GOVERNMENT

OF

THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC MEETING

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TUESDAY

DECEMBER 19, 2000

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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 10:30 a.m., Sheila Cross Reid Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

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

ZONING COMMISSION MEMBER PRESENT:

ANTHONY J. HOOD	Commissioner
CAROL J. MITTEN	Commissioner

OFFICE OF ZONING STAFF PRESENT:

Jerrily Kress,	Staff Director
Beverly Bailey,	Office of Zoning
Paul Hart,	Office of Zoning
John Nyarku,	Office of Zoning

OTHER AGENCY STAFF PRESENT:

Michael Johnson,	Rental Accommodations
Ellen McCarthy,	ffice of Planning

D.C. OFFICE OF CORPORATION COUNSEL PRESENT:

Marie Sansone, Esq.

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(10:30 a.m.)

VICE CHAIRPERSON SOCKWELL: The hearing will please come to order. Good morning, ladies and gentlemen. This is the December 19th, 2000 Public Hearing of the Board of Zoning Adjustment of the District of Columbia.

My name is Robert Sockwell, Vice Chairperson, sitting in for Sheila Cross Reid, Chairperson. Joining me today is Ann Renshaw to my left, and from the Zoning Commission, Mr. 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 and witnesses of the applicant. Two, government reports, including the Office of Planning, Department of Public Works, et al.

Three, the report of the advisory neighborhood commission, ANC. Four, parties or persons in support. Five, parties or persons in opposition. 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 materials 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 phone, 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 a 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. BAILEY: Yes, Mr. Chairman, we do. Good morning. The first preliminary matter has to do with Application 16641, of JBG/Twelfth and Massachusetts Avenue, L.L.C. Is there

anyone here for that case?

(A show of hands.)

MS. BAILEY: Mr. Chairman, the applicant is requesting that this hearing should be postponed. Would you like to address that, please?

MS. BROWN: Yes. For the record, my name is Carolyn Brown, with the law firm of Holland & Knight. I am here on behalf of the applicant, JBG/12th and Mass Avenue, L.L.C. We have submitted a letter for postponement, and we request that it be deferred until -- we believe the next available date of February 27th.

VICE CHAIRPERSON SOCKWELL: And the reasons for the postponement are?

MS. BROWN: We have recently learned of some concerns of the adjacent property owner. We want time to meet with that property owner and address those concerns, and we believe we can work them out by that time.

VICE CHAIRPERSON SOCKWELL: Well, the board appreciates opportunities for a case to be made less difficult to bring before us. And in the situation of case where the community can be brought into a feeling of agreement that this is good for their neighborhood, and where the Advisory Neighborhood Commission can support the applicant's request for relief.

And where it shortens my day, and it is certainly a valid situation to give the opportunity for the applicant to make

his modifications or representations to the affected parties, and bring a unified group before us. Board Members, do you have any comment?

MS. KRESS: I would just like to make one addition. It is the Staff's understanding that the community also requests and is behind this extension, and it is not just the applicant.

VICE CHAIRPERSON SOCKWELL: All right. Then I would move that we postpone the case to a date certain if that is possible.

COMMISSIONER HOOD: I second.

VICE CHAIRPERSON SOCKWELL: Discussion?

BOARD MEMBER RENSHAW: No.

VICE CHAIRPERSON SOCKWELL: All in favor?

BOARD MEMBER RENSHAW: Aye.

COMMISSIONER HOOD: Aye.

VICE CHAIRPERSON SOCKWELL: Aye.

MS. BAILEY: The staff will record the vote as three to zero to postpone the case. And, Mr. Chairman, the date that we are suggesting is February 27th, in the afternoon. Would that be acceptable?

MS. BROWN: Yes, that is acceptable to the applicant.

MS. BAILEY: Is there anyone else in the audience who is associated with the case or is familiar with it? There was a request for party status. Is that person here now?

(No audible response.)

MS. BAILEY: So February 27th, Mr. Chairman, in the afternoon.

VICE CHAIRPERSON SOCKWELL: All right. And that is a Tuesday, of course. That's right. Al right. Then the case is hereby postponed to the date stated. We look forward to seeing a very happy group come before us.

MS. BAILEY: The next preliminary matter, Mr. Chairman, has to do with Application 16648, of BP Amoco Corporation, and in that particular instance, there are several requests for a postponement.

There was a request from the Stanton Park Neighborhood Association, from the Linden Neighborhood Association, from Council Member Sharon Ambrose, and from the Capital Hill Restoration Society; and there are several requests for party status in that case. Mr. Brown, are you familiar with that case, sir?

MR. BROWN: Yes. Mr. Chairman and Members of the Board, Patrick Brown, from Greenstein, Deloreman & Lux. I am counsel for BP Amoco, the applicant in this case.

I am well aware of the various requests for postponement of this matter. BP Amoco objects to and opposes the continuances. As the Chair has said, often times continuances will allow parties to focus their efforts and narrow a case.

I think that we have reached an impasse in this

matter, where it is ripe for a hearing. Not for lack of attention to the community and the various parties involved, BP Amoco, and the entire team who is with me this morning, we have got eight people prepared to go forward.

We have been out in the community at various meetings for the last 2-1/2 months, and particularly the ANC, where we have been twice in the last two weeks.

We have been at the Capital Hill Restoration Society, the Linden Neighborhood Association meetings, and a variety of smaller group meetings. We have met with Stanton Park. So great effort and time has been expended, and we are at an impasse.

There is a difference of opinion, and we have attempted to narrow the issues, but I think we are to the point where at this stage the expectation of further movement is probably unrealistic in the short term, and it would be appropriate to go forward on this case.

We need to put the nature and the origin of some of these continuances in the proper origin. Obviously, Mrs. Ambrose is concerned, and I anticipate that this case will probably go beyond today's hearing date, just because it is a hotly contested case, with various parties and persons in support and in opposition.

And we could certainly make ample time on the record for Mrs. Ambrose to accommodate her scheduled even today

should that be possible. The ANC has asked for a continuance, but for no particular purpose.

And I don't think that any purpose would be served. Mr. Schauer, for the Capital Hill Restoration Society, is here this morning. They also have asked for a continuance, recognizing that the Capital Hill Restoration Society is pretty far a field geographically from this site, and probably would not be entitled to, or seek, party status.

Similarly, Stanton Park Neighborhood Association, which is again by their own charter, outside of the area of this property, will likely be denied party status, and they made it clear that they are opposed to this application, and the issues that they want to raise can certainly be raised as well now as later.

And similar the Linden Neighborhood Association, which has worked with the ANC, trying to work a voluntary agreement, but again at this point are in opposition.

So I don't think there is any purpose served by delaying this matter to a further date for the sake of just a continuance.

VICE CHAIRPERSON SOCKWELL: Mr. Brown, you stated that the Advisory Neighborhood Commission has a request for a postponement and has no particular purpose. Would you elaborate on that? You are speaking for the ANC in this case as the applicant's representative.

But I would like to understand why you believe that the Advisory Neighborhood Commission's request has no purpose.

MR. BROWN: Well, I am not so sure that there is a representative here. One, their continuance was not made by the full ANC, but by their zoning and land use subcommittee. So there is the issue -- and Mr. Pernell, the single-member district commissioner, is here.

I am not so sure that they are seeking -- and in looking at their letter, which hopefully is in your packages, they are indicating down at the bottom that the motion is based on the lack of clear information provided by BP Amoco.

And then it goes on to make specific reference to issues on the scale and environmental issues. In all fairness to the applicant and to ANC-6A, we have spent an awful lot of time with that group, and the amount of information provided to them is such that I am not so sure that the realistic expectation is that we can provide them any more information other than somehow withdrawing this application.

So again the expectation in a continuance is that we would accomplish something, and I am not so sure that I can hold out any hope to the board, or the ANC, that that would occur in the context of a continuance.

VICE CHAIRPERSON SOCKWELL: And you said that an awful lot of time has been spent with the ANC.

MR. BROWN: Mr. Chair, my co-counsel, Tony Rachal,

who hopefully you are familiar with --

VICE CHAIRPERSON SOCKWELL: No, I'm not, but that's --

MR. BROWN: -- mentioned to me as a scorekeeper, that at least four of the meetings that we have had with ANC-6A, had been plagued by a lack of quorum. That doesn't mean that the meetings didn't occur, and important information was shared both ways.

But we get into a situation where we can't be assured that the next meeting, or the meeting after that of ANC-6A, will have a quorum. So we are creating an expectation that may not be realistic as far as the ANC's participation.

COMMISSIONER HOOD: Mr. Brown, that is a stickler with me. I want you to make sure that you understand -- and while I know that you have made an effort to meet with the ANCs, that is a voluntary group.

And I am sure, and I understand that they have not had a quorum, and not in just this case, but sometimes it is hard when you are volunteering to get everybody to participate at the same time.

So I would ask that you just keep that in mind and be conscious that that is a volunteer group, and I believe that you are getting paid. And I understand that, but sometimes when it comes down to where it is being said that the ANC had a problem getting a quorum, I have a problem with that.

And that's because that I am not sure what all you do in your community and all of that, and I am not making it personal, but I would like for you to make sure that you understand that we understand, that this board does, that ANCs are voluntary groups.

MR. BROWN: And, Mr. Hood, I as not casting -- so for it to be clear, I was not casting dispersions on ANC-6A. But that was a fact of life, and it makes it very hard both for the ANC and for my clients, to operate. That is a fact of life.

There are 14 seats on ANC-6A, and they have never been able to that I am aware of, have been able to muster more than six people there. And I am not denigrating anybody, but that is the fact of life that my client, and the board, and ANC-6A has to deal with. And it is a frustrating, because --

COMMISSIONER HOOD: Let me just ask you this also. Let's talk about paid groups. I have never seen a letter from the police department having a problem.

And I have been here almost three years, and so volunteer and paid groups -- well, I guess what my concern is that a lot of opposition -- and also the Office of Planning report, is recommending that you be denied.

That is a lot of opposition, and I understand that not just the ANCs, but that you are working with the Office of Planning, and I was just thrown back when I just received something from the police department.

MR. BROWN: Well, can I focus in on that, because there is a lot less there than meets the eye? While the regional command person, who we have never dealt with, is concerned about this project, the 6th District Commander, and the PSA people are in fact thrilled about this project for a variety of reasons, including the location of --

(Brief Interruption.)

VICE CHAIRPERSON SOCKWELL: I don't believe that anyone should open their mouths, or you will be asked to leave this hearing room. It is not appropriate to speak.

COMMISSIONER HOOD: I have a letter here in black and white, and just give me a minute to finish reading all of it. I usually go and read the bottom line because I want to know what the bottom line is.

And this bottom line, unless there is another letter, staff, that has them supporting it, I am just concerned, because the Police Department usually does not weigh in on these cases.

MR. BROWN: Well, yes, and Mr. Hood, again going back to what I was saying, is that the local precinct commander of the 6th District up there, their PSA representatives that we have met with and discussed, are actually supportive of this project because -- and as part of it, and you will see in our application packet that one of the exhibits was a draft MOU with that group to provide a police substation, and Kiosk, and community work

station, right in the facility.

So again the person who is responsible for that neighborhood at the senior command level of the police department, which is arguably below the author of that letter, is saying to give me a resource right there in the building that I can help ensure the safety of this site and the neighborhood.

So again there is less there than meets the eye, and that's why we are at a point where I think a hearing, a contested case hearing, where the various views and roles are aired, and then the board makes a decision, is appropriate.

COMMISSIONER HOOD: Mr. Brown, I am not going to belabor the point, and Mr. Chair, I just want Mr. Brown to understand that I capable of reading, and I can see who signed this, McManus, who is the ROC commander, and it is also signed by Commander Dine.

So I don't know where you thought that t hey were in support, but this letter here seems to me to say it has a problem. But I don't want to belabor the point.

Maybe you can prove it if your case moves forward. That's all I have, Mr. Chair.

BOARD MEMBER RENSHAW: Mr. Vice Chair --

VICE CHAIRPERSON SOCKWELL: Please go right ahead.

BOARD MEMBER RENSHAW: I would like to ask Mr. Brown if he has appeared before the City's gas station advisory board on this conversion?

MR. BROWN: Mrs. Renshaw, no, we haven't. That is not necessarily in this case because this is an existing self-serve station.

BOARD MEMBER RENSHAW: But this is a conversion.

MR. BROWN: It is not a conversion from a higher level of service, a full-service gas station to a self-service. It is currently a self-serve gas station. So the GSAB doesn't have jurisdiction over the matter.

In other BP cases, they have obviously gone to the Gas Station Advisory Board, but in this case, since it is a self-serve facility, and it is not a "conversion" facility, it is not necessary.

And Mr. Rachal, my co-counsel, is the Gas Station Advisory Board expert, but I put words into his mouth.

VICE CHAIRPERSON SOCKWELL: Apparently there is a statement by the Stanton Park Neighborhood Association regarding a draft voluntary agreement that they were not aware of, and that they claim not to be a party to.

And I think that your statement is that the Stanton Park Neighborhood Association is outside of the area influenced by this project, or that their charter places them outside of the area.

MR. BROWN: Mr. Chair, can I respond to that? And to do so accurately, I need to give you a background.

VICE CHAIRPERSON SOCKWELL: And they also stated,

and let me for the record say that it stated that this voluntary agreement included their name.

MR. BROWN: And the background and origin of that volunteer agreement I think will help you understand, that agreement was drafted by the Linden Neighborhood Association, and you can see in your prehearing statement from us that there is a red-lined or black-lined version which shows the original, and then where changes have been made.

The document was created by the Linden Neighborhood Association, I believe, in conjunction with the ANC. We certainly had follow-up meetings in a small group to discuss that with the ANC SMDs. But again that draft started from the neighborhood association, the Linden Neighborhood Association.

They included the signatories on that agreement, and we received that, and made changes to it, and sent it back. So that the origin of the Stanton Park Neighborhood Association is not of my doing. It is of the author or the originator of that document.

If in fact the Stanton Park Neighborhood Association does not want to be on that agreement, that is their prerogative. And, in fact, I don't want to leave you with the impression that they have agreed to be on it.

And certainly we did not put them on the draft. That is something that we were given. So they are more than welcome, one, to not be on the agreement; and, two, again going

back to my objection to their party status in this matter.

VICE CHAIRPERSON SOCKWELL: Without trying to get into any of the merits of the case, the agreement that was -- that this draft agreement is something that BP Amoco has accepted apparently in some form.

MR. BROWN: The one that is attached to our prehearing statement, my clients tell me that it has been vented up their corporate chain to the head of the Atlantic Business Unit, and they are prepared to authorize its signature.

VICE CHAIRPERSON SOCKWELL: Now, the --

MR. BROWN: And as was included in your prehearing statement. And has been another addition to it quite frankly, dated after the last -- well, the next to last ANC meeting, which made some further changes, including a request for $5 million, I believe, in direct financial assistance by BP Amoco to the community. That is not amenable to BP Amoco.

VICE CHAIRPERSON SOCKWELL: Okay. Let's say that with regard to Council Member Ambrose's request for a postponement, her request is based upon the lack of satisfaction of requirements for an environment impact statement. Do you have anything to say about that?

MR. BROWN: And, Mr. Sockwell, in your other life, you are very familiar with that process. The environmental impact statement issue arises not at the board of zoning adjustment level, but at the building permit processing level, which begins

with the environmental impact screening form and then flows from that.

So while she may have concerns, those concerns are not timely in the context that she is raising them. Certainly in our presentation we are ready, willing, and able to respond, and provide and have provided in our prehearing statement environmental information.

But as to the environmental impact statement, which may in fact be required in this project, we are talking long beyond the BZA's participation in this matter.

So I think holding up the hearing for that is a little bit of a red, if not a very large, a very large red herring. Now, obviously we welcome Ms. Ambrose's participation, but that can be done without a continuance.

VICE CHAIRPERSON SOCKWELL: I would have to agree on form that the environmental impact statement procedures have little to do with the activities of the BZA in this process, in that applications for building permits are referred to the BZA before the environment impact portion has been responded to by the various agencies involved.

And that it would not be something that would have an effect on our deliberations. IT is not something that the BZA deals with in a direct sense. So I would agree with you there.

Board Members, have you had a chance to look closely at the requests for a continuance, to the extent that you

feel that they are sufficient grounds for us to consider this, or do you believe that we should proceed with the case?

The proponents are here, and the applicant is here, and are the opponents here, and those that might be requesting party status, et cetera? Are you all here? Raise your hands.

(A show of hands.)

VICE CHAIRPERSON SOCKWELL: Mr. Hood.

MS. BAILEY: Mr. Chairman, we have many persons in opposition, but based on my review of the file, we only have three requests for party status. But we have many, many letters of opposition.

COMMISSIONER HOOD: I had been looking at -- because, you know, sometimes you miss things. Mr. Brown has stated that he has some letters of support. But I guess they are getting drowned in the letters of opposition that I have, because I was looking for the letters of support.

And maybe it came in this morning. I have not read through everything else.

MR. BROWN: And there is a lot of volume of letters in the file, and we have gone back and analyzed the origin of those letters. And there are some people obviously who live very close by, and then there are some people very, very far away.

So I think just strictly a weighing of the volume of the letters without some sort of analysis of where they come -- and I can show you that pictorially.

But the majority of them come from people who are in -- and I think in the Board's way of looking at things, would be outside of the immediate area. And again I am not meaning to undermine those letters.

VICE CHAIRPERSON SOCKWELL: Well, we can get to that.

COMMISSIONER HOOD: Let me just say this though, Mr. Brown. Let me just inform you that this board is very astute. We have had letters come from Virginia and Maryland. Not in this case, but in other cases. And we are aware of the surrounding area.

MR. BROWN: Well, there are letters in that file from Maryland, and again that is the best that I can determine. But obviously I think the board would have to weigh carefully each letter and the proximity of those people to the project.

VICE CHAIRPERSON SOCKWELL: Well, board members, based on the information that has been provided this morning, the request for postponement, as well as the applicant's opposition to those requests, what is your pleasure?

BOARD MEMBER RENSHAW: Mr. Vice Chair, I am going to move that we postpone this case. I think there is sufficient documentation that has come into the record from the ANC, from the council member, from the civic associations, to request this and I would say at the outset of this case that it would be well advised to postpone to a date certain.

VICE CHAIRPERSON SOCKWELL: Mrs. Renshaw, as I stated, and I meant to be very specific, the letter from the council member raises issues that are not germane to the BZA's process.

And therefore you cannot use things that do not relate to the process as reasons for a postponement I don't believe.

BOARD MEMBER RENSHAW: I know, but I believe, Mr. Vice Chair, that at the opening of this case that it would be well-advised for us to defer on this matter to the council person.

She would like to be in attendance, and she cannot be here because of a legislative session today. I know that Mr. Brown has spoken to the effect that of course there will be other opportunities for Ms. Ambrose to be here.

But because she has issued a letter of request asking us to postpone, I would like to take that into consideration, and therefore I have urged or I move that we postpone this case until a date certain.

VICE CHAIRPERSON SOCKWELL: I believe that under the circumstances that this may not be heard today depending, but I again reiterate that when a letter comes in, regardless of the individual who provides the response, that if the response in and of itself is to issues that are not board of zoning related issues, the mere desire of an individual to be present at a hearing, a non-party, an individual that is not the ANC, or one of

those agencies that is specifically required or desired to respond, that we should not make a decision on holding a hearing on that basis and that basis alone.

BOARD MEMBER RENSHAW: Mr. Vice Chair --

VICE CHAIRPERSON SOCKWELL: I do believe that --

BOARD MEMBER RENSHAW: Mr. Vice Chair --

VICE CHAIRPERSON SOCKWELL: Let me finish.

BOARD MEMBER RENSHAW: Could you call for a second --

VICE CHAIRPERSON SOCKWELL: Let me finish, Mrs. Renshaw.

BOARD MEMBER RENSHAW: -- and then have discussion.

VICE CHAIRPERSON SOCKWELL: May I get a second on the motion?

COMMISSIONER HOOD: I will second it.

VICE CHAIRPERSON SOCKWELL: Okay. Now, discussion. I do believe that the opponents are here in force, and the opportunity is here to begin this case, and it may not be fair to those individuals in the community who have come forward to present their views to postpone this case.

COMMISSIONER HOOD: Mr. Chair, can I weigh in on that? I just want to say something to the applicant. I believe that the BZA rules are the same as the zoning commission, but we have to give the Office of Planning great weight.

And in their findings, and also in what I have

read, this does create a problem with the harmony of the zoning regulations. So if it is any more than that -- and I want to make sure that the applicant takes heed to the Office of Planning's report, in which this body is duly -- is supposed to give great weight.

And I want to just call that to your attention because they again recommend denial. And whether the ANC has a quorum or not is an issue, but the main tickling issue for me, Mr. Brown, is that I have never see the police department come forward ever.

So I have some serious concerns, and while I see a few smirks, I really have a concern with that, because I live here, too.

VICE CHAIRPERSON SOCKWELL: Is the representative from the police department present today?

(No audible response.)

COMMISSIONER HOOD: Let me state for the record that I don't live in the neighborhood, and so I can still participate in the case. But what I am saying is that I want to make sure that you understand that the Office of Planning has recommended denial.

MR. BROWN: Well, I understand, Mr. Hood.

COMMISSIONER HOOD: If this is continued, I would encourage you to go back to the drawing board, or as far as you can, with OP and the ANC, if they can get a quorum, and with the

community, because that is really going to have a lot of weight.

BOARD MEMBER RENSHAW: Mr. Vice Chair, we have received a great number of piece of material here that we have yet to review with the seriousness that these documents demand. But I just draw the board's attention to the Stanton Park Neighborhood Association, because that association does speak for a great number of persons in the neighborhood.

And it states in this letter, dated December 18th, that they believe there remains serious problems that must be resolved in advance of the BZA hearing.

And I would like to see many of these serious problems resolved before we hear this case, or we are going to be put in the position of being a referee between two parties, and that is very uncomfortable for the Board.

You know perfectly well, Mr. Brown, that the Board appreciates having cases before us, that while there may be a few little quirks to work out, the Board can do that through the regulation process, through the hearing process.

But if there are enormous problems, which it looks like there are, it would be best for you to get in a huddle out there in the community and work these out before you come to us. And I think that in the holiday spirit that you should agree with that.

MR. BROWN: Well, Mrs. Renshaw -- I mean, absolutely I agree with it. I am very uncomfortable being here,

but I also am frustrated and speaking on behalf of my clients, that we don't have an agreement is not for lack of effort on anybody's part.

BP Amoco, the members of the community, a lot of nights, a lot of meetings over a 2-1/2 month period. We have made some progress, but also recognizing that we are at an impasse at this point.

So I understand what you are saying, and it is good advice, and it is good advice that has been taken by a lot of people on both sides. But I am also here to report that we are kind of at an impasse right now. That may change, but that's where we are at right now.

BOARD MEMBER RENSHAW: Understood. I think you need to find an ombudsman, someone who could direct these proceedings in the community and see if you can't come back with a definitive report from that independent body.

Certainly the community could find with the help of your client and you, Mr. Brown, someone who would be satisfactory to both sides, and then go for it. Hammer it out.

See if you can't come to some resolution of these problems and then come back, because this case is a biggie, and you know, and I know, that what happens in this case is going to set a tone across the city.

You have already been in our area, in my ANC area, and you well know --

VICE CHAIRPERSON SOCKWELL: Ms. Renshaw, let's not bring other areas into the case that would show prejudice.

BOARD MEMBER RENSHAW: I am not, but I am just suggesting that there is some heavy work to be done before this case comes here, and that is what I am suggesting to Mr. Brown, that they find an ombudsman, to go back and hammer it out, and then come back to us.

VICE CHAIRPERSON SOCKWELL: Mr. Brown --

MR. BROWN: Can I interject something as I think it will make life a little easier for everybody?

