforced. That is not where we are today.

And because we are not making any changes on the side that most concerns you, I have to put my concern where it belongs, which is on the Little Falls side, which is what we are looking at.

It is hidden, and it is one-story now, and that's what we are looking at. That is all that I need to deal with.

That is all that this board is empowered to deal with. And I appreciate the fact that you are here, and I appreciate the fact that you have got problems.

I appreciate the fact that you have been able to voice them so that the hospital understands what your problems are if they didn't already know. But I can't do anything about them, and this board can't do anything about them in this particular application hearing. That is what I am saying.

MS. SHAUGHNESS: Are there other forms of relief for parties to come before this board to request you to actually cause amelioration --

CHAIRPERSON SOCKWELL: Ma'am, may I make this suggestion to you? That you read the BZA orders that established any other developments on this site, and look to see whether things have been addressed.

If they have not been addressed, you can bring those things back up. You can appeal decisions saying where they promised landscaping they didn't provide it. Where they said they were going to do the is, they didn't do it. But not here. Not today and not now. So we have got to go forward.

MS. SHAUGHNESS: Thank you, Board Members.

CHAIRPERSON SOCKWELL: Thank you. All right. Barring any other opposition individuals that were not heard, I will ask for closing remarks by the applicant.

MR. ELLIS: Very briefly, the radiology oncology

unit as we stated was located in the rear of the property simply because the property as it is presently built out, we could not locate it anywhere else to functionally have it work in the hospital.

Secondly, there is an absolute need for this facility because the new equipment that we have would not fit in the vaults that we have at the hospital, and therefore we have to place the new equipment in new vaults.

And therefore the need to build them and put them somewhere else, because if we were to build it within the hospital, we would literally have to close down the facility where people are being treated, and then have them go someplace else, or in some cases even delay treatment until we got the vaults built out, which is an untenable situation.

And it is also untenable to keep it in the same area that it is in when you deal with comments like Ms. Abate has made to the Board, whereby a lot of dignity is lost because of where the facility is today.

In terms of community impact in this situation, the oncology unit is completely in the rear. There is no one who is going to see it. We are going to bring truck traffic in off of the rear of the property. We are going to keep everything off the street. We are going to scrub the trucks down, and we are going to keep the tarps over them.

We plan to keep a very clean facility, and impact

the community as little as possible. In terms of potential conditions, I know you have before you the petition that was submitted, and the rerouting of buses, and we cannot reroute buses.

I mean, there is an assumption that we can reroute the buses. We cannot. I mean, that is based on what Metro wants to do, and it also is based on what the condition of the road is.

Landscaping and screening. We are meeting with the community, but the landscaping and screening that they are talking about is for the second project. We have today even given a computer generated form of how our landscape architect is coming back to deal with that.

But that is not part of this project, and I only bring it to you in terms of just information for you. The Loughboro Road nursing facility entrance, that has nothing to do with the present facility that we are dealing with.

Exterior lighting. The exterior lighting for the oncology unit is on the rear of the building. I mean, even assuming that we put the most maximum mercury vapor or anything else, you still would not see it on the other side of a building.

So again the exterior lighting has nothing to do with this facility. And the campus plan requirement, as you stated before, that is not something that is before this board, and that is something that this board could take up at the time.

Sibley's responses, In re: residential quality impact issues, as those are set forth, those were written as you can see on Sibley Memorial Hospital, and those are in response to the ANC, and the ANC then sent them into you.

So those were actually as I said drafted in response to ANC conditions that they had. We have no problem and we have -- and as those responses have set forth, we have no problem with complying with those conditions that are there as we have stated them. And we would just ask in closing for a bench decision and a summary order.

VICE CHAIRPERSON REID: I have a couple of questions, Mr. Chairman.

CHAIRPERSON SOCKWELL: Yes, please.

VICE CHAIRPERSON REID: In regard to the conditions that were proffered from the Palisades Civic Association, what did you say about those?

MS. PRUITT: I believe, Ma'am Chairman, while Mr. Ellis is looking for it, that the last two, which are on the ANC, would also fall off.