VICE CHAIRPERSON SOCKWELL: Well, let me ask you one question before you interject, and that is based upon the activities that BP Amoco, your client, has engaged in with the community at large, do you believe that you can resolve to any significant degree the most salient issues that the community has raised if this case is continued or postponed?

MR. BROWN: Can I respond?

VICE CHAIRPERSON SOCKWELL: You can give me a yes or a no, and you can give it to me in two parts; the why at the beginning, and the --

COMMISSIONER HOOD: Mr. Chairman, if I may, but when you say community, are you also meaning the police department, the Department of Health?

VICE CHAIRPERSON SOCKWELL: it would include all of the relevant issues that have been raised. I mean, you have had

time to review --

MR. BROWN: Certainly, and we don't want to exclude anybody. Can I answer your question in a not intentional fudge? Maybe. But my client, Mr. Falitto, from BP Amoco, just whispered in my ear, and I think it will make everybody's life easier, is that I think we have had an airing of discussions back and forth between the board and them.

And we began opposing the continuance, noting our concern, our frustration, and why don't we do this? The Board has an available date to continue the matter until February 27th.

I think that would be the most productive use of the board's time, our time, the other people's time, if we go forward in a mutual, agreeable manner to continue the case until that date, and we will see what we can do.

MS. KRESS: Could I just add that we had tentatively talked about that, the 27th in the afternoon. We already have two cases. In hearing the discussion so far on this case, I don't see how that can be a third case in the afternoon.

VICE CHAIRPERSON SOCKWELL: Well, it would not be completed obviously from what you are saying the apparent schedule is. I don't know what those two cases are.

MS. KRESS: The other thing is to go ahead and move it to -- that was February 27th, and the other thing is to go ahead and move it to a second case in the afternoon on March 13th, or the only case in the afternoon on March 20th.

MR. BROWN: Mr. Chair, that gets -- and one of the things that I think we have an opportunity for some renewed focus, is that talking all of a sudden about March, that --

VICE CHAIRPERSON SOCKWELL: Well, it might wind up that if we were to schedule it on the 27th of February -- you can't speak from the audience, and you would have to come to the podium. But let me Mr. Brown complete and you will have to identify yourself. We are not in the case and we are still in preliminary.

The issue would be that if we started this case on the 27th in the afternoon, and we did not complete, then it would require everybody to come back again on the second date.

For the attorneys and the applicant, usually that is not as difficult a process as it is for the people who are generally from the community who haver probably taken time off from their jobs in order to be here to represent their position.

So it would be to the advantage in a case like this, especially if you are trying to create good will with the community, if that can be done, to try and set the date so that it would hopefully be a one day, one shot testimony for everyone. I have to be here and so I don't have a choice.

MR. BROWN: The same is true for me. I would think that time is an element, and I am not pleading prejudice or anything, but I think we have got a process, and if we put it off for essentially three months, that I think time is going to be not

an ally but kind of anuria and will hurt us.

I think that some sort of urgency -- and that may not be the best word -- is needed to keep this process moving. A hearing date is a great focuser of people's attention, both from my side and from the community's side.

So I think that sooner rather than later. And on February 27th, we may arrive with this thing tied up in a night neat package, and a late holiday present, in which case scheduling may not be an issue.

But I think to keep this process moving, both here and also in what we do outside of here, that waiting another month -- and March 13th is a long time away.

VICE CHAIRPERSON SOCKWELL: Well, the likelihood -- now remember that we are at the midpoint of December. You are not going to get anything done with the community between now and the 2nd of January.

So you have to knock two weeks out of your schedule immediately, or 2-1/2 weeks probably. Then you are talking from that date 30 to 70 days, depending upon -- well, actually you can't get in before the end of February, and so we are talking February 27th at the earliest.

MR. BROWN: Well, I mean, starting from January 2nd, I think that is a fair assumption, but vis-a-vis each other, the parties, that we may do some internal thinking.

But you have still got between January 2nd and

February 27th, almost 60 days. And I think the likelihood, if this matter does proceed in a contested manner like you said, the sooner we start, the sooner we are going to finish. And in fact it may involve some scheduling and other issues and hardships.

VICE CHAIRPERSON SOCKWELL: Well, let's say this. With this Board's experience with you, Mr. Brown, and your tremendous ability to create compromise and bring people together, you might be able to come back on the 27th with a case that would take an hour-and-a-half.

And we would allow you abbreviated testimony, and the community would be holding banners espousing the virtues of low gas prices. And if you believe firmly that you can come to agreements with the community, with the advisory neighborhood commission, on major issues, and if you can solve or alleviate the concerns of the police department, and if you can look at issues regarding environment non-EIS concerns, and if you can bring a more consolidated case with fewer parties, then perhaps the 27th is a good day to begin this.

But I am hopeful that if we can assign the 27th that we are expecting that you and your client will do the best possible job to resolve the major issues of this case.

MS. KRESS: You might want to hear the opposition.

COMMISSIONER HOOD: Can I just pick up on what you said, Mr. Chair? Also, we are going to ask

-- and I think it would be appropriate to not just ask the

applicant, because I know he is the one. We can also ask the community groups -- the ANCs and the opposing groups, and as well maybe notify the police department -- which I am still baffled at and I hate to keep harping on it, but ask them also to be congenial to try to work out some type of agreements so that we can have an expedited case, if possible.

VICE CHAIRPERSON SOCKWELL: And that is well stated, Mr. Hood. Ms. Renshaw, do you have any additional statements?

BOARD MEMBER RENSHAW: No. Is it appropriate perhaps to hear from a member of the community?

VICE CHAIRPERSON SOCKWELL: Yes. Would you identify yourself, sir, and the relationship?

MR. MCCREA: Thank you, Mr. Chairman. I am a bit nervous because this is the first time that I have ever appeared before the Board.

VICE CHAIRPERSON SOCKWELL: Look, if you could that microphone on without us asking, you are in tune with us.

MR. MCCREA: My name is Mackie McCrea, and I actually live on the square in which this project is proposed. In essence, I am a hiccup away from it. The members you see behind me in the back also live on that square.

We also have a set of about six senior citizens who were going to come to this meeting. We are talking about ages ranging from the ages of 88 to 90 years old, but they declined to

come because of the inclement weather that was forecast.

We strongly oppose this proposal. The main reason why is, and with all due respect, that BP Amoco has not addressed the residences or property owners of Square 776, and we live there. We are within a hiccup away from this proposal.

We residents had to deal with the mismanagement, the crime, and other associated problems with this particular corporation for years. We, too, have been to those meetings, and just like BP Amoco attempted to control this hearing, they dictated what was being said and how the meetings with the ANC were going to go.

We solicit support from our fellow ANCs, from our fellow civic associations, such as Stanton Park. They are totally with us on this, and that's why as we sat here real antsy and saw the way that they continued to dictate -- and they are even trying to dictate the date when we are going to have this next hearing, we have senior citizens that really want to be here, and who have been in this area for a total of over 200 years probably who would like to testify.

This particular case, as Commissioner Renshaw suggested, has a lot of opposition and this is a very big issue, not just for us personally who live there and who have to deal with this problem, but for the future development of the entire northeast 8th Street corridor and we are very concerned about this.

And so if anything, we would like for our position, the residents of Square 776, which I believe in your package you have a detailed letter from us voicing our opposition.

VICE CHAIRPERSON SOCKWELL: So are you -- I think or I guess my question is are you for a postponement to give BP Amoco an opportunity to repair their relationship?

And the only way obviously that they will be able to do that is to be forthcoming with the kind of communication and the kind of response to your concerns that you who live approximate to this proposed facility have.

That that is what this is all about, and that's why we would, or that's why I would support a postponement, because it has to have substantive value. So in this case we have to feel that obviously you are aggrieved enough to be here.

MR. MCCREA: Absolutely.

VICE CHAIRPERSON SOCKWELL: And to voice your concerns, and so we have to feel that something may come of a connection, and that is why Mr. Hood suggested that the community try to reopen its mind or open to its mind to the possibility of compromise, where very often we have applicants who have not made the commitment. Please.

MS. ROBINSON: Good morning. My name is Sarah Robinson, and I live at 8016 - 4th Street, and I give honor to god and to you for giving me this opportunity to speak.

Like Mr. McCrea said, the Square 776, needs a

voluntary agreement that BP keeps pushing out to in these meetings, and they did not include anybody from our square. When they wrote up this agreement, these people did not live in the immediate area.

I feel like they -- that the people who they know are in favor of the proposal, and then they meet with those people. Do you see what I am saying? And, I mean, you can't vent the owners against the residents and the tenants. We all have to come together as one.

In their proposal, we asked for changes as far as trying to do something better that will benefit our neighborhood. They don't move. They don't budge. It is like accept our proposal or that's it. Do you understand what I am saying? So we have a lot of -- because they hear us and we hear them, but nothing has really worked out.

VICE CHAIRPERSON SOCKWELL: So you are saying that you don't feel that the -- you have stated your position, and they have stated theirs, and there has been no coming together?

MS. ROBINSON: Exactly.

VICE CHAIRPERSON SOCKWELL: Then it seems that the opposition or the differences that are between you warrant a postponement in this situation.

MS. ROBINSON: Exactly. I agree totally.

MR. MCCREA: But if I may, Commissioner, I think we have to pay all due deference to our city councilman, because in

fact she is the elected leader, and she has some serious say so about this issue, as well as our senior citizen residents, as well as some of our other neighborhood associations.

I would like to have the opportunity to consult with them, and that would be fair, in terms of date, vis-a-vis what BP is suggesting.

VICE CHAIRPERSON SOCKWELL: Well, what we try to do in terms of dates is provide dates that are available on our calendar, and our calendar is very full.

When we have cases that are quickly dispatched, it leaves lots of time. And what I don't want to do necessarily is put the community through the hardship of having to come back often in order to voice their viewpoints.

And so it may be more appropriate for us to schedule this on a date that we are sure we can get a full hearing concluded. And that means that March 6th, I believe you said, would be the earliest?

MS. KRESS: No, March 6th is booked. We have in the afternoon one case, in the afternoon on the 13th we have one case, or on the 20th, we have all afternoon.

And unless a lot of work is done, this sounds like almost an all afternoon case.

MR. PERNELL: Mr. Chair, March 20th is a good date for the ANC.

VICE CHAIRPERSON SOCKWELL: Then I would suggest

March the 20th for the reason that our case schedule happens to get pushed around anyway. So March the 20th currently has nothing on the afternoon docket. So that would be free and available, and if anything comes up, the 13th could pile up with something also.

The case in the morning of the 13th could be pushed over and it would make it difficult, and February 27th is probably not as appropriate a date.

COMMISSIONER HOOD: Mr. Chair, may I reiterate again that all parties, all people who have interests and that are involved, please enter into discussions. Let's be open-minded.

And I am asking that from the applicant as well as the community, the ANC, or whoever else. Just everybody who is going into this be open-minded. So that we can anticipate, Mr. Chair, when we come back that we will probably have a case in about an hour.

VICE CHAIRPERSON SOCKWELL: And the other opportunity is that with the kind of differences that we have between the community and the applicant being expressed by yourselves, and the outburst a little earlier, it is going to take some time to come together with the applicant and their representatives.

And to first get a hearing of each other's views and an understanding of each other's views, and then some compromise as to what works, and what is effective for the development, and that is effective for the community, and

hopefully between now and that time period it will become apparent that the community and the developer or applicant must bring forth a proposal that is coordinated around the most salient issues. And that is why I think that March 20th is a good date.

BOARD MEMBER RENSHAW: Can we have some statement from an ANC representative?

VICE CHAIRPERSON SOCKWELL: He stated that it is okay for him.

MR. PERNELL: It is.

BOARD MEMBER RENSHAW: All right.

VICE CHAIRPERSON SOCKWELL: And if you will come forward and just give your name just for the record.

MS. KRESS: Since you have been taking illegally.

MR. BROWN: Mr. Chairman?

VICE CHAIRPERSON SOCKWELL: Yes, Mr. Brown?

MR. BROWN: On the 20th, which is a good date, if we could just ensure that this case remains first on the afternoon agenda.

MS. KRESS: Right now it is the first and only.

VICE CHAIRPERSON SOCKWELL: It will be the first, and we will try and keep it the only.

MS. KRESS: We will keep it as the only case in the afternoon.

VICE CHAIRPERSON SOCKWELL: Which means that it will take an hour and we can go home early. Mr. Commissioner.

MR. PERNELL: Good morning, Board Members, and members of my single member district commission and voting commission, I am glad to be here this morning. This is one of my --

VICE CHAIRPERSON SOCKWELL: Please give your name.

MR. PERNELL: I am Commissioner Daniel Pernell, the board and single commissioner of the project of the BP. I would just like to clarify a few things that I have heard from the BP representative.

That the ANC didn't have a quorum because there were a number of people who were sick in the ANC, and there were a number of ANCs that were voted out of their position, and we were unable to get a quorum.

But on December 13th, with the chairman, Marvin Fields, of the subcommittee, we were able to get a quorum and we did make a motion, along with the community, to have a continuous (sic) on this project that BP Gas Station came before us with this large scale project, and did not apprise the community of the consequences that it may cause this community in the long run.

And I thank Sarah Robinson and Mr. Mackie who have spoken today, who live right in back of the BP project, and they are the strongest great weight here today.

Also, I want to say that we met with Stanton Park and the Linden Neighborhood Associations, and the First District and Fifth District police department on these concerns, and that

they should be heard, and that we are unanimous in this request for a postponement to March 20th, 2001.

VICE CHAIRPERSON SOCKWELL: And you said you had a quorum on the 13th of December?

MR. PERNELL: Yes, we did.

VICE CHAIRPERSON SOCKWELL: Mr. Pernell, I would request that you as a known community leader make sure that the affected parties in the community are all represented well in discussions with the applicant so that there won't be any difference of opinion as to what was submitted to whom, and who was involved in what, and who signed this, and why my name isn't on that, okay?

MR. PERNELL: Mr. Chair, there were a lot of unofficial meetings held with different organizations in the area without the purview of the ANC-6A. The ANC-6A did not take a position on it until we officially received an application from the BZA, which is our professional position.

We do not get into the demigod of who is meeting with who, but there were a number of individual organizations who met with Bill Burroughs of the 8th Street CDC, and ANCs were not invited.

Certain civic groups were not invited, including the Northeast Citizens Against Crime and Drug, which is under Ms. Laura Marry, and Reverend Bynum of the Public Interest Association, and those direct areas of the BP Gas Station.

So there are a lot of misconstrued information here that the ANC was not a party to until the application. The ANC is officially on the record since 1974 of having the first Thursday of the month at 7:00 a.m. (sic)

We have had a number of meetings at Pilgrim Baptist Church with BP with a forum, but right that the quorum failed because of the election of new commissioners, and a lot of commissioners were sick, including the vice chair, Ms. Wanda Harris.

So a lot of what you see in here today, the information that you received, the ANC still do not have.

And I would like to say -- and I agree with Anthony Hood -- that the information that is given by the First District Police Department, and the Fifth District Police Department, and any civic group, should be given to the chair, Marvin Fields, before we make a decision.

And that is the premise and purpose that we are going to use in 2001. If no information is presented to us officially in final draft by Stanton Park, Linden Place, the surrounding communities, and documentation of what their position is, the ANC will not take a position.

But we are so far in collaboration with each other that we have an agreement that we are going to solve this problem, and we are going to work together, and we are going to hear from all parties, and no one will be excluded. Everyone will be

included.

VICE CHAIRPERSON SOCKWELL: Sounds good to me, sir. Thank you very much. And you would like to speak?

MR. FIELDS: Yes. Good morning. Marvin Fields, Commissioner Marvin Fields.

VICE CHAIRPERSON SOCKWELL: You are Mr. Fields?

MR. FIELDS: I am, yes. I would just like to echo on what Commissioner Pernell said. At the beginning of these talks, I did ask the BP Amoco group to let me know all parties that they were going to be discussing the issues with me to allow me an opportunity to follow up and keep up with the information, and that had not been done.

Also, there are a number of government agencies that are not giving us information as to applications, or whatever other procedures that -- studies and so forth.

I am currently trying to unravel the amount of agencies that are involved in this process. So I still have not had an opportunity to even find out all the different agencies who have had some input in on this.

VICE CHAIRPERSON SOCKWELL: All right.

COMMISSIONER HOOD: Let me just say, Mr. Fields, that we do have a record in the staff, and you can come down and see some of the letters in which we have, and I think we have the Department of Health and some others, such as the police department and other people.

But you can come down and look in the record, and then that way you can have some corroboration as the Chair said.

MR. PERNELL: Board Members, I think what Mr. Fields is trying to say is that before we even come down here, the ANC Commission and Commissioners that are involved, and the community, we are unable to forward information to Sarah Robinson and Mackie McCrea, and members of the civil group leaders, on what is actually going on if these departments don't comply in giving us drafted information to the ANC.

There is no way in the world that the ANC can come down here and look at all of these records, and go through them and find out what the facts are. This information should be given to us beforehand, so that under the law the ANCs can properly notify and abreast communities when we have our set meetings, which is the first Thursday of the month, and the second Wednesday of the month, which is our subcommittee for zoning and licensing.

COMMISSIONER HOOD: Commissioner Pernell, I have to agree with you on that, but as you well know, as well as I do, being the president of a civic association myself, I usually find out after the fact.

MR. PERNELL: Right.

COMMISSIONER HOOD: So again to make it easier -- and that's why my recommendation is that the file is here. And I understand all these other government agencies, and for some reason the District has not been able to pull all of that

together.

Well, I agree with you. But in this circumstance, and in this specific case, so you can have your issues raised about different people who are going to be involved, and different agencies, I would just recommend -- and I know that you are aware of it, to come down and just look in the file.

MR. PERNELL: Thank you.

BOARD MEMBER RENSHAW: I just want to bring up one other thing. Mr. Pernell, you said that if the information is not presented to the ANC, then the ANC does not take a position; is that correct?

MR. PERNELL: Well, let me clarify that in a little bit more minor tone; that facts have to be presented. The ANCs are there to receive all facts from all parties involved.

We have come down here today, and we understand -- we know the gist of mostly every one is in opposition against BP Gas Station, and for a postponement.

The fact is this, is that before ANCs can render a decision, a fair decision to all parties involved, we must have all facts before us. We can't be splitting -- we don't want to split on this, in the sense that we don't have proper information.

What I am saying is that when we have our quorum -- and we will have a quorum when all new commissioners are sworn in and we have a quorum in the year 2000 (sic) and before March 20th, I am going to pull a poll and ask all parties -- Linden Place, do

you have your facts before the ANC, and down the line; Linden Place, Sarah Robinson, Mackie McCrea, so on and so on.

And once we have those people, we want to make sure that no one has been missed, and then that information is going to be duplicated to all 14 commissioners. We are going to look at it, and then we are going to render a decision right after that from the recommendation committee to the body the following month.

BOARD MEMBER RENSHAW: Well, it sounds like you have a procedure in place. I just wanted to caution you that often times when ANCs do not take a position, that silence is misconstrued as approval.

And it is brought back to various boards that that is the case. So I just urge you to make a cut on this on behalf of your community, based on the procedure that you have enunciated.

MR. PERNELL: And I agree with you. Most of the time the community is trying to buck the ANC into speaking before the facts are before us. A lot of community people have come to us before we even officially receive an application from the BZA or the zoning commission.

I tell my commissioners and the commissioners that I am involved with not to say anything until we officially receive a document and know where they are coming from.

And then we call the Zoning and Licensing of the whole community and get everyone involved, and I do agree with you

that in some cases that we weren't able to do that, and in this case we were able to talk, but not get a vote. But we will together in consideration, and the ANC will vote fairly with the facts before us.

VICE CHAIRPERSON SOCKWELL: Thank you very much.

MR. PITTMAN: Good morning, Mr. Chairman, and Members of the Board and community. My name is Robert Pittman, and I represent the Linden Neighborhood Association. I have been sitting here listening to comments regarding the draft voluntary agreement.

For the record, I am the author of the draft voluntary agreement, and I did the draft because there were a number of meetings that were going on throughout the community, but yet there was no mechanism or process for people to follow around and begin to mold and shape this project.

This indeed is a tremendous project that will impact not only the immediate residence, but will impact I would say the entire city because of the issues that are there.

And I won't get into the scaling of the project, or the environmental concerns which are important to this project. I would also like to say to the community groups that are here, and to the residents, and to Mr. Tallant, the Stanton Park Neighborhood Association, that I do believe that from this point that what we can do, even though we are listed as opposition, we can keep our ears open, and we are willing to work with the BP

Amoco representatives.

However, it has to be a project that is beneficial to this community, and so I thank you for the opportunity to make that statement.

VICE CHAIRPERSON SOCKWELL: You are welcome.

MR. TALLANT: Good morning, Mr. Chairman. My name is Drury Tallant, and I am co-chair of the Stanton Park Neighborhood Association. The Stanton Park Neighborhood Association has taken a position in opposition to the current design that BP Amoco is proposing.

Without getting into the merits of the particular design and start arguing the case, I do believe that there is one very important issue which has yet to be brought up this morning that in my opinion should be resolved before the BZA takes up the case, and that is the disposition of the public property, the public alleys which BP Amoco would like to use for their project.

Critical to their expansion on the entire 300 block of H Street is their pending request to close certain public alleys. The residents, the Neighborhood Association -- and I would point out that Stanton Park is directly across the street and has taken an active interest in the 300 block of H Street Northeast for quite some time -- is in opposition to that alley closing.

I would argue that until and unless that alley closing is --

MS. BAILEY: Mr. Chairman, is this gentleman getting into the merits of the case?

VICE CHAIRPERSON SOCKWELL: Well, I would say --

MR. TALLANT: It is more of a procedural matter.

VICE CHAIRPERSON SOCKWELL: What I wanted to state is that the issue of public alleys are not those of the Board of Zoning Adjustment, and just like environmental impact statements and other things that are part of preliminary development, review, and approvals necessary for people to go forward with their projects, those things can be discussed at the time of the hearing on the basis of impacts.

But we cannot withhold having a hearing, or dispensing with a case because those are not in place as final elements of the property. So the thing is that it is a proposal until it is a fact, and we review and approve, or disapprove, the proposals and the facts that will make them actually become reality can sometimes be coming along a different track, which is not our responsibility here.

MR. TALLANT: I understand.

MR. PERNELL: Mr. Chairman and Members, if you grant this continuance, you will be giving us time as a community to further look at the scope and scale of the project, and to talk with the BP representatives.

And one way or the other, up or down, when we come back down here again, we will be prepared as a united community to

say one way or the other which way we go, and that is why we ask for this continuance.

VICE CHAIRPERSON SOCKWELL: Well, this board feels like it is and has been a valuable exercise to have the community representatives that are here come forward and speak to the process, and the issues in a broad sense that divide you from the applicant.

And that with the time allowed between today and the 20th of March, there should be some resolution to those major issues, or at least we will know at that time, all cards having been placed on the table, that there will be no resolution of those issues, and we can go forward under that circumstance.

So I believe that under the circumstances, under this scenario, all of you should feel that it has been beneficial for you to be here today. Probably more so, or possibly more so, than in any other circumstance where the applicant and the community have been placed face-to-face with one another.

And this Board certainly hopes that the results of this will be that the case will be a less complicated and less contested case when it returns to us. Mr. Hood, do you have anything else?

COMMISSIONER HOOD: What I was going to say was that if it is the Chair's wish, I think we have -- do we still have a motion on the table?

MS. BAILEY: We do, yes.

BOARD MEMBER RENSHAW: We can call the question.

VICE CHAIRPERSON SOCKWELL: Yes, I think we do.

MR. TALLANT: Well, to that specific issue, the Stanton Neighborhood Association does support the request for a continuance to March 20th, I believe it was.

VICE CHAIRPERSON SOCKWELL: Yes.

MR. BROWN: Mr. Chair, with one caveat, I accept Mr. Tallant's representation. We have not gotten to the issue of party status, and so while he is supporting it, I would leave to the next hearing date a determination of party status of any particular party other than the ANC.

VICE CHAIRPERSON SOCKWELL: Yes. I mean, by the 20th of March, there may be fewer parties, and there may be more.

COMMISSIONER HOOD: And everyone may unite with the ANC, who is an automatic party. So hopefully all those things can be worked out when you come back.

VICE CHAIRPERSON SOCKWELL: All right. On the motion, all in favor?

BOARD MEMBER RENSHAW: Aye.

VICE CHAIRPERSON SOCKWELL: Aye.

COMMISSIONER HOOD: Aye.

VICE CHAIRPERSON SOCKWELL: Opposed?

(No audible response.)

MS. BAILEY: The staff will record the vote as three to zero to postpone the hearing until March 20th. The

afternoon has been set aside on that date to hear this case.

VICE CHAIRPERSON SOCKWELL: And I thank everyone who has come from the community and the applicant's representatives for the time that you have spent today.

MR. BROWN: Thank you, Mr. Sockwell.

VICE CHAIRPERSON SOCKWELL: We will take a brief recess of 10 minutes. Thank you.

(Whereupon, the hearing recessed at 11:25 a.m., and was again called to order at 12:05 p.m.)

VICE CHAIRPERSON SOCKWELL: The hearing is hereby resumed.

MS. BAILEY: The first case of the morning, Mr. Chairman, and Members of the Board, is Application Number 16633 of Eva Brandler. This case was continued from the November 28th, 2000 Public Hearing session, and the application is for relief under Section 3103.2, for a variance under Subsections 2001.3 (a),(b) and (c), to allow an addition to a non-conforming existing structure and use that exceeds the allowable percentage of lot occupancy, and a variance from Subsection 2101.1 from the required number of parking spaces in an R-1-B District at premises 3715 Woodley Road, Northwest, Square 1920, and that is on Lot 25.

Back on November 28th, Mr. Chairman, we established party status for Ms. Naomi Adelman. She is the abutting property owner. At that time as well, the applicant had presented the case, and the applicant now is ready for cross-examination.

But I think prior to doing that, he had indicated that he wanted to make a statement to the board, and at this point, the hearing should be continued.

VICE CHAIRPERSON SOCKWELL: Go right ahead, please.

MR. FINN: Just by way of reintroducing myself again, my name is Michael Alan Finn, and I am the architect for the project. I would just like to get a couple of technical things resolved here. Didn't we at the last hearing actually resolve the parking question?

VICE CHAIRPERSON SOCKWELL: It was believed that six parking spaces could be accommodated on the site as I recall.

MR. FINN: There is a question as to whether or not we actually did need a variance.

VICE CHAIRPERSON SOCKWELL: Let me see here.

(Brief Pause.)

VICE CHAIRPERSON SOCKWELL: I have here in my notes that there is no requirement in an R-1-B district for parking for this particular occupancy. I have got to go back to my notes, and if you would give me a second.

MR. FINN: Sure.

(Brief Pause.)

MS. BAILEY: Mr. Chairman, while you are looking at your notes, the zoning administrator's memorandum on this project does indicate that variance from the number of parking spaces are required.

MR. FINN: I think the second memo that came down from the zoning administrator only asked for one variance, and there was some confusion as to that.

VICE CHAIRPERSON SOCKWELL: Yes, I have something in my notes that say that the relief requested has been corrected.

COMMISSIONER HOOD: I think, Mr. Chair -- and I do not have my original folder. I have the file folder. But I believe there was something that -- Ms. Bailey, I believe we made that correction on which

regulation we were going by, because we had two sheets, and I think we circled -- I remember specifically that we said which one we were going to do.

MS. BAILEY: I think we -- I'm sorry.

COMMISSIONER HOOD: Go ahead.

MS. BAILEY: Mr. Hood, based on my notes, we indicated that the correct relief would be required from Subsection 2002.3 of the regulations, and that should be Exhibit Number 19 in the record that you have in front of you.

COMMISSIONER HOOD: Right.

VICE CHAIRPERSON SOCKWELL: Right. We scratched -- there was a July 28th memorandum from the zoning administrator, and then a November 7th memorandum, and in the July 28th memorandum, we scratched out Item 2, which was a variance from Section 2102 for the required number of parking spaces in an R-1-B zone.

And the replacement memorandum also changed the section, the variance on the first item, which had been originally stated as a variance from Section 2001.3(b) and (c).

And then it was changed to be a variance from Section 2002.3, to allow expansion of an existing nonconforming use to a portion of a structure not devoted to that nonconforming use for an existing apartment house use in an R-1-B zone when the original stated it as an addition.

Of course, the building was not being expanded or enlarged. It was the location of an expansion of the use within the building that was the actual relief requested.

And in my own original notes I had disagreed with the zoning administrator's original letter, which had requested -- which was 2001.3(b) and (c), which was an enlargement issue.

So I think that we clarified that it is extending a nonconforming use. If you don't have a copy of the November 7th, 2000 memorandum, let me know as I have it in my file, and that is from the zoning administrator.

MR. FINN: So are we basically okay on the parking issue now?

VICE CHAIRPERSON SOCKWELL: Yes, we are okay on the parking issue.

MR. FINN: Just a couple of other little items that I would straighten out. I believe that Ms. Adelman questioned as to whether or not we actually have -- I don't have her words

exactly, but the nine units, and whether we should or could be forced to actually eliminate the existing unit in the basement because it has not been occupied for a certain amount of time.

And so I did go down to the rental accommodations bureau, and did get a copy of our license that they have on file there that definitely shows the nine units. So I would be happy to give that to the board.

VICE CHAIRPERSON SOCKWELL: Generally, the vacant -- the fact that a single unit has been vacant would not decertify your use. It is generally when the use itself has been vacated for a period of time that it would be decertified.

I mean, you could actually have an apartment building that had a large number of units vacant just because the market was bad, and they could be vacant for any period of time as long as the occupancy itself is in conformance.

There is nothing that I know of that says that a particular apartment in a multi-unit building has to be occupied continuously. It is really the occupancy itself, and unless there is something in the rental accommodation law, or let's say in terms of the certificate of occupancy, it would be a similar situation to having an office space and you just happen not to be using one office within the office space.

The space itself is legal. I mean, let's say you lost a business partner, and you shut his office up, and you didn't put anything in there for three years, that office is still

legal to be used as an office.

It does not lose its occupancy as a result of not having been occupied as long as the space itself is still occupied, and that the building carries a certificate of occupancy for all uses within it.

MS. ADELMAN: I think my question was more to the point that it was not fit for occupancy. I have never seen the space and so I can't speak to that myself, but rumor in the neighborhood had it that that was not an apartment that they could rent out without doing serious --

MS. BAILEY: Excuse me, Ma'am, but you need to identify yourself.

MS. ADELMAN: Naomi Adelman, and I didn't know if that meant that there would be 3 or 4 new apartments, and I was still thinking about the parking that was still outstanding.

VICE CHAIRPERSON SOCKWELL: Well, I think that with regard to a condition issue, it would have to be somehow either certified as uninhabitable or condemned in some way by city inspection.

If that were the case, then the unit would at least have to be brought up to code in order for occupancy to be continued, and while the building itself might meet code, that particular unit -- whether it had burned out, or for any reason -- was not sufficiently provided with the habitable standard amenities, then that would be a code issue.

But it might not decertify the unit as a unit. It would probably be more of a building code inspection issue than a certificate of occupancy issue in the larger sense. But if nobody should be living down there, then that is an issue.

MR. BRANDLER: If I could say something about that. I am Bill Brandler. The apartment unit that we are talking about is in the basement. It is not in very good condition, but we could rent it out easily. It is not so bad.

The reason that I have kept it vacant is because I am trying to bring up the building standards, and I did not rent it out. If I rent it out, then I can't do anything to that unit or to the others.

And as a matter of fact, it has been vacant for that reason for the last three years. I didn't expect us to go that far.

VICE CHAIRPERSON SOCKWELL: Well, let me ask you this question. I mean, realistically now, you have a unit that could be rented on a short-term or long-term basis.

MR. BRANDLER: Yes.

VICE CHAIRPERSON SOCKWELL: And you are telling this board that you deliberately denied yourself income because you thought that sometime in the future that you would renovate the basement?

MR. BRANDLER: That's correct. It has been vacant for that reason. It does need some renovation. I don't know

about -- I didn't expect it to be this long, but it needs some flooring and some other items, and it is in the basement.

VICE CHAIRPERSON SOCKWELL: But basically the reason -- what you are telling me doesn't make sense, and so I will try and give you an opportunity to retract that statement because it doesn't make sense.

I mean, you can lie to yourself and that is okay, and we really don't mind. But if you say something that doesn't make sense to the board, I do mind personally, because I think that you should be able to do better than that.

I mean, I am trying to rely upon your willingness to be forthright in determining some of the things, and looking at some of the issues that have been brought up about your project and the way that you have maintained it to date.

So therefore I am stating to you that in the normal sense of doing business that if one has a unit that is substandard, or has deteriorated to the extent that it is not occupiable, or that you don't feel that you could rent it to the kind of tenant that you are trying to solicit for the property, then it is going to be vacant.

But I don't think that I would be willing to agree with you that you would leave a unit vacant simply because you thought that sometime in the future that you would do modifications to the building, for which that unit would contribute the income necessary.

MR. BRANDLER: The unit, when it was vacated, was bringing in $350 a month.

VICE CHAIRPERSON SOCKWELL: More than what you were getting without it.

MR. BRANDLER: Right. But to get a tenant in there, we would have to redo the floor, the kitchen, and it would cost $15,000 to make it --

VICE CHAIRPERSON SOCKWELL: Which can be amortized.

MR. BRANDLER: Right. But there is --

VICE CHAIRPERSON SOCKWELL: I mean, you are not giving me any good excuses, and so I think maybe we ought to leave this one, because you are not going to make me think any differently because business is business, and we understand what you can expense and what you can amortize, and all those kinds of things.

And you are talking about a minimal cost, monthly carrying charge, for a unit that is going to bring in $300 or $350 a month times 12, times however many years it takes.

And the cost of renovating a unit -- I assume that you have not had an estimate done on renovating that unit specifically now have you?

MR. BRANDLER: No.

VICE CHAIRPERSON SOCKWELL: Okay. So $15,000 is a number that you pulled out of the air, and I would rather not have that number.

MR. FINN: May I continue? There are a few more of these items that I would like to get through here. I believe that Ms. Edelman wanted to know if the five foot side yard was indeed accurate that I was talking about.

And did go down to the D.C. Surveyors, and I would like to submit this as evidence, and get a color photocopy of the D.C. Surveyors' plat of the building. And it does show the five foot setback on the side that adjoins us.

I also have one other thing that we got, which was a letter from -- and not directly from the owner of the property on the left that adjoins us on the left. Ms. Adelman adjoins us on the right.

And this is from the real estate company that represents that absentee owner, and they have got a letter here that says that particular owner doesn't have any concerns with the renovations that we want to do on the building.

So I have got these three pieces of paper here that I would like to submit in addition. There is another strictly technical item here, and this concerns the report from the Office of Planning.

There is a couple of typos on there basically concerning the numbers, and one of them states the square footage of each unit. We are basically dealing with small units here. It is approximately 800 square feet per unit, and the building only actually takes up 4,200 square feet percentage of lot occupancy.

So the numbers on the Office of Planning report need to be revised downward. We are actually a much smaller building.

VICE CHAIRPERSON SOCKWELL: Excuse me, but you are saying that the building footprint is a 4,200 square foot footprint?

MR. FINN: Yes, sir. Yes, sir. It might have been my mis-communicating with the Office of Planning when I was speaking with them, but we are actually much smaller than what the numbers on the Office of Planning letter states. And I had spoken to the Office of Planning about that.

VICE CHAIRPERSON SOCKWELL: Well, what were your numbers from having been the architect for the renovation?

MR. FINN: Well, it is just the one floor, 4,200 square feet.

VICE CHAIRPERSON SOCKWELL: Right. You are saying the basement floor is 4,200 square feet.

MR. FINN: Yes, sir. So that is just a technical matter that the Office of Planning is aware of. I think it was probably just a phone conversation that I was having and they probably misconstrued the numbers.

We are actually a lot smaller than the Office of Planning letter states, but the Office of Planning --

VICE CHAIRPERSON SOCKWELL: What is with OP's number on that?

MS. MCCARTHY: We have 16,000.

VICE CHAIRPERSON SOCKWELL: What page is that?

MS. MCCARTHY: It is on page 3.

VICE CHAIRPERSON SOCKWELL: Oh. Thank you. Our file has our drawings in it doesn't it?

MR. FINN: Yes, sir. I think the numbers on the memo from the zoning administrator are the right numbers, but vaguely 4,200 square feet.

VICE CHAIRPERSON SOCKWELL: I think the staff may not have had duplicated --

COMMISSIONER HOOD: Mr. Chair, while you are taking care of that, can I take a moment and just ask a question?

VICE CHAIRPERSON SOCKWELL: All right.

COMMISSIONER HOOD: You mentioned that you had a letter from the resident on the opposite side, or from the real estate agent on the opposite side?

MR. FINN: Right.

COMMISSIONER HOOD: And they had no concerns?

MR. FINN: That's right.

COMMISSIONER HOOD: What relevance would it be about them not having any concerns? I am just curious. And this goes back to the comments that my colleague made earlier about bringing anything to us and we are just supposed to accept it. If they don't live there, then there is no concern.

VICE CHAIRPERSON SOCKWELL: Yes, I was going to

bring that up, and I appreciate you doing that while I was looking at this. The issue is that a real estate company representing an absentee landlord is merely a management company.

The absentee landlord is not personally affected as would be a resident of adjacent property, and in this case the adjacent property resident is not an owner, and doesn't have as much say so in whether or not the apartment building is or isn't, or does or doesn't, have negative impact.

So the thing is that while your letter is a document of substance, it is a document of very little real substance when it comes to the use and the effect of this building on adjacent property.

MR. FINN: Well, perhaps I mis-spoke. Could I just read the letter, which makes it clear?

VICE CHAIRPERSON SOCKWELL: Why don't you just submit the letter.

MR. FINN: Okay. I will just submit it, along with this survey.

VICE CHAIRPERSON SOCKWELL: Why don't you do that, and I am sure that Ms. Adelman might want to see a copy of it, too.

MS. ADELMAN: I would like to see that.

VICE CHAIRPERSON SOCKWELL: Give me just a second while we are waiting for something.

(Brief Pause.)

VICE CHAIRPERSON SOCKWELL: What did you say the footprint was?

MR. FINN: Approximately 4,100 square feet.

VICE CHAIRPERSON SOCKWELL: 4,100?

MR. FINN: No, 4,200.

VICE CHAIRPERSON SOCKWELL: Yes, I will agree with you on the basis of the dimensions that you provided, the interior dimensions that you provided on the basement plan. So the Office of Planning's report should be amended on page 3 to a number of approximately 4,200, if OP does not object to those numbers, because they are considerably different from his.

MS. MCCARTHY: Yes. Also, on page 2, where it says proposal, and it says that each unit will have approximately 4,016 (sic) square feet and that also needs to be corrected.

VICE CHAIRPERSON SOCKWELL: Thank you. What did you say the number was?

MR. FINN: Well, approximately 800 square feet per unit without hallways and the stairs.

VICE CHAIRPERSON SOCKWELL: Okay. Well, whomever owns the adjacent property has basically stated in a brief letter through his real estate agent that the addition of three units doesn't raise any concerns.

And that would seemingly be a reasonable assumption, knowing that those units would be within the current envelope, and that that individual as an absentee has not had any

difficulties with you as an owner.

But at the same time, he has no active participation in the neighborhood lifestyle. So let's go forward. Now, at the last juncture, we had -- well, do you have any other --

MR. FINN: Well, what I would like to say next, as I didn't get a chance to at the last hearing, and actually in a way that was kind of gratuitous because it brings up I think what the owners of the building are trying to demonstrate.

I had mentioned the fact that we really want to be a good neighbor, and I believe that Commissioner Hood had mentioned, you know, how can we believe that. And let me just start by saying that from a strictly technical point of view, Ms. Adelman's house actually adjoins the high-rise building to her right.

And so we are a little bit further away, and so I think we have the two side yards separating our buildings. So technically I think we have the chance to be a good neighbor.

And what actually had happened was I believe before the November 28th hearing, Bill Brandler here had actually contracted with a landscaper to --

VICE CHAIRPERSON SOCKWELL: Let me ask you a question. I realize that you are the spokesman in this case for Mr. Brandler, and that you are his architect.

And yet Mr. Brandler has to impress this board

himself that he intends to become a better neighbor. I don't think that it is -- in a situation like this, I don't think it is as important that you state for him his intention.

It is important that he states his intention to the extent that Ms. Adelman, who is the most affected neighbor, and who has presented herself here at this hearing and in the previous hearing, believes that there will be change to the way that the property is managed and maintained.

And I think that that is something that should come from the gentleman who is sitting to your left.

MR. FINN: Well, may I give you these photographs?

VICE CHAIRPERSON SOCKWELL: Yes. Let him explain. I would like to hear you explain what you are going to do and why Ms. Adelman should believe that things will be better.

MR. BRANDLER: I don't believe that anything I can say is going to convince Mrs. Adelman.

VICE CHAIRPERSON SOCKWELL: It is not about convincing her by what you say. It is about convincing her that you plan to do what you say.

MR. BRANDLER: Well, first of all, the apartment building -- well, first of all, I appreciate Ms. Adelman, because she does have a nice yard, and a well kept house, and to me it is the nicest in the area.

VICE CHAIRPERSON SOCKWELL: Which certainly makes the people who look out of the windows from your property feel

better.

MR. BRANDLER: Right. And I really do appreciate that.

VICE CHAIRPERSON SOCKWELL: The opposite view is what is her problem.

MR. BRANDLER: Right. But it does help the area. It helps my building. This area has changed a lot in the last 25 years or so, and if I can improve the building, it improves the rents. If I can do simple things, like landscaping, and some other issues, such as covering porches, it helps for me to increase the value of the property.

And what she is doing is helping. The property wasn't maintained as well as it should have been, but I was very surprised when I heard how bad she thought it was, because I went to the ANC meeting and none of this was brought up.

So when I spike with her, and she was against this, I wasn't surprised that she might have been against it, but to that extent, I think there is a lot of easy solutions to it. I had not been involved in the day to day operations of the building.

VICE CHAIRPERSON SOCKWELL: Go ahead. I'm listening.

MR. BRANDLER: Prior to going forward with this, and adding additional units, I hadn't been involved in the day to day operations, and meeting people. It has been a while since

I've done that.

I have a job, and I have been basically letting the management company handle it. When I met with neighbors prior to the ANC meeting, they had a few concerns, but nothing to this extent.

VICE CHAIRPERSON SOCKWELL: Well, it is usually the most immediate neighbor who gets the brunt of the bad problems or issues that develop, no matter who it is.

I mean, it is the guy next door, or the lady next door, and if you have got an 8-story building, it is anyone who can hear the guy on the top floor screaming at the top of his lungs that he lost his job.

And so it is Mrs. Adelman that we are trying to accommodate in a way that is reasonable, and the question is what is reasonable. Reasonable is that your property should be maintained in an adequate manner to not detract from the neighborhood.

Mrs. Adelman doesn't expect you to plant flowers and be out there with a watering can every day on your knees. But she does expect that the lawns are manicured properly, and that dead trees are removed from the property as required.

That the general appearance of the property be maintained as she maintains her own appearance, the property's appearance. She is not asking you to, or would not expect, or should not expect, you to turn your building into a palace.

But at the same time, she doesn't want your building to make her building look out of place in the neighborhood, because it is too nice to be next to this.

And I think that as much as anything that if you would point out on your plan, on your floor plan, where Mrs. Adelman's property is in relation to yours, just do that, Mr. Finn.

MR. FINN: Well, actually, here --

VICE CHAIRPERSON SOCKWELL: Well, what I want you to do is I want you to point out her property in relation to your floor plan as it is shown with the proposed modifications.

MR. FINN: Okay. Basically, we have an existing area next to the property in question, and we have 5 feet, and then her property. We have five foot sides.

VICE CHAIRPERSON SOCKWELL: All right.

MS. ADELMAN: May I make a statement here about this?

VICE CHAIRPERSON SOCKWELL: Yes.

MS. ADELMAN: I don't think that that 5 feet is taking into consideration -- I am not sure what you call this, but a porch or an add-on.

VICE CHAIRPERSON SOCKWELL: Are you submitting that for the file? Would you so we can see what you are referring to.

MS. ADELMAN: Okay. This is my property, and this is the apartment building, but it has an extension, and then the

stairway that they are talking about is right underneath that.

VICE CHAIRPERSON SOCKWELL: Yes. The stairway can project into a side yard in any situation.

MS. ADELMAN: Yes, but I think that takes away from the 5 feet.

VICE CHAIRPERSON SOCKWELL: Actually --

MR. FINN: I think what Ms. Adelman is talking about is that there is an existing by window on that side.

MS. ADELMAN: I don't think that is a bay window. That is a major extension.

VICE CHAIRPERSON SOCKWELL: Well, it could be considered to be a bay window. It looks like it extends maybe 36 inches.

I think a bay window can extend at least that far. It looks like it is within the accepted range of projections. I am not sure what is going on underneath that thing.

MS. ADELMAN: It is a staircase.

MR. FINN: What they are, they are actually porches that were -- that they put siding on. They are not heated and they are not part of the units. They are actually outside of the units. They are porches. They put siding on them to make them look more attractive, but they aren't heated.

VICE CHAIRPERSON SOCKWELL: Do you know when that siding was put on?

MR. BRANDLER: It has been -- I am guess about 10

years.

MS. ADELMAN: They have been there as long as I have owned the house.

MR. BRANDLER: Right. It has been a while, but it was to help the appearance.

VICE CHAIRPERSON SOCKWELL: Does the top porch have a roof over it?

MR. BRANDLER: Yes, I believe it does.

VICE CHAIRPERSON SOCKWELL: Did it always?

MR. BRANDLER: As far as I recall, yes.

VICE CHAIRPERSON SOCKWELL: That is an issue that I can't respond to. I would say that if exterior porches under the zoning ordinance can extend -- I think they can extend into a side yard, but I haver to check the ordinance. Actually, it is not in the -- I am not sure that it is in here. Let me see.

MR. FINN: If I could make one more comment that might sort of clear this up?

VICE CHAIRPERSON SOCKWELL: Yes, sir.

MR. FINN: It is an existing condition, and actually it is not part of the building that we are renovating, but as the architect, we would be more than delighted to meet with Mrs. Adelman to make these things more agreeable from your house. I mean, we are happy to do that.

COMMISSIONER HOOD: You mean that was not done between the last meeting and this meeting?

MR. FINN: No.

MR. BRANDLER: No. As I said, it has been at least 10 years. It has been a long time.

MS. ADELMAN: No, I think my concern here is --

COMMISSIONER HOOD: We had a meeting on November 28th, and we knew we were coming back today, and there has been no deliberations to do some of the things that you come here today to offer to do.

MR. FINN: Well, please, may I just make one comment. I don't know why Mr. Brandler here has not said it, but -- and I have got some photographs here. I mean, he has gone through a considerable expense to do quite a bit of landscaping in the front, and that contract was signed before the last meeting.

And I have some photographs here that actually show the guys out there working, and we have new trees and shrubs, and so we are making every effort to spruce this place up. I think this is quite an undertaking.

COMMISSIONER HOOD: Let me just say this. The effort has been made now, and it goes back to my statement at the last meeting, or at the last hearing, was that these existing situations existed. There was nothing -- and I understand about -- I think you said that your mother or someone who was getting up in age, and I understand all of that.

But still, you still had an obligation to keep the property up, and her concerns are -- and there have been numerous

complaints, and like it was stated earlier, that when she looks from her side, as opposed to the people in your place looking from their side, it should be an even tradeoff there.