VICE CHAIRPERSON REID: The last two?

MS. PRUITT: The last two are ones that were part of this Sibley Memorial project that are not part of this particular project.

VICE CHAIRPERSON REID: Okay. But the other three would relate?

MS. PRUITT: Would relate to this project, yes.

VICE CHAIRPERSON REID: Do you have a copy of it, Mr. Ellis?

MR. ELLIS: You mean the Sibley responses?

VICE CHAIRPERSON REID: No, no. The one proffered through the Palisades Civic Association.

MS. PRUITT: And I believe they are similar conditions to what you requested, or which were put forward, which are like adequate parking on site for oncology, and that all construction traffic et cetera be routed through Little Falls, et cetera, and that all construction workers be required to park on site.

MR. ELLIS: Actually, I was not given a copy of this. So I am seeing this for the first time.

VICE CHAIRPERSON REID: Okay. Do you want to take a moment and just glance over the first three?

MR. ELLIS: That adequate parking be provided for patients at the radiation oncology center. Mr. Oudens pointed out in his presentation -- well, it is on there already, but we are okay with that.

MR. OUDENS: We will agree to that.

CHAIRPERSON SOCKWELL: You are talking about that parking right there?

MR. ELLIS: Yes.

CHAIRPERSON SOCKWELL: And that parking right

there, I guess.

VICE CHAIRPERSON REID: In regards to conditions on the Sibley Memorial Hospital stationary, the ANC, if I am not mistaken, only asked for 7, 8, and 9.

CHAIRPERSON SOCKWELL: Right.

MR. ELLIS: Right.

VICE CHAIRPERSON REID: But you are willing to include the entire list?

MR. PRICE: We would agree to do all these things that are included in Penny Pagano's letter.

VICE CHAIRPERSON REID: No, no, I am going now to -- I thought these things came from the applicant that is on Sibley Memorial Hospital stationary.

MR. PRICE: Right.

VICE CHAIRPERSON REID: The point that I was making, sir, that the ANC stipulated that Issues 7, 8, and 9 be incorporated. But I was asking you were these other ones, 1 through 6, the ones that you yourself had proffered to us as being amenable to you?

MR. PRICE: Yes.

VICE CHAIRPERSON REID: Now, the other thing that I want to discuss is or ask is given the opposition, and the rather contentious nature of the opposition that pertains to -- and even though -- and please understand that I understand that this may not have been something that was germane to this particular

application.

Nonetheless, it appeared that these are issues that have arisen over time, predicated upon the other orders having been approved, and is there any effort or any kind of discussion or dialogue that is ongoing to try to ameliorate some of those problems as well as a means to defusing some of that negative or adverse impact so as to bring about the aspect of a good neighborness or some type of conciliation within the community?

MR. ELLIS: Be assured that Sibley Hospital is not sitting in front of you saying we are not willing. We have met with the ANC, and we have had Palisades come in and say they would set up a committee to meet with us.

What happens is -- and you have got to understand, that when you have a group of people, and you are dealing with a group of people, sometimes there are others who want something different. There are others who have a different agenda, and what happens is Sibley is dealing with the Palisades committee, and Sibley is dealing with whatever the ANC has.

Sibley has dealt with the Shaughnesses, both of them, Mr. and Mrs. Now, sometimes Sibley doesn't do what one or more of them may want. But the reality is that -- and if you remember the testimony, Ms. Pagano came up and said we have met with them, and we have been more than willing to meet with them.

The ANC actually meets in our facility, and we have it there and we discuss it there, and we put it before them. We

are willing to meet and there is continuing dialogue.

But you can't always get a yes from everybody, and this is a situation where others may be more accepting of what we have proposed and what we are doing than what others are doing.

VICE CHAIRPERSON REID: I understand that, Mr. Ellis, and this board member did acknowledge that there had been considerable meetings and communication with various aspects of the community.

But I am referring specifically to the opposition, and as such, is there a liaison -- do you all have a liaison?