VICE CHAIRPERSON SOCKWELL: Within reason. The question that I want to raise is when was your building constructed?

MR. BRANDLER: I think in the '20s.

VICE CHAIRPERSON SOCKWELL: Okay. So the likelihood is that when these porches that are now enclosed on the sides with siding were built, they we probably fire balconies. They may have been considered to be fire balconies, which would have been allowed to extend in to the side yard, at a projection of up to 4 feet.

And it looks like these are about 4 feet deep going out from the building, and as far as the projection back in from the wall, they probably go in a little bit more.

But because they are part of the original building, my assumption is that they were legal at the time that they were built. The fact that they have siding on them now might make them less legal, but I don't want to get into that issue. It is a building code issue.

But the question of the quality of maintenance, and the fact that Mrs. Adelman's property resides close to two of the units that would be made units --

MR. BRANDLER: Well, actually the existing one is

on Ms. Adelman's property.

VICE CHAIRPERSON SOCKWELL: Okay. So there would be one new unit on your side, Mrs. Adelman. The other two units are going to face the opposite side of the building, and that means that they would in and of themselves not affect you from a noise standpoint.

And even the means of access to them would be from other points than adjacent to your own property. One unit in particular would use a stair that would be created or is in existence, and that is there, for its residents to come in. The windows are all above grade, correct?

MR. FINN: Yes, and we wouldn't touch any of the windows. They are all there.

VICE CHAIRPERSON SOCKWELL: So the windows actually run down close to grade at that level, and so it is a partial basement.

MR. BRANDLER: I have some photographs which will help a lot.

VICE CHAIRPERSON SOCKWELL: Then if you would submit them, and we can make copies of them, and make sure that Mrs. Adelman gets a copy of each of them as well.

I think from what I see -- and, Board Members, give me a minute here. Mrs. Adelman, you have testified at this point, or you have cross-examined?

MS. ADELMAN: I have been just interrupting, I

think.

VICE CHAIRPERSON SOCKWELL: Well, cross-examination. Okay. This is your front yard work?

MR. BRANDLER: Yes. We just did that.

VICE CHAIRPERSON SOCKWELL: Mrs. Adelman, did you think that was an improvement?

MS. ADELMAN: That is very nice.

VICE CHAIRPERSON SOCKWELL: And you do feel that it is an improvement?

MS. ADELMAN: That is an improvement of the front yard. It is not an improvement of the care of the actual building and the tenants, and the trash.

VICE CHAIRPERSON SOCKWELL: Now, on the issue of trash. Are you talking about accumulated trash that is tossed out of the building?

MS. ADELMAN: There is no on-site manager and so -- and the people that live there -- but not all of them, but some of them -- are incredibly piggish, sloppy, and there is nobody there that takes any kind of responsibility of keeping the property neat and clean. There is trash in the back, and I would like to submit these photographs.

VICE CHAIRPERSON SOCKWELL: Well, these photographs are showing a fairly clean arrangement in the back.

MS. ADELMAN: Well, that probably happen right recently, and the person whose apartment is --

VICE CHAIRPERSON SOCKWELL: Well, I am sure it is fairly recently, but --

MS. ADELMAN: But this happens regularly, that they collect junk, and pile it up on the back porch for months, and then either sell it, distribute it, or whatever. I don't know what this tenant does.

VICE CHAIRPERSON SOCKWELL: Well, there are fire regulations that prevent the accumulation of trash and combustibles in particular on balconies.

MS. ADELMAN: And that's why I have called to report any number of times.

VICE CHAIRPERSON SOCKWELL: And the management company, you called the management company as well?

MS. ADELMAN: Yes.

VICE CHAIRPERSON SOCKWELL: Okay. You have another photographs or photographs that you would like to provide us?

MS. ADELMAN: Yes. And I am not disputing the fact that it looks like this now, but I guarantee you in another few weeks, unless somebody takes charge of the tenants, that it will look the same as before.

BOARD MEMBER RENSHAW: Ms. Adelman, when you say you called, who did you call?

MS. ADELMAN: I called a Ms. Dooley at -- I think it is Wagerman and Brauner. I have never heard of the company. When I first moved into the house in 1991, and I had a number of

concerns.

I did find out the owner's name, and I did speak actually to Mrs. Brandler, and she informed me that I should only speak to this management company and that she was not going to do anything about it.

And so Ms. Dooley, and actually other people in the management company when she is not present, have heard my complaints probably more than they care to.

COMMISSIONER HOOD: Mr. Brandler, do you have a maintenance contract now or is this being done just to get through this process?

MR. BRANDLER: What is happening now is that at the very beginning, we managed it every week, and that was for the first 10 years. Since then, Wagerman and Brauner has been responsible for it.

At one point, we tried to have someone living there do it and give them a break, and this is where the famous apartment number nine in the basement came.

We had someone living there, and they were responsible for keeping things up, and that did not work out very well. So right now the management company sends someone over to cut the grass. I agree it is not done as often as it should be done. Sometimes I drive by and take a lawn mower out and do it myself because it is too long.

But the way it works right now is that the

management company has someone that is responsible for it, and I have invoices that show that Mr. Johnson comes by and does it.

COMMISSIONER HOOD: Mr. Chair, I just have a question, I guess, and not sitting here all the time, I am wondering first of all that if this is approved can it be conditioned?

VICE CHAIRPERSON SOCKWELL: There are conditions that can be applied that would run with the land. They have to be generic conditions. It cannot be what we call personal conditions.

COMMISSIONER HOOD: But my question, I guess, is that the maintenance of the property, is that something that we can condition? The upkeep of the property, I guess.

VICE CHAIRPERSON SOCKWELL: Well, yes, we could condition that a regular maintenance and trash removal program would be required.

COMMISSIONER HOOD: And can it be enforced?

VICE CHAIRPERSON SOCKWELL: The question of enforcement is always the main one, and that goes right through to the fact that the BZA can under certain circumstances I'm sure revoke an approval. But the issue is, one, that we don't have a regular staff of inspectors. We don't have a staff of inspectors at all.

The process never included to the best of my knowledge an inspections procedure. If we are to grant Mr.

Brandler his income, which is his additional units and the inclusion of a rehabilitated fourth unit, which was the existing unit, we are talking about four new monthly rents coming in to you.

And those units are going to rent for whatever, but they are going to allow you to have income that even if you didn't apply it to profit 100 percent, should allow you to pay off the cost of the renovations, and should allow you to better maintain the grounds.

Now, the situation of this balcony, which is deplorable. You have a tenant in there that is on a month-to-month lease.

MS. ADELMAN: And I have complained about her specifically for 9 years.

VICE CHAIRPERSON SOCKWELL: And if you are renewing her lease on a yearly basis with the deplorable conditions of that balcony, then you are not handling this properly, because there is no excuse for a -- your insurance company -- your fire insurance company could pull the policy. You know that.

And your master fire insurance policy is the only way that you are going to be able to stay in business. That balcony is a fire hazard. And you have every right to force that tenant out.

Look, apartment buildings in this town are rented 95 percent or better. The only reason you want apartments is

because you know that you can rent apartments. You don't have to have that lady in there.

You don't have to make it dangerous for the people upstairs because she has all sorts of stuff on that balcony. You don't have to make your next door neighbor have to put up with something like that.

These are issues that are of the kind of management that -- well, you wouldn't have your mother living next to something like that. You would be up in arms and you would be calling every local government agency, and doing exactly what Mrs. Adelman has been trying to do constructively, and then in frustration, to get things improved, and this is very important.

She just happens to be the thorn in your side at this point, but she has been putting up with deaf ears. And I believe that if we are to believe that you will consistently maintain a level of quality that this neighborhood requires in the exterior appearance, and in the conduct of your tenants, because you have lease agreement requirements.

You have got any number of provisions which protect you. Most of the provisions in the lease protect you. And all Mrs. Adelman is asking for is that you reasonably meet the requirements that any neighbor should meet.

And because you have a much higher income potential in a building that your family has owned for how long?

MR. BRANDLER: Close to 30 years.

VICE CHAIRPERSON SOCKWELL: Close to 30 years, and you have got no mortgage on that building.

MR. BRANDLER: That's correct.

VICE CHAIRPERSON SOCKWELL: This is all meat and potatoes, and your mom, regardless, has now placed you in a position to be the sensitive manager. So we are not talking about a huge incumbrance. We are talking about a cash building, and we are talking about modifications of a moderate nature to the lower floor.

We are talking about maintenance that would even attract a better class of tenant to the building. And now that you re going to put the ground floor into use as living quarters, you are going to have to maintain those spaces, because these people are going to be looking out on the same thing that Mrs. Adelman is looking out on, and yet they are going to be that much closer. And it is going to be at eye level.

And so you are actually in one respect benefited by them occupying the basement with real people, because real people can complain, and real people don't want to look out on that sort of thing, because this is the kind of neighborhood that nice people live in. And I look at you and I can see that if it isn't, then you are in the wrong neighborhood.

MS. ADELMAN: I would like to say one other thing. Another neighbor saw the sign on the door, and can speak from a

different prospective, if that is possible.

VICE CHAIRPERSON SOCKWELL: Well, we are still in the testimony phrase of this.

MS. ADELMAN: The only other thing I have to say about the basement apartments is that unless you can make people sign when they sign their lease a statement that they are going to complain and they are going to speak up, most people I find don't complaint, and don't take the time.

As it is, I complain a lot and I am busy. I don't have time to --

VICE CHAIRPERSON SOCKWELL: Well, you are a homeowner, and you complain because this is your investment.

MS. ADELMAN: Right.

BOARD MEMBER RENSHAW: But she should not have to do that.

MS. ADELMAN: Right. But it is annoying and if I am going to have four more tenants, and if they are going to be of the same caliber as any number of these tenants that they have now, that's not to my advantage. That is very much or really not to my advantage.

VICE CHAIRPERSON SOCKWELL: Well, right now we are in a market where rents are -- the ceiling is whatever you set for it, and that means that he can attract better tenants.

MS. ADELMAN: I agree with you, but we are looking at someone who has not been able to deal with the tenants that he

has now and who don't take care of that property.

VICE CHAIRPERSON SOCKWELL: Well, if you don't have people living at the ground level, then the people who live above that don't deal with it. I mean, I lived in an apartment for 26 years, and I know a little bit about apartment living.

And I live adjacent to people now in a condominium, and I know what I have to put up with, and what I can put up with, and what I shouldn't put up with.

And having people two doors down who are contractors means that the back yard is filled up with contractors stuff all the time. So we have to go to the condo association, and of course I am the vice president of that, and so that makes it a little different. But the point is that --

BOARD MEMBER RENSHAW: Mr. Sockwell --

VICE CHAIRPERSON SOCKWELL: What I am saying or trying to do is come to a point where we can establish the kinds of conditions that you will accept, and realistically this is really one of maintenance as much as anything, because you can never be a hundred percent sure what a tenant is going to be like when they get in the building.

But it also means that if there are complaints, those complaints should be lodged with someone who is willing to, and is directed to, let the owner know that, first, a tenant has complained to the management company, or a local resident has complained to the management company about a tenant or a set of

conditions.

We as the management company are empowered to do X, Y, and Z, but at the same time, we must contact the owner and let the owner know that this is the case.

MS. ADELMAN: And that is what has been done for the last 9-1/2 years, and for 9-1/2 years the management company has said to me that the Brandlers did not want to do anything about any of these things, and that they did not want to put money into anything and have any expense.

VICE CHAIRPERSON SOCKWELL: Well, of course, they were wise enough not to put that in writing.

MS. ADELMAN: Of course they didn't put it in writing, and they also -- and let me please finish. I also come from a long line of apartment dwellers in real estate in New York City. So I do understand it as well.

But these basement apartments, you can't tell that they are not occupied, and if you walked by that building, you would have no idea that nobody lived in the basement. So it is not problematic. It's better that they are empty, I think.

VICE CHAIRPERSON SOCKWELL: Well, actually, no, I don't think so. I disagree with you. I think that English basement efficiencies in Capitol Hill work very nicely, and the odds are improved because of that.

I believe that if I live at the ground level, and this is what my view is, it shouldn't be of trash, and old tires,

and --

MS. ADELMAN: Actually, they would be below the trash. They are below the trash.

VICE CHAIRPERSON SOCKWELL: No, they are not. Their feet are, but their eyes aren't. The important part is what you look out at. If there are windows in those -- look at the level that they are going down. They are going down about six steps. Am I correct?

BOARD MEMBER RENSHAW: In the back, they have to pass the trash.

VICE CHAIRPERSON SOCKWELL: And that is about 42 inches, and those windows are close to the level of the lawn.

MS. ADELMAN: Right.

VICE CHAIRPERSON SOCKWELL: And so you are going to look out directly at that lawn.

MS. ADELMAN: Right.

VICE CHAIRPERSON SOCKWELL: So what would you want to see, Mrs. Adelman?

MS. ADELMAN: Oh, I would like to see a nice law and landscaping.

VICE CHAIRPERSON SOCKWELL: All right then. Do you think that these people are any different from you?

MS. ADELMAN: No.

VICE CHAIRPERSON SOCKWELL: No, they are not.

BOARD MEMBER RENSHAW: Mr. Sockwell, we cannot

state anything for the record about tenants that are not in these apartments.

VICE CHAIRPERSON SOCKWELL: I am talking about human beings in general. I am not talking about specific tenants.

BOARD MEMBER RENSHAW: There are some human beings --

VICE CHAIRPERSON SOCKWELL: Let me finish, Mrs. Renshaw. Let me finish.

BOARD MEMBER RENSHAW: Well, you have been going on, Mr. Sockwell, and I would like to make a point.

VICE CHAIRPERSON SOCKWELL: I have the chair seat right now, and so I will continue until I am through.

BOARD MEMBER RENSHAW: Yes, but I am requesting just a moment of your time.

VICE CHAIRPERSON SOCKWELL: It will only take a time.

COMMISSIONER HOOD: Let me just interject for a second. I know that you are the chair, but I think in due diligence to the people that we have in the audience, and this case is to the point where we can move forward.

And so I would ask my colleagues to move forward. I know that he issues are tough, but we are a group, and so let's move forward.

VICE CHAIRPERSON SOCKWELL: Well, I want Mrs. Adelman to have an open mind toward the issues, and that the

conditions are going to change if we approve this, and that we have to condition it so that you have some protection.

It may be to your advantage that we have had this review, because without this review, you would still be banging your head up against the wall on this.

And I am not happy, and I don't think that Mr. Brandler truly understands the issue before us, but I understand that he is an intelligent individual with a vested interest in his property, and that he has to have a vested interest in the community in which his property resides.

And we can condition an approval if we choose to approve in some way to protect the adjacent neighborhood.

BOARD MEMBER RENSHAW: Just if I may make a short comment. First of all, Mrs. Adelman, I know that it is tough living next to an absentee landlord, and it has been so obviously for a number of years.

And now, Mr. Brandler, you are taking over for your mother's property, and you are going to be conditioned if we move ahead with this. But I do want to say to Mrs. Adelman that you have several avenues.

One is that anything having to do with fire issues, you can contact the fire marshals office, and an inspection can be made, and the property owner can be cited. Also, if there is trash build up, there is "Clean and Lean" also.

MS. ADELMAN: I have done that.

BOARD MEMBER RENSHAW: And have you had any results?

MS. ADELMAN: Not much.

BOARD MEMBER RENSHAW: Not much results?

MS. ADELMAN: Not much.

BOARD MEMBER RENSHAW: And in any case if you have continuing problems, then to make sure that you contact your ANC commissioner, and have the ANC intervene on your behalf if there is a problem in your neighborhood with your next door neighbor.

But I am hoping that from now on, Mr. Brandler, that you will be able to maintain this piece of property in a manner that befits the neighborhood, and certainly the most immediate neighbor who has complained.

MS. ADELMAN: I do have one other comment. Mr. Brandler himself has said that he has been responsible for this property for two years.

BOARD MEMBER RENSHAW: And it hasn't worked out.

MS. ADELMAN: And it hasn't been taken care of. The fact that we have new grass in the front of the building is lovely, but that has not taken care of the much more primary issues, which are just basic cleanliness and safety.

BOARD MEMBER RENSHAW: Well, many times these cosmetic additions are made for the purpose of the hearing. We recognize that.

MS. ADELMAN: That's true.

BOARD MEMBER RENSHAW: But I would suggest to the board that if we are working on conditions for this application that there be a 24-hour hot line to the owner of the property so that you can -- so that Mrs. Adelman can bypass this management company, and go directly to the owner and say there is a serious problem. I hate going through a second party to get the answer to resolve an issue.

VICE CHAIRPERSON SOCKWELL: In a way I agree with you that there should be a direct connection, but I think that the management company is hired by the owner to manage the property. Under that contract the owner is paying the manager.

The manager has to do what the owner tells them what to do because that is what it is about. If the owner tells management not to let them know that someone is complaining, then management will do that.

If management is told that they must pass complaints through to the owner in writing as to any complaints that are registered more than once for any issue, should be passed directly through to the owner, then that is what we may have to do.

But the point is that there needs to be a method by which any complaints that are continuing complaints get redressed.

COMMISSIONER HOOD: Mr. Chair, with that, Mr. Finn, I want you to understand that I don't know whether this is going to be voted up or down, but I was wondering if you have been

handling anything else from what you have already handled, and in the way it looks you have handled it.

I was prepared to vote against it, I will be frankly honest, but I have been informed that we can place conditions. Hopefully they can be enforced. I believe they can be. So some of the conditions also with my colleague, Commissioner Renshaw, that I would like to see is that you have a maintenance contract.

And I am sure that I am saying something that is out of the scope of legality, and that Ms. Sansone will correct it, but also the phone number for complaints, and again I don't know whet her it is a 24 hour piece, but something that is made available that is going to be responsive to those deplorable conditions that I see in these photographs.

And also a regular trash pickup. Those are some of the things that I wanted to add in.

VICE CHAIRPERSON SOCKWELL: And we would certainly want to make sure that the conditions of things, like balconies, have to be maintained according to law. No tenant, even with a scant view of management, should be allowed to maintain a balcony like that. That is a fire hazard.

COMMISSIONER HOOD: Can I also add, Mr. Chair, or can I ask, but I wish -- and I don't think we can, but I wish we could put a time frame on it, but I don't think we can do. Can we, Ms. Sansone?

MS. SANSONE: Mr. Hood, I believe that you can establish a time frame on a variance, and then it would be up to the owner to come back and renew that when the time had run.

COMMISSIONER HOOD: If that is the case, then I would like to see a time frame.

BOARD MEMBER RENSHAW: Okay. Would you like to recommend?

COMMISSIONER HOOD: Six months.

BOARD MEMBER RENSHAW: I would just like to state, Mr. Vice Chair, that one of the sticky points is going to be that during the time of the conversion of the space into apartment units, and the construction or whatever, the trash, extra trash that is going to be around there, it should be considerable I would imagine.

So that I would like to see some kind of an agreement between Mr. Brandler and Mrs. Adelman as to how the different aspects of the construction are going to be handled, so that she is satisfied with the hours of operation, and the trash pickup, and any other matters. And how she reaches the owner directly, if need be, during the construction period.

VICE CHAIRPERSON SOCKWELL: I think those are good issues to bring forward, and that we have traditionally required -- and this is a short term requirement -- during construction that certain things in regard to the construction schedule be adhered to very closely.

Because you are going to have a dumpster, and you are going to have workers, and we would condition that the construction be handled during the hours of, say, 9:00 a.m. and 6:00 p.m. weekdays only for anything that deals with the exterior of the building.

And that interior construction could take place on weekends between the same hours. That the trash containers would be removed and cleaned out, or cleaned out on a regular basis, and that the time frame of construction -- I assume that you are going to build out this whole thing out at one time?

MR. BRANDLER: Yes, that is the only way to do it.

VICE CHAIRPERSON SOCKWELL: That is the only way to do it. And what do you think the term would be for completing construction once you receive a building permit should you be approved?

MR. FINN: Well, just off the top of my head, since there is no necessity to really do any really heavy construction because the concrete slab in the basement is low enough, I would have a guess of three months. I mean, that is overly optimistic. I an not sure.

VICE CHAIRPERSON SOCKWELL: Right.

MR. FINN: But we are willing to be more than accommodating.

VICE CHAIRPERSON SOCKWELL: Because you are going to have to chop out that slab and put in piping, and you are going

to have to do some electrical work, which will come from overhead, and the water will probably be brought in from overhead, but all of the drainage is going to go down.

So all of that has to take place during those hours of 9:00 a.m., and on the weekends, I would condition that no drilling --

MR. BRANDLER: Absolutely.

VICE CHAIRPERSON SOCKWELL: No drilling or jack-hammering of slabs would take place on the weekends. And that there be a number provided for contact between Mrs. Adelman and the contractor at all times that he is on site.

BOARD MEMBER RENSHAW: And also, Mr. Vice Chair, that parking by workers should be on the premises. I would hope that could be done, and also if there is a porti-potty, that that be on the premises also.

COMMISSIONER HOOD: And also if we could just add to the list; that work should start -- I am not sure what the regulation is in the District, but I think it is after seven o'clock.

VICE CHAIRPERSON SOCKWELL: I already said they should be restricted from 9:00 to 6:00.

COMMISSIONER HOOD: Oh, okay.

BOARD MEMBER RENSHAW: Can we give Mrs. Adelman at least one day of rest? In other words, that no work be done on a Sunday?

COMMISSIONER HOOD: Well, I'm sure that they would be working on Sunday.

VICE CHAIRPERSON SOCKWELL: Well, they might be painting on Sunday and things like that, which is not a problem.

BOARD MEMBER RENSHAW: I can tell you that there is often heavy work done on a Sunday, and if they can fit it in, they will do it. So I would say that we should give Mrs. Adelman one day of peace.

MR. BRANDLER: Excuse me, but as far as a portable sanitary facility, we can use the existing apartment for that, and so that should not be any problem.

VICE CHAIRPERSON SOCKWELL: All right. That's fine. I mean, if you want to condition this so that there is no construction on Sunday, or no loud noise producing construction; and that means hammering, and banging, and that kind of thing, so that you can give her one day of peace.

Painting is not a problem. They paint all weekend in most places. I think those kinds of things I would see as conditions. But let's get closing arguments or closing statements, excuse me. And we have one more gentleman to speak. I'm sorry. Would you come forward. Has he been sworn in?

MS. BAILEY: No, he hasn't.

(Whereupon, the witness was sworn.)

MS. BAILEY: Mr. Sockwell, before we go forward, did you indicate that you were going to give a time, or did I

miss, or did I not hear that properly? Did you indicate a time?

VICE CHAIRPERSON SOCKWELL: You mean the time for the approval?

MS. BAILEY: A time to expire prior to the applicant having to come back.

VICE CHAIRPERSON SOCKWELL: It will take him a period of time to complete the construction. So we want to give them that opportunity, and it will be at that time that they will be able to begin to continuously maintain the property.

I would want to put two years on it because it gives them 9 months for construction and a year to failure. And if they fail, they come back, and it will be a problem.

They will have expended their money, and I am sure that they will want not to come back with a negative impression from the affected neighbors. But let's continue. What is your name, sir?

MR. ROSSOTTI: For the record, my name is Edward Rossotti.

VICE CHAIRPERSON SOCKWELL: Rossotti?

MR. ROSSOTTI: Rossotti.

VICE CHAIRPERSON SOCKWELL: How do you spell that, sir?

BOARD MEMBER RENSHAW: R-O-S-S-O-T-T-I.

VICE CHAIRPERSON SOCKWELL: Thank you.

MR. ROSSOTTI: My wife and I own and live in 3145 -

38th Street, which is on the southeast corner of 38th and Woodley. To put that in perspective, the back of my house runs along Woodley, and my driveway is across the street from 3715.