MR. ELLIS: Yes, the liaison is here with me, Mr. Price.

VICE CHAIRPERSON REID: And you have been in dialogue with -- and understandably there are certainly in the best of worlds situations where you cannot make everyone happy.

MR. ELLIS: Right.

VICE CHAIRPERSON REID: And there are some things that go beyond the pale as far as requests are concerned, but what I am referring to are specifically those things that may be within the power of the hospital and requests, and coming to some type of meeting grounds and the meeting of the minds type of thing, and particularly if you know that there is as a result of these previous orders having been promulgated that there has been some type of adverse impact.

MR. ELLIS: Let me give you an example. The

hospital is aware that certain community members are not satisfied with the landscaping. Our landscape architect is in North Carolina. When he came to town to deal with one other aspect, we sent him out and said, okay, give us an idea of what to do here.

He gave us something, and did it on a computer, and we provided it to the opposition. Now, the opposition said that it is not substantial enough. We will take it back and within humanly possible, but there was a comment that was made today that what they proposed is going to cost us a whole lot more money.

Everything has economies of scale, and we will do what we can within our budget to ameliorate your problem, but you can't expect us at any cost to ameliorate your problem simply because you have a problem with it.

I mean, when we came in, we presented it to the board, and we told the board exactly what we were going to do, and it was accepted on that basis. And we have tried to meet with everybody and said, okay, we have now got this here, and you are now saying you have problems with it.

We are sitting here and we will meet with you, but you can't say that it is carte blanche to do that.

CHAIRPERSON SOCKWELL: Okay. You have not presented to this board a landscaping plan have you?

MR. PRICE: No.

MR. ELLIS: No, not for --

MR. PRICE: And let me just say something about

that.

CHAIRPERSON SOCKWELL: And that is something that you have stated that you would agree to, because you in a way on the landscaping bound in the skilled nursing facility, because --

MR. PRICE: Sure. We agreed to that, but let me just explain. Our landscape architect was on the site last week. He came up to do his punch list on the new building, and at the same time took some digital photos of the two areas that the neighborhood is concerned about.

He has e-mailed those to me, and I have provided a copy of those today just as a courtesy to one of the neighbors. Our intention is to meet with Penny Pagano's task force, and which represents the community at-large, right away.

We will be scheduling that meeting probably within the next 2 or 3 weeks to present to them a comprehensive landscape plan. Our intention is to have that all done as soon as we can start planting that stuff.

And virtually anything the neighbors want, we will do with regard to that. So I think the mechanism is set up by Ms. Pagano for the community to meet with us on a regular basis, to include representatives of the 5200 block, and we are perfectly willing to do that.

CHAIRPERSON SOCKWELL: All right. Now here is the other issue. Because you have in fact accepted as a responsibility for this approval the landscaping of portions of

the site other than the ones that is in question for the new development, I am going to ask if you would have a problem accepting one other element of the petition that Ms. Shaughness circulated, which had five items on it.

And one which would be the rerouting, which is really covered in other things generally speaking --

VICE CHAIRPERSON REID: If it got approved.

CHAIRPERSON SOCKWELL: Yes, it if got approved, and the landscaping, which is almost word for word what was stated in another area of the -- it was the bottom one at page 2 of the ANC letter.

The one that I want to add to that, or would consider adding to that as a condition would be work with the neighbors and community to reduce night time impact on exterior institutional lighting, because along with landscaping, lighting becomes an important issue because the two go hand-in-hand.

You can either landscape to block the lighting, or you can do things to the lighting to reduce the need for landscaping. We are talking about bleed out.

MR. ELLIS: Let me point out something ot you.

CHAIRPERSON SOCKWELL: Please.

MR. ELLIS: The lighting that we are talking about, right now we are --

CHAIRPERSON SOCKWELL: We are not specifying what to do. We are specifying to communicate with the community and to

have an open mind, and to accept opportunities where they present themselves to improve the night time appearance of your property by reducing off-site bleeding of the illumination used for your parking lots and your facilities. I am not saying what to do.

MR. ELLIS: I know, and Mr. Sockwell, as you may well know, around the hospital they have those fog lights. You know, the city lights are fog lights around.

CHAIRPERSON SOCKWELL: You are talking about sodium vapors, as opposed to --

MR. ELLIS: Yes, vapor lights that are sitting there. Those are the brightest lights. It is not the hospital's lights. But we are going to meet with them, and we don't have a problem with that.

But we want you to understand that the brightest lights are the sodium vapor lights of the city. We can't do anything about that.

CHAIRPERSON SOCKWELL: If those lights are city lights, then they are not your responsibility. If they are on the street, on public space, they are not your responsibility.

MR. ELLIS: And those are the brightest lights, because once our facility is inhabited, all the windows --

CHAIRPERSON SOCKWELL: Well, let me just say we are going far a field here.

MR. PRICE: We have a little bit of a disagreement with the neighborhood in terms of what are the bright lights, and

what is the impact on the neighborhood, but we can agree to what you say.

We will continue to have dialogue with the neighbors, and if we can do something that doesn't compromise safety for our employees, and in going out to those parking lots at night for our nurses that get off at midnight, we will do the best that we can, and we will commit to that.

VICE CHAIRPERSON REID: And that is a major issue, Mr. Chairman, and I saw that, too. And I also have it in my notes on security, because you have people coming and going 24 hours a day.

CHAIRPERSON SOCKWELL: Certainly.

BOARD MEMBER RENSHAW:

MR. MILLSTEIN: And I'm sure that Sibley Hospital has security people on staff to work with that.

CHAIRPERSON SOCKWELL: We have conditioned other projects with regard to lighting and when they can have it on, and when they turn it off at night, et cetera, especially when there is a residential adjacency.

VICE CHAIRPERSON REID: I think your point is well taken and I would ask that they try to work together to come to a resolution, which would perhaps also include talking to DPW as well. If everyone is open-minded about that, and about security, and trying to work together --

MR. PRICE: That is what we want to do.

CHAIRPERSON SOCKWELL: That is what you are going to need to do. All right. Do we feel comfortable in voting on this today?

VICE CHAIRPERSON REID: Yes, I think so. Mr. Chairman, given the fact that this is a circumstantial type of variance that is being requested here that pertains to health issues, quality of life issues in regard to cancer patients, that the most expeditious manner in which we can take care of this particular application would be appropriate.

And I would therefore vote approval of this application with conditions, and with that, I do move that we approve the application with the conditions that have been put before us, and decide on what conditions would be the most appropriate ones to add to the order.

CHAIRPERSON SOCKWELL: I will second the motion, with the statement that we really have a situation of a hospital that does a great deal of good within the community, and that like many institutions has an independence that sometimes makes it very difficult for the community to feel totally comfortable with development that is proposed, and with the results of orders that may have been issued by this board with regard to compliance with all of the positive aspects of making changes to the status quo in a local neighborhood.

At the same time, the services provided by this hospital and in the oncology section cannot be disrupted without

causing the kind of pain that may actually lead to loss of life because their facility is overburdened.

And I am sure that the other facilities around the city are not as available to the people who would normally use Sibley, and may not be as high quality. Sibley Hospital enjoys a fine reputation in this town as a hospital, and that is from the provision of a medical services standpoint.

Yet, they have to become more aware of the community and more responsive, and more proactive, and not to a fault, because you are not for profit. But at the same time, not being for profit means that you have to use more creative means of accomplishing your goals, and that is not just the provision of new radiology equipment, or doing a value engineering study on a building.

Everybody does value engineering studies, and the architects hate them. But the point is that we are there at a situation where to shut that service down for redesign would not be a good thing. Once the new facility is up, should we vote to approve it, then the hospital has to be cautious about how it re-utilizes the existing spaces, because everything that you add means that you vacate something, and then you have to refill it.

The glass is either half-empty, or half-full, or it is spilling over, and you never know which it is. So on that basis are there any other comments?