I am here to oppose the applicant's petition for the renovation. Basically, for the reason that even the current number of tenants that they have in the building creates somewhat of a nuisance in the neighborhood, in terms of parking and trash.

Specifically for me, my driveway, being as it is across the street from The Alban, I have routinely had people park in my driveway or blocking it. These are either visitors to or residents of The Alban.

And because parking is tight in the neighborhood, I guess they see it as a convenient place to park. Usually short term, anywhere from five minutes to two hours. But if you come home and there is someone parked in front of your driveway, a half-an-hour seems like a long time.

But what I did is that when I found out about the proposed renovation, I tried to spend a week somewhat documenting the occurrences of people parking in my driveway and tieing it to The Alban, because that would be a key point for your consideration.

So from December 5th through December 10th, I spent a lot of time looking out my window, and there is a couple of instances, or several instances

-- and I am going to go into detail on three of them to give you

an idea of not just the volume, but sort of the character of what is going on.

On December 5th, at 2:15 in the morning, I was awakened by a car horn and some fairly faint, but ambient, music coming out of a car, and I so I looked out my window and there was a white Volkswagen Passat parked in front of my driveway and parked.

He had come in facing the wrong way down the street, with headlights on, and in front of my driveway, and I thought that I would document that, and went back to bed.

And 10 or 15 minutes later, I could still hear the music, and I thought that it is now 2:15 in the morning, and I was somewhat concerned that there is a car in front of my driveway.

So I was thinking about calling the police, the non-emergency police number, when actually one of the doors to the car actually opened, which turns on the cabin lights, and there was a mostly naked male climbing out the back seat, and a female, who was buttoning up her blouse.

She was getting out of the car and she sort of kissed her boyfriend, husband, date, whatever, goodbye and walked into The Alban.

On 12/7, a large truck that was doing the landscaping work that you see pictures of was parked in front of my driveway while they were unloading those nice plants that you see.

And I am generally accommodating. If someone is just there for 30 seconds and they are with their vehicle and they are going to move right away that's fine. I told the supervisor that I was getting ready to go to work, and this was about 8:25, and he said are you leaving right now, and I said, well, in about 2 or 3 minutes.

And he said fine, I will move when you ready to leave, which is not really the response that you want, because 5 minutes later when I was getting ready to go, they were unloading the truck, and it takes a while for them to close the back up, and et cetera, et cetera.

And this is the last one that I will go into detail on. On December 10th, at approximately 5:30 in the afternoon, a green Ford Taurus was again parked in front of my driveway for a long time making liberal use of my driveway. It had baby seats and suitcases all over the driveway, and they were loading up.

They had about 5 or 6 people that were either packing up or unpacking. And I happened to notice as they were getting ready to go that one of -- it was a younger kid who was getting in the car, and he actually took a bag of trash, and it was a small bag, and threw it from where he was standing at the car to the driveway area.

Actually, it my neighbor's driveway abuts mine, and he actually threw it on to the neighbor's driveway. I was hoping that they would go and pick it up, and when it looked like they

were going to drive off and didn't, I went out and said would you please pick up your trash and take it with you.

And at which point the driver of the car wasn't really nice, and she said, hey, we were going to pick it up anyway, et cetera, et cetera, and she said, by the way, my sister lives in The Alban. So I come here often, blah, blah, blah. It's not like I leave trash in the neighborhood.

Well, that statement I think shows me that, one, her sister lives in The Alban, which is why she was there; and, two, I pick up trash from around that area. Every two weeks or so I go around with a trash bag. So I think it is fair to say that that trash would have been left there.

You know, there are countless other incidents. I came home once and there was a car parked actually in my driveway, as opposed to blocking it.

This guy was in a gray Jeep Cherokee, and he was unloading his groceries from my driveway to across the street to The Alban. And I said, excuse me, but please don't use my driveway to unload your groceries.

He said, well, I will be done in a second and I will move it. Now, I should add that I have gone through a fair amount of process. I have had the Department of Public Works install official City no parking signs to indicate that it is a driveway.

And I had my own sign. There is a gate that blocks

off the garden from the driveway, and I haver a no parking sign installed there. So my point here is not to come here and tell funny stories, but basically with the number of people in The Alban already, it seems like there is not a lot of control over -- you know, there is a parking situation, and I can directly correlate problems with people parking in or in front of my driveway to The Alban.

If you add four more tenants, or three more, depending on how you want to analyze the situation, to me it is just -- maybe this is just self-interest.

But there is a direct correlation between how many people live in that building, and how many people are going to come and use my driveway to visit people in The Alban, or to unload their groceries, or to do work on the premises.

So I strongly oppose it. I think that I want to be balanced and say if the neighborhood really needs more apartments, then maybe that should be a consideration. But I think you mentioned 95 percent occupancies. I think we are at the peak of an economic cycle here.

And I think you are probably taking some economic risks by building that out. I mean, I think we are seeing slowdowns in various sectors in the economy, and I don't think --

VICE CHAIRPERSON SOCKWELL: Actually, the housing market isn't going to go that way hopefully. We are very well invested in the housing market. Trust me. I am an architect, and

our firm is very much invested in the housing market, and we don't expect it to go down.

MR. ROSSOTTI: Well, that can probably be debated by --

VICE CHAIRPERSON SOCKWELL: Well, by somebody, by people less qualified. Well, I don't want to get into that issue, but the issue is one of your situation, where people have been violating your driveway, and you relate that to the fact that they have been either visiting or doing something that has in effect come from or occurred around The Alban.

And to the extent, if I might say, that any anyone can control the people off of The Alban property, it is very difficult. It would be as difficult if your neighbor's visitors from a single family home did the same thing.

And I understand the feeling, because people park in my own parking space who come from an apartment building next door. But what I am saying is that with regard to the building itself, and noises, and people throwing trash out of the windows of the building, and people making these extremely loud noises from the building, are those issues that in particular that you can speak to?

I don't want to take an issue of a guy who owns a white Passat who happens to have a girlfriend that lives in the building.

MR. ROSSOTTI: Right.

VICE CHAIRPERSON SOCKWELL: It certainly would be more her responsibility to tell him not to park in your driveway than his, because he doesn't live there and could care less.

MR. ROSSOTTI: And what I can speak to is that the same issues that Ms. Adelman raises, I raise, too, because the entire back of my house looks out on it, and I don't want take up the board's time being redundant to what she has said.

I support everything that she says about trash, and the general character of the neighborhood. My only point in bringing up the parking is that when you expand the number of residents in the building, you are detracting from the quality of life in the neighborhood because of not only the trash, but I am trying to give a different perspective from the board, which is that you also bring in additional vehicles and that kind of situation.

VICE CHAIRPERSON SOCKWELL: Do you have a problem with people from The Alban parking and leaving their cars in your driveway for extended periods of time?

MR. ROSSOTTI: Actually, I do. This particular week, I focused on those three incidents because that is where I had interaction with the driver.

VICE CHAIRPERSON SOCKWELL: Which is a dangerous thing. You should use the police more than just --

MR. ROSSOTTI: Actually, I do. I call 727-1010. I'll be honest. I feel stupid calling the police over that

because they have better things to do.

VICE CHAIRPERSON SOCKWELL: They don't come to my neighborhood either.

MR. ROSSOTTI: One time they took three hours to get there, and they want you to be on the property when they come.

VICE CHAIRPERSON SOCKWELL: So the bottom line is that you have been -- you have some problems with the neighborhood, and you believe that a lot of those come from the fact that you have an apartment building that is grandfathered into your neighborhood that is a large residential occupancy.

MR. ROSSOTTI: Correct. And by expanding it, you have proportionally increased the problems. I don't have a problem with an apartment building, per se, because I just bought the house six months ago or a year ago, or last summer.

And I have lived in this city my entire life, and I know that you always in a city have parking problems, and you have to be accommodating and reasonable.

But at the same time, you know, to increase the number of units is going to proportionally increase the problems.

VICE CHAIRPERSON SOCKWELL: Do you have anything to say to rebut?

MR. FINN: It is difficult to control, and the only thing I can suggest is that the management company do and follow through with sending notices. I also might add that the proportion of parking spaces is going to increase to the units.

So maybe that will help if someone is parking ont the street now.

MS. ADELMAN: How will you increase parking? You already have four spaces in the back that are taken up.

MR. FINN: There is two spaces.

MS. ADELMAN: Well, they double-park, and I have that photograph as well.

MR. FINN: There are two spaces that are rentable to tenants if a tenant is parking there, and they have done that. They are not paying for the rent and that is going to stop because we will put a barrier there.

I certainly would not want people parking and not paying rent for parking. So we have two spaces and we will increase it to six, and as a proportion, we will --

MS. ADELMAN: So you are going to take up the whole back yard with parking?

MR. FINN: We will put six spaces.

MS. ADELMAN: Six spaces would be your entire back yard.

VICE CHAIRPERSON SOCKWELL: Yes, but it is legal. You cannot make them put grass down. You can't have someone not have a swimming pool and those kinds of things.

MS. ADELMAN: We had hoped that the original thing was going to be --

VICE CHAIRPERSON SOCKWELL: Well, I think we had discussed the parking being increased to six spaces in a previous

hearing.

MS. ADELMAN: And we have no choice about that.

COMMISSIONER HOOD: And if I can just add, and I don't know about my other colleagues, but I have heard enough discussion. And I know that in about 10 minutes that you are going to lose a quorum, because I am here in the morning, and I do have some other things to do this afternoon.

VICE CHAIRPERSON SOCKWELL: All right. I think that barring any more discussion, closing remarks from the applicant would be next.

MR. FINN: I will just be mercifully brief here. It just seems to me that the problems that the neighbors have brought up can certainly be resolved with some resolve by the owner, because, for instance, Ms. Adelman, actually is a physical part of a high-rise building that is in the neighborhood, and all along Wisconsin Avenue there is very dense development.

And we are kind of a -- we are really a very modest building here, and so I am saying that we can certainly handle this stuff with some attention by the owner and that's all that I have to say.

VICE CHAIRPERSON SOCKWELL: I am going to tell you right now that I have somewhat ambivalent feelings about the situation here, because certain things have taken a long time to be -- I mean, certain conditions have existed for a long time, and I think that maybe what we need to do with this case is not deny

or approve it, but to continue it until perhaps June or July of next year, six months, to see how well the relationship and the maintenance improve or continue in an improved situation.

And to put this back on the table at that time, and if the planting has not been maintained, and if the balcony has not been kept clean, if the issue of -- and specifically to Mrs. Adelman's property and the cleanliness and appearance issues have not been handled properly, then the case will take on a different tone.

But I believe that we should withhold a decision and continue this case for a six month period until June of the year 2001.

COMMISSIONER HOOD: If that is a motion then --

BOARD MEMBER RENSHAW: I am comfortable with that, very comfortable with that.

VICE CHAIRPERSON SOCKWELL: All in favor?

COMMISSIONER HOOD: Aye.

BOARD MEMBER RENSHAW: Aye.

VICE CHAIRPERSON SOCKWELL: Aye.

MS. BAILEY: The staff will record the vote as three to zero; the motion made by Mr. Sockwell, and seconded by Mrs. Renshaw, to hold this case in abeyance for six months. That is, until June of 2001. At that time the case will be readvertised and put on the Board's docket.

CHAIRPERSON REID: This completes the cases for the

morning. We will take exactly a 25 minute break and return for the afternoon.

(Whereupon, a luncheon recess was taken at 1:30 p.m.)

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

(2:20 p.m.)

CHAIRPERSON REID: Good afternoon. Welcome to the Board of Zoning Adjustment. This afternoon, we are going to -- I am going to go ahead and read the opening remarks and then I am going to open the meeting.

In the meantime, other board members will come in so that I can have a quorum to open the meeting properly. But I am just going to read the introductory remarks.

Ladies and Gentlemen, this is the December 19th, 2000 public hearing of the Board of Zoning Adjustment for the District of Columbia. My name is Sheila Cross Reid, Chairperson.

Joining me today is Robert Sockwell, and Ann Renshaw, who will be joining us shortly, and representing the Zoning Commission is Carol Mitten.

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

Before 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 exception in variance cases is -- well, I am just going to read the order for appeal cases, since this is the only thing that we have this afternoon is just an

appeal.

And that is that the statement and witnesses of the appellant, the zoning administrator or the government official, the owner, lessee, or operator of the property involved; and if not, the appellant; the ANC within which the property is located, intervenor's case, rebuttal and closing remarks by the appellant.

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

The record will be closed at the conclusion of each case, except for materials 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 at this time so as not to disrupt these proceedings. The Board will make every effort to conclude the public hearing as near as possible to six o'clock p.m.

If the afternoon case is not completed by six o'clock p.m., the Board will subsequently set a date to complete the pending case or cases remaining on the agenda.

At this time the Board will consider any

preliminary matters. Preliminary matters are those which will relate to whether the case should or should not be heard today. If it is a request for a postponement, continuance, or withdrawal, proper and adequate notice of the hearing must be 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. Are there any preliminary matters?

(No audible response.)

CHAIRPERSON REID: Does the staff have any preliminary matters?

MS. BAILEY: No, Madam Chair, the staff has none.

CHAIRPERSON REID: Thank you. Then I will now formally open the case, or formally open the afternoon session, and hear the first case of the afternoon, or the only case of the afternoon. Thank you. We now have a full quorum.

And I do apologize for the delay this afternoon and in beginning the meeting.

MS. BAILEY: Madam Chair, the case for this afternoon is an appeal, and the appeal is Number 16646, of Daniel Serwer and James W. McBride, pursuant to 11 DCMR 3100 and 3101, from the administrative decision of Michael D. Johnson, Zoning Administrator, Building and Land Regulation Administration, Department of Consumer and Regulatory Affairs, made approximately April 18th, 2000. Building Permit Number B426044 for a two story

garage addition, and on August 8th, 2000, Building Permit Number B428648, to add a covered walk connection.

The appellant alleges that the construction of the garage addition and covered walk connection are unauthorized commercial use, and does not conform to the zoning regulations in an R-1-A District at premises 5655 Moreland Street, Northwest, Square 2307, Lots 801 and 802.

All those wishing to testify would you please stand to take the oath.

(All witnesses were sworn.)

MS. BAILEY: Madam Chair, just a brief comment. The appellants are Daniel Serwer and James McBride; and the intervenors are Thomas and Linda Shiner. The appeal case is now ready to go forward.

CHAIRPERSON REID: Thank you. Okay.

MR. MCBRIDE: May it please the Board, I am James McBride of the D.C. Bar. I find myself in a somewhat unenviable position today of being both an appellant and counsel for the appellant.

And so I think I am doing something that I don't think that I have ever done in my 38 years of practice, and that is actually serving myself as a lawyer.

I will try to conduct myself appropriately in this matter. I have never been sworn in at the beginning of a case before. But let me see if I can move forward, and I will tell you

how we are going to proceed in this matter.

I am going to make an opening statement, which hopefully will set the stage for what we believe the issues to be.

CHAIRPERSON REID: I'm sorry, but I am having a hard time hearing you.

MR. MCBRIDE: All right. I will try to speak into the mike and more loudly. Is that better?

CHAIRPERSON REID: Yes. Thank you.

MR. MCBRIDE: I am going to make an opening statement to hopefully put the issues in some perspective for us here today. And then I will call on Mr. Serwer, who is the other appellant in this matter, to be a witness.

I also just found out this afternoon that a neighbor, a Ms. Theresa Bollech, who lives at 5711 -27th Street, is concerned about this matter, and would like to make a brief statement. So as far as I am concerned, she will be a witness on our side, and count against our time, and I will call her.

CHAIRPERSON REID: Okay. You want to bring her in as a part of your case?

MR. MCBRIDE: Yes.

CHAIRPERSON REID: Okay.

MR. MCBRIDE: She has asked to make a representation and so that's fine. She can be part of our case.

CHAIRPERSON REID: How long do you envision your case taking?

MR. MCBRIDE: Oh, 40 minutes.

CHAIRPERSON REID: Including hers?

MR. MCBRIDE: Yes.

MS. BAILEY: Ms. Reid, would you please turn your microphone on.

CHAIRPERSON REID: So 40 minutes, including her time?

MR. MCBRIDE: Yes. I have no idea how long she is going to take, but I don't think her time will be very long.

CHAIRPERSON REID: Okay. She has indicated five minutes.

MR. MCBRIDE: Okay.

CHAIRPERSON REID: Okay. And for the intervenor, Ms. Giordano, how long do you anticipate your case to take?

MS. GIARDANO: Good afternoon, Cynthia Giardano from Arnold and Porter Law Firm. I am still having trouble getting use to that, and I am representing the intervenor, the Shiners. I anticipate our case taking approximately 25 to 30 minutes.

CHAIRPERSON REID: All right. Thank you.

MR. MCBRIDE: And then I take it that someone from DCRA will present something?

CHAIRPERSON REID: Yes. Someone is here. Mr. Toge Bello is present.

MR. MCBRIDE: Okay. Many of the people in the

neighborhood where we live are concerned about a number of aspects of this particular construction. Not the least of them is the commercial nature of this structure, which arises out of the fact that any reasonable person who looks at that sees that there is a separate building out of which commercial activity is going to take place in the front yard of this building.

And that I think is what many of the neighbors are very concerned about, and I am sure that is what Ms. Bollech is going to speak about. I want to focus our presentation a little bit more narrowly, and of course the commercial nature of this building will in fact play a part in it.

But I want to focus on why we believe that the DCRA was in error when it granted building permits to build this particular structure in R-1-A. Those issues really resolve down into three main categories.

One, there is no record lot here, and there has never been a reasonable explanation about why a building should take place without a record lot.

And, number two, if you truly look at what is happening here, what is being built is an accessory building in the front yard.

And I don't think that anybody will disagree about the fact that if this is an accessory building, it is illegal. It is a garage in the front yard, and it is going to be used for commercial purposes. It is too tall. I don't think that anyone will disagree with that notion.

And, third, and I think very importantly, this particular lot is encumbered by the D.C. Highway Plan, and in fact we will show as part of our proof in this case that this garage structure is actually being built within the D.C. Highway Plan.

Never at any time during this matter did the Department of Public Works sign off on the building permit. That is just completely wrong, and that is an issue which it seems to me is absolutely fatal to this building permit.

There has never been a Department of Public Works signature and sign-off with respect to this work, notwithstanding the fact that everybody knew the property was encumbered by the Highway Plan. And I am not sure that we are going to have problems with anybody showing that in fact this property is being built within the Highway Plan. And I will talk more specifically about that when I get to that point.

MS. GIARDANO: If I could just interrupt for a moment. We object to this Highway Plan issue really being brought before the Board. This is not a zoning issue.

The Board has no jurisdiction in that area, and whether DPW checked a box on a building permit application is not an issue that is properly appealed before the Board of Zoning Adjustment.

The Board of Zoning Adjustment's jurisdiction deals with interpretations of the zoning regulations by the zoning administrator, and there are interpretation issues involved in the

first two issues raised by the appellant. But the third way, the third issue, is not relevant at all to zoning.

CHAIRPERSON REID: Okay. Let me get a read on that from Ms. Sansone, or rather, Mr. Sockwell, could you speak to that issue?

VICE CHAIRPERSON SOCKWELL: The Highway Plan Encumbrance is an issue of some -- I would say some importance in regard to property as, for one, lots that are encumbered by a highway plan cannot be subdivided into lots of record.

The types of facilities that can be built on the highway plan are irrelevant to the issue of zoning, and are relevant to other things. It should not have any bearing on the specifics of a case like this.

If the agencies that review for the building permit choose to interpret the highway plan encumbrance one way, or another, is not something that we would take up in this hearing process.

CHAIRPERSON REID: Is that something that we would need input from DPW?

VICE CHAIRPERSON SOCKWELL: We would be dealing with front yard or side yard, or building restriction line issues to some degree. But the highway plan piece is really -- well, I think it is an issue that I think falls outside of our direct review authority.

CHAIRPERSON REID: Ms. Sansone, do you concur?

MS. SANSONE: Madam Chair, I think we need to hear from the appellant on this issue. Clearly, the Board's jurisdiction in an appeal case would be limited to errors relating to the zoning regulation. But perhaps the appellant can point out something of that nature to the Board.

MR. MCBRIDE: Would you like --

MS. SANSONE: If I could just interject again. I think there are aspects of the highway plans that are relevant here, and the issues are somewhat intertwined.

The first issue about getting a record lot, there is an issue related to the highway plan involved there. But the third issue as stated by the appellant that this property owner does not have the right to build because of the highway plan designation issue, that is what I am objecting to.

That is not a zoning issue. Zoning does not prohibit building in a highway plan area. In fact, the law is very clear that you are allowed to build in a highway plan area, and I would be happy to share the statute with you, but that is not a zoning issue.

VICE CHAIRPERSON SOCKWELL: I think there are, or maybe there have been, and maybe there are more recent statutory limitations, or changes, with regard to what can be built within the highway plan designated area.

At one time, I know that only elements of a property that could be relocated in the event that the local

jurisdiction declared eminent domain could be actually built within the highway plan.

I mean, I have been involved with such cases, but I don't know what the current body of case law is.

MS. GIARDANO: Well, just looking at the statute, the statute is very clear, and I would be happy to pass that out. But again I really don't think that is an issue before the zoning board. The zoning regulations don't prohibit building in the highway plan area.

I am sure that there is another forum for pursuing that remedy if the appellants have a problem with that. But that's not an issue that the zoning board can decide.

MS. MITTEN: Madam Chair, I just wanted to maybe go back to Ms. Sansone's suggestion, which is just allowing the appellant to at least make some argument about if he feels that it is appropriately before --

CHAIRPERSON REID: I was going there next.

VICE CHAIRPERSON SOCKWELL: The highway plan doesn't --

CHAIRPERSON REID: No, I was going to after Ms. Sansone had mentioned letting him speak, and then Ms. Giordano spoke, and after the next person spoke, I was going to acknowledge that with Mr. McBride.

MS. KRESS: And perhaps it should be treated as a preliminary matter and allow testimony on this issue, and perhaps

then you will be ready to decide whether you feel it should be allowed or not allowed.

CHAIRPERSON REID: Right. Definitely, because this is has made a very contentious issue in this particular case, and for my edification, I want to make -- well, I have in my notes that I want to get clarification on this.

MS. KRESS: It is very important.

CHAIRPERSON REID: Yes, and to determine whether or not in fact this is an issue that we would be addressing as it pertains in this particular case or not.

MS. KRESS: You might want to give just a few minutes, like five minutes, to each side to brief on that matter, and then stop.

CHAIRPERSON REID: Well, Ms. Giordano has already done that.

MR. MCBRIDE: She has already briefed.

CHAIRPERSON REID: Yes.

MS. KRESS: And in any rebuttal, depending if there is something new that comes up.

CHAIRPERSON REID: Sure. I appreciate that, Mrs. Kress. Okay.

MR. MCBRIDE: Let me make a couple of points. First, the issue is whether or not the building permit was properly issued. That is the issue, and it is required in order to have a proper building permit for the Department of Public

Works to sign off on it.

One of the things that has been to be signed off for public works is whether or not somebody can build in the highway plan. Now, let me tell you why this is a zoning problem, and why this is something that this board ought to take a look at.

And I apologize, but I am going to need to stand up. I am going to be referring to Exhibit 17 that was prefiled by us. And I want to explain why in this case the highway plan is exceedingly important from a zoning standpoint.

What I have in front of you, and what our Exhibit 17 is, is from the surveyors office, and it shows the dedication of land for the widening of Moreland Street.

Now, that is very interesting, but that is not really the purpose for which I am showing this. What you have to do is look at the Shiners' property. The Shiners' property is shown on this particular plat as parcel 6185 and parcel 6186. This is just Lot 801 and Lot 802.

Now, please look carefully at this. This lot protrudes into the street, and Mr. Shiner has admitted at the ANC that a portion of his lot is actually underneath the paved street of North Hampton.