BOARD MEMBER RENSHAW: Yes, Mr. Chairman, just a

comment. I want to take this moment to thank Sibley Hospital for making its presentation. It is one of the finest hospitals in the city, and we do recognize that.

But on the other hand, I do want to applaud the community in this regard for stepping forward to express their opinions. We feel the frustrations that many of the community members have had with Sibley.

And we understand their need to grab at this opportunity to remind us, the BZA, that what looks and sounds acceptable at the time of a vote sometimes does not play out. So we hope that Sibley Hospital will renew its efforts to make a match with this community, because you are living together, and make sure that what the community has brought to your attention today is rectified and ameliorated in some very fast manner, and with that, I think we are ready to vote. I know I am.

VICE CHAIRPERSON REID: Just one other thing in regard to the regulations, the zoning regulations. I feel that the applicant has -- and I forgot to say this in my motion, but that they have met the burden of proof, and approval has been recommended by the Office of Planning and the ANC, which we do give great weight.

And they have demonstrated that there would certainly be a practical difficulty in not granting the application, and that it would not result in any unnecessary and adverse impact given the fact that the intensity of use is not

going to be increased.

And that whatever adverse impact there is, or that there is perceived to be, is being addressed within the conditions as best we can, and that it would not impair the intent and integrity of the zoning regulations. Now, the conditions, do you want to do that now or after?

CHAIRPERSON SOCKWELL: We can do the conditions now. We have advisory neighborhood commission conditions.

VICE CHAIRPERSON REID: And that is included in the Sibley Hospital residential quality impact issues all included.

CHAIRPERSON SOCKWELL: And 7, 8, and 9 were the ANC's stated ones.

VICE CHAIRPERSON REID: And that takes care of the ANC, yes.

CHAIRPERSON SOCKWELL: And the Palisades Citizen's Association had five conditions, and we have taken the first three from there; and we add one specific condition on exterior lighting from the petition circulated by Linda Graves Shaughness.

MS. PRUITT: And I believe also the board was going to condition that there be no work on construction work on Saturday, and that construction would not begin before 7:00 a.m.

BOARD MEMBER RENSHAW: And also to include that there will not be any blasting. Mr. Price said that.

CHAIRPERSON SOCKWELL: Right. Fortunately, they are not going deep enough.

BOARD MEMBER RENSHAW: I just wanted to make sure that it is in there.

MR. PRICE: That's absolutely right. We wouldn't want that either.

BOARD MEMBER RENSHAW: Good.

CHAIRPERSON SOCKWELL: Okay. And that the truck controls, the on-site parking, and the construction site attendant cleaning vehicles be implemented as in previous phases of the construction. I believe if there is a list of those elements somewhere that we could get them provided to us, because you stated that you had a person who would knock the dirt off the trucks, and made sure that loads were covered.

You have on-site parking provided for all of the construction workers, and those things, and the truck movements that you discussed, would be bound into the order.

MR. PRICE: I think that was everything and we agree to that.

CHAIRPERSON SOCKWELL: Okay.

VICE CHAIRPERSON REID: Then let's take a vote.

CHAIRPERSON SOCKWELL: Then all in favor?

(A chorus of ayes.)

CHAIRPERSON SOCKWELL: Opposed?

(No audible response.)

MS. PRUITT: The staff will record the vote as five to zero to approve. The motion made by Ms. Reid, and seconded by

Mr. Sockwell, and a proxy to approve from Mr. Hood.

CHAIRPERSON SOCKWELL: Thank you very much. We appreciate the time that you have spent. That concludes today's hearing of the Board of Zoning Adjustment. Thank you.

MS. PRUITT: And also I know that we don't have anybody here, but just for the record, the afternoon case that was scheduled, the Potter appeal, we did receive a letter requesting withdrawal today.

CHAIRPERSON SOCKWELL: Thank you.

MS. PRUITT: So I just wanted to put that on the record.

CHAIRPERSON SOCKWELL: I appreciate it. The hearing is adjourned.

(Whereupon, the hearing was concluded at 3:22 p.m.)