MS. GIARDANO: I would object. I think you should just confine your comments to your own information and not put words in Mr. Shiner's mouth.

MR. MCBRIDE: All right. Now, let me go further.

What's happened is that from Oregon Avenue, which is to the east, to almost Moreland Street, North Hampton Street is dedicated to 90 feet.

And it is not just the highway plan that that sets out. That actually sets out the building restrictions, and provides for the open space, and the character of the neighborhood.

West of Moreland Street, there is a 60 foot dedicated street, and a 15 foot building restriction line on each side of the street. So that except for the Shiners' property, there is a 90 foot right-of-way unbuildable on North Hampton Street.

That provides not only for future highway use, but that provides the only building setback problems, and the only building restrictions that the Shiners would have.

As you know the front yard setbacks are not in your zoning laws. They are set by building restriction lines. If the highway plan does not encumber and keep the Shiners from building, he can build all the way to Moreland Street.

He can build up flat against it, because -- and don't ask me how, but somehow, except for the fact that this piece of property is preserved as part of the permanent highway plan, there are no building restriction lines either on Moreland Street or on North Hampton Street.

And so unless the highway plan is preserved, and

unless DPW is given a chance to weigh in and rule on this matter before a building permit is issued and before building takes place, it is clearly erroneous.

And this is quite frankly why this is a zoning issue. It is not just a matter of does this need to be used for the street. The highway plan in this particular instance is the only thing that provides any building restriction to the Shiners' lot.

And I suggest that if you look at Section 7114, which counsel has cited, that is quite an old statute. I think if memory serves me it started out in 1889.

But that statute certainly doesn't override the administrative patina that has taken place over time dealing with how this building should take place. It certainly doesn't say that the Shiners have the unfettered right to build anything they want wherever they want to build it here.

And I suggest that in terms of whether a building permit should have been granted, this is an appropriate issue for this Board to look at, and to understand what is going on, because it is not just highway plan issues that are at stake here. It is open space issues. It is public space issues.

If the Shiners can build on this piece of property that is part of the highway plan, they will be the only people on North Hampton Street that don't have to abide by all the other building setbacks.

And my point is that there should have never been a building permit granted here until it went through the Department of Public Works. And you have safeguards in place to do that, and they weren't abided by here.

VICE CHAIRPERSON SOCKWELL: Mr. McBride, the issues that you have mentioned, and the condition of the parcel 61-85, and 61-86, are rather unique conditions that one does not normally find within the street plan layout of this city.

MR. MCBRIDE: I agree.

VICE CHAIRPERSON SOCKWELL: At the same time, there is a section in the zoning ordinance, Section 2503.1, Structures in Required Open Spaces, that states that except for the structures specified and the exceptions set forth in this section, every part of a yard required under the provisions of this title shall be open and unobstructed to the sky from the ground up.

The point is that the yard that may be in violation is not specified in the zoning ordinance if one wants to assume that the project is actually bound by the zoning ordinance for that location that is within the highway plan encumbered area as you stated.

And so what I am saying to you is that the zoning ordinance does not have a provision that deals with the building restriction lines on property. The building restriction lines on property are designed around another agency's responsibilities. And therefore we cannot factor into our judgment that is not in

our court.

MR. MCBRIDE: But my point is that what is in your court is whether or not a building permit has been properly issued here, and whether or not a building permit should have been issued in this instance without the Department of Public Works' signature.

MS. GIARDANO: What is before the BZA is whether the zoning administrator made the proper ruling with regard to a building permit in this particular case.

They are not responsible for whether a building code issue was complied with or any other issue involving a building permit; only the zoning aspects of the building permit. I think that's where the confusion lies.

VICE CHAIRPERSON SOCKWELL: The zoning administrator to my understanding, Madam Chair and Board Members, would be to determine again under the auspices of, and the requirements set forth within the zoning ordinance, the auspices of his office and the requirements of the zoning ordinance, whether or not said construction, proposed construction, fits within the context of the ordinance.

He would not have the right, nor the duty, to make a determination that would be another agency's issue. However, if the other agency determined that the building could not be placed there for reasons that are not zoning reasons, but are property restriction reasons, highway plan encumbrance location, dedicated

right-of-way de facto easement -- you name it, and there are any number of issues that could come up -- this would then affect the issuance of a building permit.

But it wouldn't necessarily mean that the zoning administrator was incorrect in making a decision one way or the other if he did not have the authority to make such a decision.

MR. MCBRIDE: And my position is, Mr. Sockwell, is that the zoning administrator never looked at this issue. He should have had the Department of Public Works sign off on this.

My understanding is that the appropriate way to deal with a matter when you want to build within the D.C. Highway Plan is to have that matter approved prior to the time that your building permit is issued by the Department of Public Works.

CHAIRPERSON REID: Okay. This is --

MR. MCBRIDE: And in fact the issue that we have is that there was no signature by the Department of Public Works on this building permit application as we understand is required.

CHAIRPERSON REID: Let me ask Ms. Kress. Ms. Kress, perhaps I can get you to give me some clarification here. In the process, in the procedures, and in the issuance of the CFO, and just routinely that the case might be deferred to DPW to analyze and sign off on, can a CFO be issued without that signature legitimately?

MS. KRESS: Certainly. I mean, it depends on whether DPW is involved or not involved, and what I wanted to go

back to was the building permit. The zoning administrator does not control the building permit. Building and land regulations authority does.

The zoning administrators are one of the few little pieces that signs off of all the pieces that have to be signed off. It is not within the zoning administrator's power to take any responsibility for DPW, or for structural, or for electrical.

I mean, they might coordinate, but he is not the person, or she is not the person who runs the whole permit. So I think the point that is being made, and I think rightly so, is the point that affects the zoning administrator, and that affects this body, and that is the zoning related piece, and not the pieces that relate to whether there is an improper egress, the wrong fire rating.

Those are things that do not come before this board, just as I believe that these issues that are in DPW's perview do not come before this board.

MR. MCBRIDE: Let me say --

CHAIRPERSON REID: No, excuse me. I am still not clear. You are saying that if in fact what is before us is the appeal of the decision of the zoning administrator, which was predicated upon the issuance of the CFO --

MS. KRESS: Only pertaining to zoning issues.

CHAIRPERSON REID: Okay. So we are to determine whether or not it was correctly -- whether or not the zoning

administrator acted correctly?

MS. KRESS: For zoning issues only.

CHAIRPERSON REID: Okay. Now, are you saying that the process itself as it pertains to the referral to DPW, and whether or not that was effectuated, that that has no bearing on the decision?

MS. KRESS: Or on us.

CHAIRPERSON REID: So then it is irrelevant whether or not it was signed off on or not?

MS. KRESS: it is irrelevant.

VICE CHAIRPERSON SOCKWELL: Madam Chair, this is a statement that may not help matters, but let me say that it is possible -- and I would see it as not inappropriate, but not a requirement of the zoning administrator to withhold a decision on approval in view of the existence of unusual conditions of a lot if he felt that his approval would be premature pending resolution of other issues that might have affected the location of the proposed structure, and that could have affected side yard or rear yard compliances, and things like that.

The zoning administrator could have stated that he would withhold his approval until he was sure that the building proposed would upon other review by agencies with different authorities had assured him that the site was correct and would not fluctuate based on highway planning encumbrances and other things.

But that would have been a decision that I think the zoning administrator could have made one way or the other without necessarily being in violation of this ordinance.

And I think that that is where it is a judgment call, as opposed to a direct violation of zoning.

MS. MITTEN: I actually think that this issue may be just as Ms. Giordano had characterized it in the beginning, which is there is a total of three issues that Mr. McBride has put forward, and they are sort of bound up together.

And the highway plan may be relevant in the sense of whether or not these people were able or required to obtain a record lot. And it is in that context that we should have a discussion about that.

But to have a discussion about whether or not it is legal to build within the highway plan is addressed in Title 7, and because it is in 7 and not 11, that is outside our jurisdiction.

So I would suggest that it is relevant, but only as it relates to the issue of whether or not these people could have obtained or needed to obtain a record lot.

VICE CHAIRPERSON SOCKWELL: That is a good question, but --

MS. MITTEN: It wasn't a question.

VICE CHAIRPERSON SOCKWELL: Well, a good statement, but let me explain this. It is a fact that one can build on a lot

that cannot be turned into a record lot as the result of highway plan encumbrance. We have built projects all over northwest that way, where they were encumbered by highway plans.

For example, everything that is built along Wisconsin Avenue, and along Observatory Circle, is encumbered by a highway plan -- the Fresh Fields, and everything else that is new down there -- because you can't build.

There is a 30 foot building restriction line, which is really a highway plan encumbrance on those properties. There is nothing to prevent you from building, but there are restrictions placed on the property by other agencies.

And those restrictions are the ones that govern where zoning is not an issue. The highway plan encumbrance will prevent you from obtaining a record lot. So in those cases, and only in those cases, can you build on a lot that has an 800 number or a 900 number. It is just a fact of life.

In fact, the city is trying to remove as much of the highway plan encumbrance on property as it can, but that's not important here. But it is important that it is not an issue of constructability when the property cannot be given a record lot designation.

MS. KRESS: Well, I still think that you could deal with the third issue, and then if you want, you can come back to discuss further the record lot issue as it overlaps with these building restriction lines having to do with highways.

I was just trying to deal with a procedural matter, which is the full breath of the testimony that you are going to take. And it is my interpretation procedurally that on the third issue, as they mentioned it per se, that does not come under the jurisdiction of this board, regardless of whether maybe the zoning administrator, in his capacity as BORA, might have considered it, and should have from the zoning regulations.

It does not come under this board's jurisdiction, regardless of whether it should be under the zoning administrator's. So I would think that you might want to just discuss procedures and make the decision on what has now been dubbed the third issue to help you in your testimony.

Or otherwise on the other side, if you would rather hear just all testimony, and then make your decision later. I was just trying to help procedurally.

BOARD MEMBER RENSHAW: Madam Chair, I would recommend that we get on with the testimony, and then come back to this issue, or we are going to get rather bogged down in it.

CHAIRPERSON REID: Okay. All right. Let's proceed. Go ahead, Mr. McBride.

MR. MCBRIDE: Are we going to proceed with respect to all three issues; is that my understanding or is that understanding correct?

CHAIRPERSON REID: Yes. Go ahead with your case.

MR. MCBRIDE: Pardon me?

CHAIRPERSON REID: Go ahead with your case.

MR. MCBRIDE: Thank you very much. I will start out with the record lot issue, and we are certainly mindful that there must be ways to get around building where you are encumbered by the highway plan.

11 DCMR 3202.3 specifically says that you have to have a record lot. All I am saying is that as far as I can tell, and from my discussions with the DCRA, nobody has a reason why building was permitted here.

In effect, the argument is that because you can't get a record lot, you can build. You have to have a record lot to build, but if you can't get one, you don't.

But my point, Mr. Sockwell, and I want to be sure that it is clear, I don't think anybody looked at how the highway plan affected this particular lot before they permitted building there.

I agree with you that there are plenty of instances where we don't have the kinds of problems that we have here with respect to the highway plan. But somebody at DCRA had to make a decision that, yes, this would be built, or these people could build, and they wouldn't require a record lot.

My question is did they look at how the highway plan encumbered that, and did they look at the fact that this is a most unique lot, and that to allow people to build on that is going to change the whole character of the neighborhood, and allow

them to build in places other people can't.

That's basically our argument with respect to the record lot. We have never heard anybody explain to us whose decision it is, and how you go about determining whether a record lot is required or not.

Let me turn to another issue, the second issue, which I think is very important, and that is the question of whether this is an accessory building, or whether this is a single building.

What I put up on the board is the second page of our Exhibit 2, and that is the site plan for the building permit that was issued in April of 2000.

I will just make two comments with respect to that. It is for an accessory building. It is not for an addition. The only connection between those two buildings is shown as a trellis.

That trellis simply goes from the garage to the corner of the building, and connects no communication between those two buildings. If you look at the project data that is shown with respect to this matter, it indicates that the addition, the footprint for the addition that is going to be built -- and they call it an addition, and that is their word and not mine -- is 487.66 square feet.

That's that there, and that's no connection at all. That's only for this piece of property right here. So there is not any question that the plans that were submitted at the time

that the building permit was approved were to build an accessory building.

And that accessory building is a garage, and it is in the front yard of that property, because the front yard is on Moreland Street. It is two stories tall, and it is admittedly being built for the purpose of running a business out of it.

Now, when we made our complaints to the zoning people, they issued a stop work order with respect to that. And at that point, revised plans, or actually new plans, were submitted. And that is our Exhibit 14, which is attached to our statement.

And that shows a glass covered walkway being constructed from the garage around this L for entrance into the basement of that building. That building being the house itself.

The only entrance -- the main entrance to the house is here, almost 60 feet away. In addition, there is actually no communication to the second floor of the garage from that covered walkway.

VICE CHAIRPERSON SOCKWELL: I'm sorry, but would you repeat the last thing that you just said, sir.

MR. MCBRIDE: Yes. There is no communication to the second floor of this garage from even the new covered walkway that they have talked about. The only way to get into the second floor of that garage is by access by an outside staircase.

So that the garage, or that the second floor of

this garage is completely separate and apart, and can only be entered from the outside. And we suggest to you that that does not meet any definition of a single building.

And if it does meet a definition of a single building, look at what a mockery it makes of the accessory building limitations that are in the zoning laws. Let's make no mistake about what we have here.

This is not an office in somebody's house that he has got a home occupation permit for that is hidden away. This is a two-story structure, and because of its proximity to North Hampton Street, sticks out in front of every other house in the neighborhood, and it is going to be used for commercial purposes.

And DCRA, and the homeowners, say that's fine. We can convert this into a single building, and we will put a little glass covered walkway between the two. That's a perversion of the zoning laws, and really an improper interpretation of the zoning laws.

There is no connection at all anywhere to the main house to the second story, which is the only portion of that structure, where people are going to be, and where people are going to be working.

I suggest to you that no reasonable person who looks at that building is going to tell you that that is a single building. It is two separate buildings.

And the simple expediency of putting a glass

covered walkway between the two doesn't convert it into a single building.

VICE CHAIRPERSON SOCKWELL: I am looking for a copy of the D.C. surveyors plat that would have been filed with this application, and I have yet to come up with that. I am not sure why it isn't in the file.

MR. MCBRIDE: Well, what you have is what was in the file, okay?

VICE CHAIRPERSON SOCKWELL: There would have been a D.C. surveyors plat prepared as a blank document describing the lot that would ultimately be submitted as part of the zoning review package.

MR. MCBRIDE: Yes. There was a time --

VICE CHAIRPERSON SOCKWELL: And a building permit review.

MS. GIARDANO: I would like to submit it.

VICE CHAIRPERSON SOCKWELL: It must be submitted.

MR. MCBRIDE: Let me tell you that that is not a document that we have ever seen, nor was it in the file.

MS. GIARDANO: Exhibit 17.

VICE CHAIRPERSON SOCKWELL: Oh, it is?

MR. MCBRIDE: Oh, it's our Exhibit 17?

VICE CHAIRPERSON SOCKWELL: Where is it? No, that is the record lot for the property description. This is not the D.C. surveyor's plat. It is a different document entirely, and I

have been looking for it.

MR. MCBRIDE: Are we talking about the wall check?

VICE CHAIRPERSON SOCKWELL: This is the D.C. surveyor's plat, and these are copies of the original and the modified plat.

MR. MCBRIDE: Let me just say for the record that --

VICE CHAIRPERSON SOCKWELL: Have you seen copies of these?

MR. MCBRIDE: -- I have never seen those, and those are not in the building permit files.

MS. GIARDANO: They should be.

MR. MCBRIDE: Well, I am telling you that the building permit file was filed as part of our appeal.

VICE CHAIRPERSON SOCKWELL: The documents that the District would review as part of a building permit submission, Mr. McBride, are that document, and that would have been filed with the application, along with any other drawings that were stamped.

And I think that the reason that I was looking for it was to determine the way that the street was depicted. And on the D.C. Surveyor's plat there is generally a fairly limited description of anything that is off the property line.

So the plat is by nature somewhat vague in its description of the surrounding street pattern, and I wanted to see whether or not there was a reason to believe that it might have

been difficult to determine exactly what was going on just by looking at the plat.

BOARD MEMBER RENSHAW: What is the difference between 3b and 3c?

VICE CHAIRPERSON SOCKWELL: This shows the -- they were done --

MS. KRESS: There is two versions; one is the '92 and one is the 2000, just for clarification.

VICE CHAIRPERSON SOCKWELL: Yes.

MR. MCBRIDE: I don't know the relevance of the '92 one.

(Discussion off the record between board members.)

VICE CHAIRPERSON SOCKWELL: One issue that we have here is that the -- we have a 2000 plat and a 1992 plat, and we are showing an approval of a covered walk.

MS. GIARDANO: The '92 plat was for the initial construction of the house, and it shows the total plan. The garage was not built as part of the initial permit. The garage was built later. So I am just showing you -- because the streets I think read better on that first plat.

And that there were two plats involved here, and between the two maybe you could get a good picture of what it is that you are looking for with the street network.

VICE CHAIRPERSON SOCKWELL: I think in both situations that the streets are depicted in relatively the same

relationship to the property. And if one were to assume that the locations of things were the same in the year 2000 plat and the 1992 plat, which was approved at that time, a zoning decision might have been made simpler merely by referencing the fact that everything was in the same place.

And that the difference was primarily that of a slight change in the size of the garage, and the fact that it is two story -- it doesn't state whether it is one-story or two-story in the '92 plat, and a change to the connection between the main house and the garage.

Now, how -- this thing says connecting wall and covered walk. I assume that the covered walk was a modification note added after some question was made of the trellis.

BOARD MEMBER RENSHAW: Perhaps we could ask Mr. McBride on the 1992 plan which you have seen, there is the drawing for the garage. Was that a one-story or a two-story garage?

MR. MCBRIDE: It was a one-story garage. As a matter of fact, I have got the site plan.

BOARD MEMBER RENSHAW: In 1992?

MR. MCBRIDE: In 1992. It was a one-story garage, and quite frankly if you look at the site plan that was submitted, the permit set, it shows exactly the same thing that the site plan shows here in 1992.

VICE CHAIRPERSON SOCKWELL: The relative relationship seems to be the same, but the issue is that in 1992

it was clearly called a covered walk, because at that time the garage would have clearly been an addition in the initial permit that was issued for the house and garage together.

MR. MCBRIDE: There was no permit issued for the garage.

VICE CHAIRPERSON SOCKWELL: You're saying that the permit was not issued for the garage?

MR. MCBRIDE: The permit was only issued to build a house, and I have that permit here and I don't think it will be disputed. But there has never been a permit issued to build anything other than the house initially.

And then, secondly, to build a garage. Those are the only two building permits, and I will be happy to submit them for the record if you want them.

VICE CHAIRPERSON SOCKWELL: Well, in the initial zoning sign-off of '92, which was -- and where it states encumbered by highway plan, as it would normally state when that is an existing condition, and signed by Ms. Hicks, a former acting zoning administrator in her last job there.

I don't see -- I mean, I can see where this was placed in motion that the garage could exist at that point on the site, and then anyone following this forward would have looked at the original signed plat, and looked at the new plat, and said -- well, you can just take the two drawings and you can overlay them, and maybe everything fits.

But in reality the garage appears to be pushed somewhat forward in the year 2000 plat just by overlaying the two drawings at the same scale.

MR. MCBRIDE: Well, I have got an overlay that is done digitally that I will show you later that shows where these buildings are actually. I mean, I am not sure any of these are really to scale.

VICE CHAIRPERSON SOCKWELL: The drawings are drawn to scale by the City.

MR. MCBRIDE: Okay.

VICE CHAIRPERSON SOCKWELL: The scale is indicated in the top left-hand, under one inch equals 30 feet, and it is the same for each, and that's why they overlaid so cleanly.

MR. MCBRIDE: Okay.

VICE CHAIRPERSON SOCKWELL: They are drawn by hand currently, or at least they have been. And even xeroxed, there is not a problem seeing the two fit nicely over one another.

So it does show that the garage actually moved forward toward Moreland Street. But regardless the issue is this; that the permit was issued initially with a trellis, and then a modification was made later to add the covering.

I would say that with the trellis that the garage was not an addition, because -- but there again it would not be normally an addition unless it is connected by a covered structure.

MS. MITTEN: Mr. Sockwell, maybe we could hear all the testimony before we draw conclusions.

VICE CHAIRPERSON SOCKWELL: Yes.

CHAIRPERSON REID: Thank you, Mr. McBride, and thank you, Mr. Sockwell.

MR. MCBRIDE: Well, I will simply say that in none of the building permit application files that we looked at were there any plats of this kind. This is the first time we have seen this.

VICE CHAIRPERSON SOCKWELL: One plat copy would reside with the zoning division's records, and one plat copy should have been in the main building permit record, and the third copy would have been the owner's record.

MR. MCBRIDE: I will tell you that there was included as part of the building permit application our Exhibit Number 5, which does show very clearly how the highway plan encumbers that property.

And it is very clear that if you extend the line from North Hampton Street that the garage is being built within that highway plan. Our position is and continues to be that the simple existence of a glass covered walkway between these two very different structures, particularly where there is no communication or access into the second story except by virtue of an outside staircase in the garage, does not convert those buildings into a single building.

And if it does, then the accessory building restrictions don't mean a single thing. Now, I am going to be fairly quick, and simply tell you that you have heard our arguments with respect to the highway plan.

I will again implore you to look at what is happening here in this particular case. Look and see that every other neighbor has a requirement to abide by a 90 foot dedicated street, or a 90 foot strip covered by the street and the building restriction line, except the Shiners.

And if there is no restriction caused by the highway plan, there is nothing to keep the Shiners from building directly on Moreland Street, and at least within 8 feet of North Hampton Street.

And the building permit should have never been issued without giving DPW a chance to look at and rule on that particular issue. And here we are, and the construction is for all intents and purposes complete.

And I will tell you that I have had a number of discussions with the D.C. Government people, and this matter is being looked into very carefully right now by them.

But we are in this place because whoever was responsible for issuing a building permit didn't raise these issues with the Department of Public Works. Now, I would simply state that what we did, because we didn't have those documents that you looked at, the overlay, and that we looked at the wall

check for this property digitally scanned.

And we have the site plan for this property digitally scanned so that we could show the effect, and indeed the actual construction of the property is about 6 or 7 feet further west as shown by a wall check than the site plan would show.

Now, based on the wall check, the actual garage is here, and we simply have digitally scanned this to show you what happens with respect to the highway plan.

This portion of the diagram here under this dotted line is the property that is covered as part of the permanent D.C. highway plan. This garage is actually built into the highway plan. If the highway plan doesn't limit building, then that garage can be built right there.

This is North Hampton Street, and I will tell you, I will testify, that this is Mr. Shiner's drawing here, the line here. This portion of Mr. Shiner's property, which he uses to calculate his square footage, is actually under the paved street.

This is the paved street of North Hampton right here, and not the 90 foot right-of-way, which is back here. And if you look at what is happening, the City's own property for North Hampton is very, very narrow there. Very narrow.

Whereas, the street actually runs along in here, and I suggest to you that it was an error in having a building permit issued to build. And believe me that there was no reason that the people didn't know that was happening, because if you

look at our Exhibit 5, it makes very clear where the highway plan is.

VICE CHAIRPERSON SOCKWELL: Would you press your plastic close to the drawing and stop right there. I am just trying to locate the edge of the existing house.

MR. MCBRIDE: Well, actually the existing house is actually right there, the wall check.

VICE CHAIRPERSON SOCKWELL: Well, what is that that you are showing me that is -- I want to make sure that what I am looking at was the existing house?

MR. MCBRIDE: Well, for the existing house, I am showing you the wall check. But it is not on the surveyor's plat.

VICE CHAIRPERSON SOCKWELL: Yes. You have a portion that is --

MR. MCBRIDE: It's really not. It is the underneath portion. The only thing that is shown here on the wall check is the actual house. So the house actually, if you look at the lot, the house actually extends into --

VICE CHAIRPERSON SOCKWELL: That is a corner of the -- of what?

MR. MCBRIDE: The house.

VICE CHAIRPERSON SOCKWELL: Is that the house itself or a porch?

MR. MCBRIDE: No, that's the house.

BOARD MEMBER RENSHAW: Or is that part of the

covered walkway?

VICE CHAIRPERSON SOCKWELL: So what is underneath it?

MR. MCBRIDE: The basement of the house, and the regular house. I mean, this piece right here is not shown. This wall here that we are looking at underneath is not shown on the wall check. You can look at the wall check, because you can see where --

VICE CHAIRPERSON SOCKWELL: So you are saying that a wall check locates the house in a different location than the site plan?

MR. MCBRIDE: Yes.

VICE CHAIRPERSON SOCKWELL: Okay. Thank you.

MR. MCBRIDE: And that concludes my statements, and I would now call on Mr. Daniel Serwer.

CHAIRPERSON REID: Thank you, Mr. McBride.

MR. SERWER: My name is Daniel Serwer, and I bought my house at 2701 North Hampton Street, Northwest, which is located within 50 yards or so of 5655 Moreland, in 1984.

I am not a lawyer, but I am personally familiar with the facts of this case, and adopt as my own the prehearing statements submitted by Mr. McBride, as well as the exhibits attached thereto.

I am citizen concerned about the construction at 5655 Moreland because it impacts the character of the neighborhood

in which I live, and it is visible from my house, and it can be expected to affect property values, including my own.

I was astonished last July to return from a trip abroad on business to find a two-story building going up in my neighbor's front yard. Could this be legal? I discovered that it was not.

An accessory building cannot be over 20 feet high, and it cannot be located in a front yard, and it cannot have a second story, except to house a domestic servant.

So I wrote to Mr. Shiner on July 17th, and my letter is at Exhibit 7, registering my concern, and making it clear that I was prepared to take legal action if there were zoning violations.

Mr. Shiner never replied in any way to my July 17th letter, but instead pushed ahead with construction, even having worked it on after dark and early Sunday morning.

It took some effort to attract the attention of zoning officials, but in early August, Mr. Edgar Nunley called to tell me that he had issued a stop work order because the construction was clearly an illegal accessory building. I am talking about the original -- about the building as it existed on the original building permit application.

I was pleased that the stop work order did not last long. Less than a week later, Mr. Nunley told me that he had lifted the stop work order because Mr. Shiner had agreed to file

new plans showing the two buildings connected by a glass covered walkway rather than just a trellis.

The original plans for a trellis is shown in Exhibit 2, and the glass covered walkway is shown in Exhibit 14. This glass covered walkway, which insofar as I can tell has never been built as only the trellis seems to be in place, does nothing to make the two separate buildings into one.

There are still two buildings separated by about 19 feet unconnected in any meaningful way, and as Mr. McBride has indicated, the only entrance into the second story is by that sort of patio door there.

You get up there by an outdoor staircase. If it the cover is some day put on the trellis, it is not going to go up there, and it is not going to connect to the main door of the house or to the main floor of the house in any way. But rather apparently to a basement entrance.

The accessory building is still over 20 feet high, and the second story is to be used not as housing for a domestic servant, but rather as a commercial office.

I protested to the zoning authorities, but to no avail. They said there were precedents for making two buildings into one by this kind of covered walkway, though none of the zoning officials has ever cited a precedent in a front yard.

I asked zoning officials at least a dozen times since July to stop the construction so that the Board of Zoning

Appeals would not be faced with a fait accompli, but could instead discuss the matter before construction was complete.

I also discovered other problems. First, Mr. and Mrs. Shiner had once applied for a record lot, which I understood was a requirement for construction. But they were told that they could not get one because their property was encumbered by the City's highway plan.

Indeed, their new accessory building was going up on land located within the highway plan. This struck me as very odd. So again I consulted the zoning officials. They repeatedly assured me -- and I want to underline this in light of our earlier conversation.

Zoning officials, including the zoning administrator, and then acting head of the Bureau, told me that no building permit could be issued for construction within the highway plan unless the Department of Public Works signed off.

This, they say, was absolutely standard procedure. But there is no DPW's signature on Mr. Shiner's two building permit applications this year. You can see that on the first one on Exhibit 1.

I have since learned from DPW that the zoning officials were correct. No building permit from their perspective can be legitimately issued for construction on the highway plan without DPW's permission.

On the second question of the record lot, zoning

officials offer a bizarre explanation. A record lot, they say, is required, except when you can't get one. In that case, the City always allows construction to proceed in any event. To this day I fail to find logic in this.

A third problem emerged. My colleague, Mr. McBride, recently discovered, and has now shown you, that Mr. Shiner has from 1992 onward presented building permit applications that show his house and garage six feet deeper into his property than is in fact the case.

This may put his house, built eight years ago, outside the highway plan, but it leaves the accessory building constructed this year well within it.

This raises a fourth important issue, because the Shiners' property has no building restriction line as Mr. McBride has shown you. This is unique in the neighborhood, and means that Mr. Shiner has built far closer to the street than anyone else would be allowed to do.

Indeed, if Mr. Shiner is allowed to build on the highway plan, there is nothing that would stop him from building even closer to the street, and I suppose even in it since his property extends there as you have seen. A procedure that leads to such an absurd conclusion can't quite be right.

Fifth, although it is located in an area zoned R-1-A, Mr. Shiner is using this accessory building, which has the appearance of a commercial building -- and you have some

photographs in our materials -- for commercial purposes, and not allowed by the zoning regulations, complaining that this building is an addition to his residence.

But this is not a home office that is a part of his home devoted to business activity. It is a separate commercial structure, with no connection at all between the commercial area on the second floor of the accessory building, and the main story of his house.

The building is in fact known in the neighborhood as the warehouse and for good reason. This construction clearly sets a terrible precedent in breaking the letter and spirit of the zoning regulations.

The bottom line here is this. As a result of errors by City officials, and his own misrepresentations, Mr. Shiner, a licensed architect who knows the rules, has constructed an illegal commercial accessory building that encumbers the highway plan in a residential neighborhood.

This is an important new precedent that should not be allowed to stand. I urge the BZA to order that it be torn down. Thank you.

CHAIRPERSON REID: You're welcome. Thank you very much. Okay. And does that complete your case at this point?

MR. MCBRIDE: Ms. Bollech wants to make a statement

MS. BOLLECH: Good afternoon. My name is Theresa Bollech, and this structure has been quite an emotional issue in

our neighborhood.

BOARD MEMBER RENSHAW: Excuse me, Ms. Bollech, but would you tell us where you live, please.

MS. BOLLECH: Yes, Ma'am, I would be happy to. I live at 5711 - 27th Street. We are actually -- well, Moreland Street is here, and this is 27th Street, and we are three houses down on the east side.

I am here as a concerned parent. We have a nine year old daughter, Ashley, and across the street from us, closer to where this structure has been built, her two friends, Frankie and Sarah, live across the street.

On nice days, and typically in the fall, spring, and summer, you will see the children out there with their bicycles, or their toys, and so forth, and they will play up on Mr. and Mrs. Serwer's home.

And we have had that freedom if you will as parents to feel that when Ashley -- and I am sure Frankie's and Sarah's parents, that the kids are pretty safe, even though we live in the inner city, and this is a new day and time.

And one of the concerns that I have, and that my husband has as well -- and unfortunately he could not be here today -- is that it is a safety issue with this new structure, because it is going to be used for commercial purposes.

And how much traffic, additional traffic, is that going to draw into our neighborhood, and I am very concerned, as

others are, and there are other children that live on our block as well.

And I think that it is very important to point out that we live in a fairly quiet, if you will, neighborhood. We don't have a lot of traffic that cuts through or comes through, and that is a big concern.

And I also think -- and Mr. Serwer said it the best -- the spirit of the zoning laws. This is a quiet residential neighborhood, and there are a lot of families that have children that live here, and of course we are ones as well.

And I would like to say that I don't really know Mr. and Mrs. Shiner. I don't see Mr. Serwer and Mrs. Serwer that much, or Mr. and Mrs. McBride.

So I am here about a safety issue, and it is about children, and the safety of our neighborhood; and how many additional cars are going to be coming through our neighborhood.

I have noticed in the last couple of weeks -- I don't work right now, and in the afternoons as I am coming home, I will pass by the new structure. Now, I noticed that there is a car with West Virginia plates, and that could very well be somebody in their family. I don't know.

There is another car as well. It doesn't appear that it is construction, one of the construction individuals that were working on the house before.

I believe there was a white truck, and I could be

wrong, but I am almost positive that it was a white truck. It might have been the contractor.

And there was an older, kind of small, car during the summer months that might have belonged to one of the construction workers.

But I just want to say that in this day forward how much additional traffic is going to come into our neighborhood, and what about us, what about our children?

Where were we through this process, and our one neighborhood -- and I assuming from what I can -- and I have not looked recently, but I don't think the zoning laws have changed that much in the last few years, but that is a residential neighborhood.

And I hope that we can keep that same spirit there, especially for our children, and that's why I am here today. And I really do appreciate you all listening.

CHAIRPERSON REID: Thank you very much for your testimony. All right. Board Members, did you have any questions of any of the witnesses?

VICE CHAIRPERSON SOCKWELL: Just one thing that I wanted to cover with mr. McBride. You spoke to the fact that the Shiner property did not have a building restriction line along North Hampton, I believe?

MR. MCBRIDE: That's correct.

VICE CHAIRPERSON SOCKWELL: Yes. And from one of

your exhibits, your Exhibit Number 19, I believe, you show the breakdown of streets and property. The width of North Hampton is 60 feet to one side of Moreland.

MR. MCBRIDE: Are you talking about Exhibit 17?

VICE CHAIRPERSON SOCKWELL: It looks like it is 19 here.

MR. MCBRIDE: It probably didn't print out too well, but it should be Exhibit 17. Is it this one right here?

VICE CHAIRPERSON SOCKWELL: What is that? That looks like a nine.

MR. MCBRIDE: I think that is actually -- I will find it. That is actually -- maybe I can help you. It is this one right here?

VICE CHAIRPERSON SOCKWELL: Yes. I have a 19. In the upper left-hand corner of the thing, you have something that looks like -- maybe that is a 61.

MR. MCBRIDE: I think that was already on the document. I apologize.

VICE CHAIRPERSON SOCKWELL: Okay.

MR. MCBRIDE: Please go ahead with your question.

VICE CHAIRPERSON SOCKWELL: What I am saying is that what it does indicate is that there is a 30 foot difference in the street width on one side, on the Oregon Avenue side of North Hampton.

And therefore what would have been accommodated as

a building restriction line over private property on the opposite side of the street, which is only 60 feet wide, was accommodated by the increased width of North Hampton up to that point, which was the reason for the building restriction lines to the other side, which would have accommodated growth of the street width under the highway plan.

And you stated or you made a statement that said that this property was the only one that was not encumbered by the highway plan. Well, that's not for any reason other than the fact that the right-of-way had already been built out at 90 feet, and was not at that point necessary as built street. So the highway plan was mapped for the future development of North Hampton.

MR. MCBRIDE: Well, I want to be sure that you got my point.

VICE CHAIRPERSON SOCKWELL: The same thing was done on Foxhall Road and some other streets.

MR. MCBRIDE: Well, the point that I was making, and it is easier to see on Exhibit 17, but the point that I was making is that from a point beginning about Moreland Street, east to Oregon Street, and there is actually a dedicated -- the City owns all that property, and so nobody is ever going to build within that 90 feet.

VICE CHAIRPERSON SOCKWELL: Right.

MR. MCBRIDE: To the west, the City owns 60 feet, but there is a building restriction law, so that nobody can build

within that 90 foot point -- that is the point that I am making -- except for the Shiner's property.

VICE CHAIRPERSON SOCKWELL: Yes, but the Shiner's property is on the west side, or whatever the other side of the street is. It is not on the blocks that are encumbered by the highway plan for a reason.

MR. MCBRIDE: Well, no, because it is covered by the highway plan.

VICE CHAIRPERSON SOCKWELL: Well, what I am saying is that it is actually -- however it is set up. I mean, the point is that it is -- it is not encumbered by a building restriction line. That's what I mean.

MR. MCBRIDE: It is not because --

VICE CHAIRPERSON SOCKWELL: And it wouldn't be because if you had a building restriction line along with the 90 foot right-of-way, you would be encumbering the property along Moreland Street as well.

MR. MCBRIDE: And I am not suggesting that there ought to be a 90 foot street and a 15 foot building restriction line. What I am suggesting is that for the whole length of North Hampton Street, from Utah Avenue to Oregon Avenue, there is a 90 foot right-of-way.

That 90 foot right-of-way is either by virtue of dedication, or dedication and 15 foot building restrictions; or the highway plan reservation, and the highway plan reservation is

in addition to maintaining the street, is to maintain the character of the neighborhood.

VICE CHAIRPERSON SOCKWELL: Yes. It is not a right-of-way, except where it is dedicated. It is only --

MR. MCBRIDE: I am using that term --

VICE CHAIRPERSON SOCKWELL: Yes, but you can't.

MR. MCBRIDE: I will change the term.

VICE CHAIRPERSON SOCKWELL: Yes, use the right terms for the right thing. We understand what you mean.

MR. MCBRIDE: All right. What I am suggesting is, and let me see if I can say it precisely, because I want to get it on the record correctly.

VICE CHAIRPERSON SOCKWELL: Maybe I can say it for you.

MR. MCBRIDE: Well, let me say it, because I think it is very important. There is in fact a dedicated right-of-way of 90 feet that the City owns that is east of Moreland Street, and west of Moreland Street there is a dedicated 60 foot street with 15 foot building restrictions on either side.

And except for the Shiner's property that creates a 90 foot open space area along the whole of North Hampton Street, except for this one little funny piece of property that somehow got missed in the mix.

But it is clear that it is encumbered and it is part of the permanent street plan of the District, and what I am

suggesting is that that creates a very serious problem, in terms of maintaining open space, of maintaining where buildings ought to be built along North Hampton Street.

Because if you simply do away with the highway plan, leaving aside the street problems -- and I will tell you that that DPW has a serious problem, vis-a-vis the street with respect to this, because they don't even own the land under the street.

That creates a situation where there is no building restriction for this one piece of property, the only piece of property in the neighborhood.

VICE CHAIRPERSON SOCKWELL: The issue is even more serious than that, and that issue is strictly that the City will never be able to purchase any of the property west or east of -- that's east, east of Moreland Street.

They will never be able to, and they will never do it, and in fact that aspect of the highway plan is a fact for the sake of being a fact only. It is not a fact for a purpose. There is no purpose to the highway plan at this point, and we understand that.

MR. MCBRIDE: Except that the highway plan is --

VICE CHAIRPERSON SOCKWELL: That it exists.

MR. MCBRIDE: And I talked to the open space people, who have a great feel about this, and the highway plan in the District as to the street plan, don't only serve to provide

for streets, but they in effect provide for open space and maintain the character of the neighborhood.

I will agree with you that the City is probably never going to buy those 15 feet that is east of there. But by gosh they have got a building restriction line, and nobody is going to build in those, and that maintains the character of the neighborhood.

What I am suggesting here is that there ought to either be building restriction lines or there ought to be a dedication of that to make North Hampton at least 60 feet with a building restriction line.

And DPW should have been told and advised of that, and they should have been in a position to deal with that prior to the time that somebody wily-nilly said, fine, you go ahead and build on this.

VICE CHAIRPERSON SOCKWELL: But the unfortunate fact is that because there is no building restriction line, that DPW cannot justify or has not

-- even if we talked about this in a substantive way about whether they could or couldn't, it isn't there.

So it isn't a building restriction line, and because it isn't a building restriction line for the particular piece of property, the issues are strictly of whether or not the proposed -- this particular issue, this one issue, is whether or not the proposed structure intrudes upon the highway plan line or

right-of-way line as it exists.

And there is every reason to believe that what is mapped across the property is -- even though not stated as a building restriction line, nor dotted as a building restriction line, appears to be the highway plan line.

MR. MCBRIDE: This is really --

MS. GIARDANO: Excuse me, but I can really object? This is just not relevant at all, and it is misleading, and it could be damaging. The purpose of a highway plan is not to provide open space. It is to provide a highway, which is never going to be built here. There is no building --

VICE CHAIRPERSON SOCKWELL: Well, I am not dealing with any open space issues at all.

CHAIRPERSON REID: Let us -- the objection is sustained.

VICE CHAIRPERSON SOCKWELL: Open spaces is a subjective statement of the applicant to be interpreted any way that you want.

CHAIRPERSON REID: Are you done, Mr. Sockwell?

VICE CHAIRPERSON SOCKWELL: Yes, I am.

CHAIRPERSON REID: Because we can't both talk at the same time. I will allow you to finish your statement if you would only be so kind as to not speak when I am speaking.

VICE CHAIRPERSON SOCKWELL: Of course, Madam Chair.

CHAIRPERSON REID: Thank you. That had been raised

in the very beginning, Ms. Giordano, and I do apologize. It kind of got back in. Somehow it leaned that way all because of the fact that it is an indirect issue, and I think that the intent was to try to determine how relevant it is to the zoning issue.

And to be perfectly honest with you, it is difficult to just completely segregate the two. It is difficult. We have to kind of like put our minds apart, to split our minds, and try not to think of it like that.

But nonetheless for me, and looking at the map, and trying to understand how that parcel goes out there into the street, and is not really there, but it is there, and all that -- I mean, just bear with us, please if you would.

MS. GIARDANO: Again, I am not trying to be difficult, but when we start getting into statements about highway plans serving open space purposes, and whether DPW, even if they were consulted, would have any right to prohibit somebody from building in it.

CHAIRPERSON REID: Well, in the next segment, I think we will get some more clarifications when we bring up the zoning administrator's representative, and then we can get him to speak, and then we can question him further.

And then I think that will help us at any rate. Thank you very much for your presentation. Thank you.

MS. SANSONE: Madam Chair, are you going to allow cross-examination of --

CHAIRPERSON REID: Well, you know, this is what has come up before in appeal cases. We don't usually have cross-examination in appeal cases do we? Do we or do we not?

MS. GIARDANO: I will make it very easy for you. I am not going to cross-examine.

CHAIRPERSON REID: Okay. But that has come up. Okay. You don't have any cross-examination.

MR. MCBRIDE: Well, I would assume that there would be some cross, that we would be able to cross-examine the DCRA people would we not?

CHAIRPERSON REID: Well, that's what I have to get clarification on. When Mrs. Kress comes back out, I will ask her again, because we have had that before.

MR. MCBRIDE: Well, I will get my administrative rules out, but I thought we would be allowed cross-examination.

CHAIRPERSON REID: Well, I may stand corrected.

MS. BAILEY: Madam, Chair, cross-examination is allowed.

CHAIRPERSON REID: Could you ask Ms. Kress, please, to join us.

MS. BAILEY: Sure.

CHAIRPERSON REID: Well, we will make that determination at the end, and in the meantime, let's now have the zoning administrator's representative, Mr. Bello, to come forward.

Mr. Bello, did you have a presentation to make, or

were you just making yourself available for questioning generally?

MR. BELLO: Only available for questioning.

CHAIRPERSON REID: Okay. We will commence with questioning. The Board Members will question you, and then we will determine whether or not there will be any cross-examination.

MS. BAILEY: Mr. Bello, would you please identify yourself and who you are with.

MR. BELLO: I am with the Building Land Regulatory Affairs, Zoning Division, and my name is Toge Bello.

CHAIRPERSON REID: We can go ahead and ask questions, and we will find out about cross-examination. All right. Now, Mr. Bello, could you explain to me -- well, I had several questions, but I will just start off with the issue of the walkway between the house and the garage.

Well, let me correct myself. Earlier I had mentioned a certificate of occupancy, where I had met a building permit in this instance, and I just wanted to correct that.

Now, with the building permit application, when is -- well, how is it that a glass covered walkway can be utilized to turn a building into an addition or a structure into an addition?

MR. BELLO: Well, simply because it qualifies as a definition of a structure of a building.

CHAIRPERSON REID: Okay. So a walkway between two buildings is considered a structure, and as such would then make another structure an addition to the initial building? Is that

what you are saying?

BOARD MEMBER RENSHAW: Where is that stated?

MR. BELLO: Well, if I may --

CHAIRPERSON REID: On page 9. It was basically a paraphrasing of what Mr. Nunley had said when Mr. McBride talked to him about this issue of the trellis.

MR. BELLO: Well, perhaps it would help if I read the definition of a building as written in the zoning codes.

CHAIRPERSON REID: Okay. And also how an addition is determined. What is a definition of, and what procedures are used, or what is utilized to actually recognize a structure as an addition as you go through that.

MR. BELLO: Well, if it fits the definition of a structure, or a building, then it is considered an addition if the proposal is outside the perimeters of the existing building.

CHAIRPERSON REID: So I asked you this before, and I will state it once again, that a glass covered walkway is considered a structure?

MR. BELLO: When it connects to a building above grade.

CHAIRPERSON REID: I'm sorry, I didn't say that part, but when it connects to buildings --

MR. BELLO: Above grade.

CHAIRPERSON REID: Okay. Above grade. Okay.

MS. MITTEN: Madam Chair, can I just piggyback a

question on that point?

CHAIRPERSON REID: Sure.

MS. MITTEN: How is it that the trellis, which is a structure, didn't mean the definition to create the addition, but the glass covered enclosure does?

MR. BELLO: Well, it is really a judgment call, but to particularly answer your question is that that would be open to the sky, the trellis structure.

MS. MITTEN: But I thought that your response to Ms. Reid's question was a structure connecting one portion of a building and another, and that is the definition to create an addition, as opposed to an accessory building, then why wouldn't the trellis be sufficient?

MR. BELLO: Well, one would have to make a judgment call on that. You have trellises that are designed just for planting creeping trees or something, or plants, as opposed to a very sturdy structure that has the potential for a eventual cover. So it would depend on the details of the plans of the proposal.

MS. MITTEN: And you could tell all that from the permit application?

MR. BELLO: From the plans you could tell.

BOARD MEMBER RENSHAW: Mr. Bello, does the plans --

CHAIRPERSON REID: Wait a minute, Ms. Renshaw. Wait one second, please. Can you read that definition of building?

MS. MITTEN: A building?

CHAIRPERSON REID: Is that what you were referring to?

MS. MITTEN: Well, I mean, I guess I am curious. I wasn't referring specifically to the definition. I was just trying to explore the notion that Mr. Bello had introduced that a glass covered walkway met the definition of creating an addition.

And it had been -- at some point in the past it had been -- when the stop work order was issued, there was a decision made that a trellis was insufficient to meet that definition. But the glass covered walkway now somehow rises above that.

CHAIRPERSON REID: Right.

MS. MITTEN: So I was just trying to understand fully his response.

CHAIRPERSON REID: Right. But here it says building or structure having a roof supported, et cetera, when separated from the ground up or from the lowest portion, each portion shall be deemed a separate building.

So a trellis is open, and I guess when they changed the plans to make it a glass enclosure then that was the attempt to --

MS. MITTEN: And, yes, and Mr. Bello just responded to that.

BOARD MEMBER RENSHAW: But, Mr. Bello, under these definitions then, at this time, since there is no glass enclosed

walkway, that it is just a trellis, at least that is what Mr. McBride's photographs are showing, and then we are dealing with an accessory building as it stands now, and not an addition, because the trellis is not covered?

MR. BELLO: Well, the concern would be with the finished product, and as revised, that structure would be having a cover, and field inspections would verify that.

CHAIRPERSON REID: Okay. So you are saying that even though it is not there, but the fact that it is part of the plans, within itself suffices?

MR. BELLO: It has to be constructed.

CHAIRPERSON REID: Okay. Okay. I see what you are saying.

MS. MITTEN: Madam Chair, I just want to again continue the point that you raised, which is that if they show something on the plans, but then don't build it, that sets forward that there is an expectation in the approval that something will be constructed.

And if it is not, then somehow -- I mean, the plan exists in its totality. So given that the roof seems to be quite important in this case, the fact that it is not constructed seems to suggest that they at the moment have an accessory building, as opposed to an addition. Would you agree with that statement?

MR. BELLO: Not necessarily, because the applicant has a duty to build according to plans that have been submitted,

and the system is in place to verify and make sure that that is done. Your argument really has a temporary factor in that.

MS. MITTEN: When is the construction considered to be complete? I mean, isn't there some point in time when you say, okay, we are done? Is it when the structure is occupied, or --

MR. BELLO: Well, usually for buildings that would require a certificate of occupancy, then the combination and issuance of that certificate of occupancy, which is predicated on field inspections, then in particular instances where there are outstanding zoning issues, then the zoning inspection would verify that by field inspection.

MS. MITTEN: So have you or anyone from your office gone out to inspect the property in its current state to determine whether or not it is considered to be complete according to the plan?

MR. BELLO: That is triggered by the applicant's request for that inspection once construction is done.

MS. MITTEN: Well, just help me out. In the case where there is no certificate of occupancy, are you in effect saying that for a single family residence that if you don't hear anything from anybody, you just assume that everything went the way it was -- that the building was constructed as it was supposed to, because there is nothing to trigger you all coming out to do an inspection?

MR. BELLO: Well, then that situation would fall

into a situation of enforcement. If a proposal has not been carried out to completion, then at some point in time the enforcement tool is going to be triggered one way or the other.

MS. MITTEN: But you are saying that something outside of your office is going to trigger that though. Someone is going to call and say that I think that they didn't finish because the plans said they were going to build a covered walkway, and the walkway is not covered.

MR. BELLO: Well --

MS. MITTEN: It would be triggered outside your office?

MR. BELLO: Well, that's one possibility. The other possibility is that we may set a time when we go out and check to be sure that the job is done.

MR. BELLO: Is that part of your normal procedure to do that on a single-family dwelling?

MR. BELLO: In instances where there are specific zoning issues, yes.

MS. MITTEN: So how about in this case; has that been done?

MR. BELLO: Not to my knowledge. Not that I know of.

MS. MITTEN: But given that there are specific zoning issues in this case are you saying that is something that in the course of business that you anticipate that that

inspection will be completed, but it just has not been completed?

MR. BELLO: That is correct.

MS. MITTEN: Correct. I didn't mean to interrupt you. I'm sorry.

CHAIRPERSON REID: Do you have any other questions?

MS. MITTEN: Well, you were going to --

CHAIRPERSON REID: Well, I was going to stick with your question, which was that the stop work order -- when you issue a stop work order, then the plans are revised to bring more into compliance with the regulations, okay?

MR. BELLO: Un-huh.

CHAIRPERSON REID: So then the stop work order is lifted I thought at the time that the regulations were complied with is it not?

MR. BELLO: No, the stop work order is usually lifted once a revision to the permit has been affected.

CHAIRPERSON REID: So it is just the revision within itself is satisfactory enough to lift the stop work order, regardless of whether or not the actual plans are effectuated or not? You don't know, and that is basically what Ms. Mitten was saying, that you don't know?

MR. BELLO: Well, that would be the only way to carry through a proposal to completion, because without lifting the stop work order, they cannot work on the site. So to get a revised permit without that lift, they wouldn't even be able to

use that revised permit.

CHAIRPERSON REID: Well, suppose that someone were to do that, and just come down and say, okay, here is my revised plan, and I am going to do so and so.

And then you lift the stop work order, but you have no way of knowing whether or not they actually complied with what they said they were going to do, and the stop work order is still lifted, right, until such time that someone comes and says that they didn't do it?

MR. BELLO: Well, no. There is also the wall test report process, which is carried out through the construction inspection branch, which the zoning branch communicates with pretty regularly. So we know what is going on.

CHAIRPERSON REID: Okay. Okay. That's what I wanted to find out. Thank you.

MS. MITTEN: Just to follow this idea of the addition versus an accessory building all the way through. The final sentence in the definition of a building says, "The existence of communication between separate portions of a structure below the main floor shall not be construed as making the structure one building."

So in this case we have the covered walkway connecting the basement of the dwelling to the first level of the -- we will call it the addition for now. How do you reconcile the notion that this is an addition with this definition?

MR. BELLO: Because the elevation of a cover is above that level. It is above the main level.

MS. MITTEN: The elevation of the cover, but that's not -- what this says is that the communication is between separate portions of a structure below the main floor.

So the communication in effect is between the basement of the dwelling and the first floor of the addition?

CHAIRPERSON REID: I thought --

VICE CHAIRPERSON SOCKWELL: No, that's -- you are misreading that, Ms. Mitten. What it is saying is that the existence of communication below the first level does not --

CHAIRPERSON REID: It shall not.

VICE CHAIRPERSON SOCKWELL: -- make the communication, or does not make the buildings one structure. It is the above-grade portion that is involved when you are creating that one structure condition.

MS. MITTEN: I was hoping that Mr. Bello would answer, even if I am wrong. I would still like to hear what --

VICE CHAIRPERSON SOCKWELL: No, you read it wrong, because what you said was not what you mean.

MS. MITTEN: Well, I read the words that were on the page.

BOARD MEMBER RENSHAW: Let Mr. Bello clarify.

MS. MITTEN: Okay. I will read the whole sentence again, and then Mr. Bello can correct me if I am misunderstanding.

"The existence of communication between separate portions of a structure below the main floor shall not be constructed as making the structure one building." So what am I misinterpreting?

MR. BELLO: Well, you are missing the point of the elevation of the roof here as above the main floor of the building. This isn't an instance where you could have a substantial connection between two towers of structure that is totally subterranean.

That if you have no connection above grade that you cannot consider those two buildings one building just because they have a substantial connection below grade.

MS. MITTEN: Okay. So you are saying that the communication, whatever it is, is an above-grade communication, as opposed to something --

MR. BELLO: Yes, Ma'am.

MS. MITTEN: Okay. Great. That's been clarified. Could yo u speak to the requirement in Section 3202.3 as it relates to the record lot and put us in the picture a little bit better on that, and why -- perhaps first of all, why a record lot could not be obtained in this case, and why it was acceptable to issue a building permit in light of that.

And then based on whatever your knowledge was regarding the highway plan, why there was not a referral made to DPW if that is in fact a relevant factor in not being able to

obtain a record lot?

CHAIRPERSON REID: Okay. Now, Ms. Mitten, that was three questions. And that is a good point, because that is precisely what I was going to ask. Give it to him one question at a time so he can respond like that.

MS. MITTEN: Okay. Could you just respond to the issue related to the record lot, and why one could not be obtained?

MR. BELLO: Sure. Obviously this is an administrative decision that predates my employment with the division. In instances where a property is encumbered by a highway plan, which then makes it impossible to get a regular lot subdivision, then we have traditionally issued building permits to them if they are not in violation of any other zoning regulations or inspections.

MS. MITTEN: Could I just explore that a little bit, which is -- well, now, we have some specific language in the ordinance that talks about the requirement to obtain a record lot, and then it says there is an exception.

MR. BELLO: Correct.

MS. MITTEN: So are you saying that the exception that is typically granted in your office for properties that are encumbered by highway plans, that's done out of practice, as opposed to something that is specifically authorized in the ordinance?

MR. BELLO: That would be my understanding, yes.

MS. MITTEN: Okay. So you can't direct us to anyplace in the ordinance that specifically says that that is appropriate to do?

MR. BELLO: You could say that, yes.

MS. MITTEN: Okay. And then if I understood you correctly, that the reason in this case that the record lot couldn't be obtained was because of the existence of the highway plan?

MR. BELLO: That is correct, upon confirmation with the surveyor's office.

MS. MITTEN: Okay. So the building permit application was being processed, that determination was made that in fact the property, subject to the highway plan, and on that basis that we cannot issue a record lot?

MR. BELLO: That's the standard rule, yes.

MS. MITTEN: Okay. And then on that basis, given that there was a highway plan, wherever it was, and whatever affect that it had, why was the decision made not to refer the application to DPW?

MR. BELLO: Well, the permitting process, which involves an intake process, the intake engineer determines exactly what discipline needs to address an application.

So it is not inconceivable for applications to not be directed to a specific agency if that engineer makes the

determination that it may not be necessary.

And I believe that this is probably predicated on the fact that public space as a matter of rule does not even consider those applications in instances where we referred it to them.

MS. MITTEN: Okay. So let me get -- one thing that I understood you to say is that it would not be your call to make the referral to DPW?

MR. BELLO: Absolutely.

MS. MITTEN: Okay. So let's go back to what would be in your perview, which is you know that you can't issue a record lot because it is subject to the highway plan?

MR. BELLO: That's correct.

MS. MITTEN: So do all of the same rules about -- how do you impose the normal rules that we would have regarding setbacks and side yards, and all of that? How do you know where your -- where is the point of departure if you don't have a sense of what the nature of the encumbrance is from the highway plan?

MR. BELLO: Well, I think that because my review limitations stop at the boundaries of private property lines, which would be reflected on the surveyor's plans.

MS. MITTEN: Well, let me just explore that a little bit more, which is that we have had some testimony about the fact that the corner of the lot, one of the corners, or sort of the pointing corner, is actually paved with the street, with

North Hampton Street.

MR. BELLO: Un-huh.

MS. MITTEN: And so how -- and it is not clear from the survey plat, and it is not clear from, I would say, the survey that was done by Land Tech that that is the case.

So given that you don't have a document that shows you even where the road bed is, how would you -- I mean, isn't there really more information that you would have to get, because in a case where a property is encumbered by the highway plan, the survey plats don't tell the whole story.

MR. BELLO: Well, that would not be relevant to my review requirements quite frankly, because again the setbacks as required under the zoning codes are reflective of the boundaries of your private property lines.

MS. MITTEN: So even if some of that property has basically been -- you know, we have used the word encumbered, it is not exclusively private property if it has been -- if there is someone -- you know, the City has some claim, whether it is a weak claim or a strong claim to that property, if for no other reason than they paved part of it.

MR. BELLO: Well, that responsibility would fall squarely with the surveyor's office, or the Public Work's Department.

MS. MITTEN: Okay. So how is it supposed to get to them, I guess? In this case, it seems that DPW -- that it would

have been very worthwhile for DPW to have weighed in on this.

And granted that was not your call to make, but how is it supposed to get to them? That's something that the engineer intake person is supposed to have routed it through them?

MR. BELLO: That's correct, and the intake person is not a zoning review person.

MS. MITTEN: Okay.

CHAIRPERSON REID: Okay. Ms. Mitten, can we kind of share the questioning, and then we will come back to you?

MS. MITTEN: Sure. That's fine. In fact, I think I'm done.

CHAIRPERSON REID: Well, do you have just one more something?

MS. MITTEN: No, I don't have even one more.

CHAIRPERSON REID: Okay. Ms. Renshaw, do you have any questions?

BOARD MEMBER RENSHAW: Ms. Mitten has very successfully covered a lot of ground there, and I thank her for shoveling the way so to speak. I did want to ask you, Mr. Bello, where all of this business is a matter of rule, you talk about this kind of interpretation about the cover on this, the trellis effect that makes this into an addition from what we can say now, or we might say now, is an accessory building.

But it has been now four months since the permit was applied for for the covered walkway, and it doesn't look like

the covered walkway is in existence. It is just the trellis.

So it seems to me that without any rules and regulations that you are kind of allowing the community to be troubled by the fact that this building is not coming together. It is still for the most part an accessory building.

And so therefore the community seems to have some very valid complaints that have been brought to your attention. And I am wondering why you have not taken it upon yourself to make sure that whatever provisions were applied for, whatever permits were applied for, were adhered to by now.

And how much longer does this go on, whereby the community sounds like it has a very valid complaint?

CHAIRPERSON REID: Okay. That is 2 or 3 questions, Ms. Renshaw.

BOARD MEMBER RENSHAW: That's all right. Then I will turn it over to Mr. Bello for an answer.

CHAIRPERSON REID: Yes, but ask them one at a time, or can you answer the first one?

MR. BELLO: Yes, because quite frankly the City doesn't impose time limits for constructions, unless otherwise specified by a special order. Once a permit is put in use, we apply a standard of reasonable time.

And the judgment as to whether reasonable time has expired would be that of the administrator of the building, BLRA.

CHAIRPERSON REID: Okay. All right. Mr. Sockwell.

VICE CHAIRPERSON SOCKWELL: Mr. Bello --

CHAIRPERSON REID: Are you done?

BOARD MEMBER RENSHAW: Well, it is just the case that as of now we are really judging an accessory building.

CHAIRPERSON REID: Well, are you making that as a fact, or --

BOARD MEMBER RENSHAW: I am just asking Mr. Bello. At this time are we judging an accessory building since there is no cover on this trellis?

VICE CHAIRPERSON SOCKWELL: There is a permit for the building.

MR. BELLO: You have to look at that in the context of what has been approved on the plans. The request has not been to establish an accessory structure.

Once the proposal is constructed to completion, then I think it is the position of the department that it would not be an accessory structure.

VICE CHAIRPERSON SOCKWELL: Mr. Bello, my first question is on the highway plan encumbrance. What is the trigger under the accepted practice of zoning to allow construction on lots that have not been issued a single lot of record number?

What is the trigger for zoning to accept construction on a lot that might contain, as opposed to a lot of record number, an 800 number, or a 900 number?

MR. BELLO: If I understand your question right,

once the surveyor's office confirms an ability to go through a subdivision for a record lot, that's what allows us to go forward.

VICE CHAIRPERSON SOCKWELL: So are you saying that once the surveyor's office states that the lot is encumbered by a highway plan, and should affix -- or at least in practice affixes to the issued surveyor's plat drawing some statement that the lot is encumbered by a highway plan, or at least that is the way that it was done, then the zoning office would work with that lot on that basis; i.e., not requiring it to be subdivided?

Or to state that if there is no highway plan encumbrance on the lot, and it is submitted as Lot 801, for example, zoning could not approve the construction. Am I not correct, as long as that construction is new construction, and not construction within the envelope of the existing building?

MR. BELLO: That is correct.

VICE CHAIRPERSON SOCKWELL: Okay. And with regard to the typical practice that you have seen, where a project hasn't met the specification to be called an addition, where remedy could be accomplished in a variety of ways, what is the typical posture of zoning regarding such properties?

MR. BELLO: Well --

VICE CHAIRPERSON SOCKWELL: In other words, let's say that there has been a stop work order issued on a property, and it was intended to be an addition, or it was called an addition and doesn't meet the requirements of an addition, what

would zoning normally look to do?

MR. BELLO: The stop work order can be used temporarily for many purposes; one which may allow us to revisit an issue that we may believe that needs revisiting. It is not necessarily designed as a punitive action, or designed to indicate that something may have been untoward.

But as a courtesy to the public when they have a concern with a proposal, we have often used that tool just to be able to revisit an issue.

VICE CHAIRPERSON SOCKWELL: And this question is important. If the plat that was issued to zoning by the applicant for an addition did not show a roofed connection, should it have been stamped approved by a zoning technician?

MR. BELLO: Well, let me answer that question in context. I believe that a proposal similar to this had been approved prior to the 2000 approval, and it is quite conceivable that the reviewer may have been piggybacking on that prior approval of the same proposal.

VICE CHAIRPERSON SOCKWELL: But the zoning technician would review the plans along with the plat to determine the type of construction being proposed; is that not correct?

MR. BELLO: Yes, that's correct.

VICE CHAIRPERSON SOCKWELL: And if the plans and plat showed a non-roofed linkage between two aspects of an above-ground structure would it be correct for that zoning technician to

have considered the structure proposed to be an addition to the existing structure, as opposed to being a separate structure or separate building? And in this case an accessory building.

MR. BELLO: Well, I guess the real issue is how substantial must a connection be between two buildings in order to make them one.

VICE CHAIRPERSON SOCKWELL: And by definition a building, if multiple masses connected by a roofed element, supported by columns or walls, is considered one building for the purposes of zoning, such a building or group of masses above grade, connected by an unroofed structure, would or would not, or should or should not have been considered as one building?

MR. BELLO: It is a judgment call as I explained to you. Depending on the sturdiness and the structural integrity of the connection, I have in instances not allowed a trellis structure that have the potential of eventually being covered after the fact.

VICE CHAIRPERSON SOCKWELL: This is my last question and it is a very simple one, which is what we have done before in other cases, and I just want to ask it. Had this roofed connection not physically touched the proposed addition would the proposed addition have been considered to be an addition?

MR. BELLO: It would have been considered an addition, albeit not one connecting the two buildings.

VICE CHAIRPERSON SOCKWELL: But in this case the

garage, if the roof did not touch the garage, and if it just came close, would the garage have been looked at as a separate structure or an addition to the main building?

MR. BELLO: It would have been looked at as a separate structure.

VICE CHAIRPERSON SOCKWELL: All right. Thank you.

CHAIRPERSON REID: Okay. Thank you, Mr. Sockwell. I have a couple of final questions, Mr. Bello. One is that going back to the issue of the record lot. Has it become a practice, or is it my understanding that it has become a practice that when you can't obtain a record lot that the zoning office has been substituting tax lots?

MR. BELLO: Yes, that has been the practice, and I think the whole idea is for multiple lots not to be allowed to be rearranged where those lots are encumbered by highway plans.

But in this particular instance, and in most instances, the inability to effect a record lot subdivision is basically the issue at hand here. I mean, the highway plan, as it encumbers that, does not allow any subdivision of any kind to occur; either a subdivision to reconfigure, or a subdivision just merely to record a lot.

CHAIRPERSON REID: So basically it is a method to be able to cut through that restriction in essence?

MR. BELLO: Simply.

CHAIRPERSON REID: Okay. Now, in regard to the BPW

signature, I think what I am ascertaining is that the way that you are able to ascertain whether or not a construction or a structure encumbers the highway plan is by the reflection of the DPW signature?

MR. BELLO: That is correct.

CHAIRPERSON REID: All right. Now, if you do not have that signature, then that is --

MR. BELLO: No, I'm sorry, the surveyor's office confirms that a lot is encumbered by a highway plan, thereby making it impossible to subdivide for record lot purposes.

CHAIRPERSON REID: Okay. All right. I understand that, that part, because you said that earlier; that the surveyor's office is the one who makes that determination.

However, the BPW signature comes into play by it being referred to DPW, or are you saying that DPW's signature is not really necessary to be able to determine whether or not it is something that encumbers the highway plan?

MR. BELLO: I cannot speak to that, because --

CHAIRPERSON REID: Well, let me rephrase it. The way that you determine if something encumbers the highway plan is by what is reflected from the surveyor's plat?

MR. BELLO: Yes.

CHAIRPERSON REID: All right. The surveyor's plat has it. Then what is the practice in your office is to in some instances reallocate those recorded lots to become tax lots, okay?

So in effect the DPW's signature is not something that is essential. It is not critical; the signature of DPW on those particular applications is not critical for it to be approved?

MR. BELLO: Not from a zoning standpoint, no.

CHAIRPERSON REID: Okay. That's what I am trying to find out. Are you with me, Board Members, on this? Because there is a point being made here that was of some importance, and that was in regard to the recorded lot. Did you hear what he said?

VICE CHAIRPERSON SOCKWELL: No, what did he say?

CHAIRPERSON REID: That the determination as to whether or not the structure or construction is encumbered by the highway plan is determined by the survey, and not by the DPW signature.

VICE CHAIRPERSON SOCKWELL: Yes, I know.

CHAIRPERSON REID: Oh, yo know that?

VICE CHAIRPERSON SOCKWELL: Yes.

CHAIRPERSON REID: Oh, excuse me. Thank you.

VICE CHAIRPERSON SOCKWELL: That was the line of questioning that I was making earlier about when he knows, when the zoning person knows that construction can be allowed.

CHAIRPERSON REID: Right.

VICE CHAIRPERSON SOCKWELL: And that is when it has been determined by the Office of the Surveyor.

CHAIRPERSON REID: Yes, but my question was that the issue had been raised in the submission, and also by Mr. McBride, the appellant, that it did not have DPW's signature, and I was just trying to find out whether or not that was in fact something that was necessary for it to be determined whether or not it encumbered the highway plan and it's not, and that was a further point that I was making.

VICE CHAIRPERSON SOCKWELL: Yes. My understanding of the application procedure -- and maybe Mr. Bello can shed light on this -- is that the plat determination of incumbrance is what gives zoning

the understanding of which direction to take on an application for construction, exterior construction, which constitutes an addition or something like that, or an enlargement, or a new building, on a lot that does not have a record number on it.

CHAIRPERSON REID: Okay. I've got you. Thank you. All right. Now, if there are no further questions from the board members, then Mr. McBride, we will allow -- the staff has advised me that we can allow you to ask questions of Mr. Bello.

MR. MCBRIDE: And, Madam Chair, I will try to be brief, but I have a few questions that I need to ask.

CHAIRPERSON REID: Okay.

MR. MCBRIDE: Mr. Bello, good afternoon. I am James McBride. We have not met before, but you have met with Mr. Serwer have you not?

MR. BELLO: Correct.

MR. MCBRIDE: You had a meeting with Mr. Serwer and the zoning administrator, Mr. Johnson; is that correct?

MR. BELLO: That's correct.

MR. MCBRIDE: And again referring to the building permit and the correctness of the building permit application, did not you and Mr. Johnson tell Mr. Serwer that a Department of Public Works signature was absolutely necessary on that for the building permit to be valid?

MR. BELLO: Well, my recollection would be that we told him that we believed that Public Works may have an overview of the encumbrance on the highway plan.

MR. MCBRIDE: And in fact you told him that a Department of Public Works signature was necessary on the application did you not, you and Mr. Johnson?

MR. BELLO: Possibly.

MR. MCBRIDE: Okay. So whether it is a zoning matter or not for the building permit application to be correct, DPW should have signed off on the building permit.

MR. BELLO: That would not be a call that I can categorically make, but again it would not have been terribly relevant to my review of the process.

MR. MCBRIDE: Well, you understand that the discussions that you and Mr. Johnson, and Mr. Serwer, were having was as to the efficacy of the building permit.

And I want to be sure that you are testifying under oath that it is your testimony here that you didn't tell Mr. Serwer that a DPW signature was absolutely necessary in order for that building permit application to be correct?

MR. BELLO: Categorically no.

MR. MCBRIDE: You did not?

MR. BELLO: No.

MR. MCBRIDE: You did not tell him that?

MR. BELLO: That's correct.

MR. MCBRIDE: And Mr. Johnson didn't tell him that?

MR. BELLO: I can't speak for Mr. Johnson, but I was in there.

MR. MCBRIDE: Okay. Let me go if we may just very quickly, because I need to understand about this definition of building. In the last sentence which Ms. Mitten talked to you about, the term appears for the first time in the definition communication.

MR. BELLO: Un-huh.

MR. MCBRIDE: What do you understand communication to mean? Do you mean access between the buildings?

MR. BELLO: You mean literally or --

MR. MCBRIDE: Sure.

MR. BELLO: Well, the two buildings speak to each other, yes.

MR. MCBRIDE: Well, is the word, communication, in

your mind, or from a zoning standpoint, does that mean just touching?

MR. BELLO: Well, there has to be a function purpose for that.

MR. MCBRIDE: And you don't take the word communication to mean being able to move back and forth between the two buildings; doorways, access?

MR. BELLO: Not necessarily, no.

MR. MCBRIDE: Okay. I need to test this with you, because I must tell you that I don't understand how the zoning laws are applied. If the covered walkway simply touched -- and perhaps I can do it this way.

(Brief Pause.)

MR. MCBRIDE: If the covered walkway simply touched the corner of this building, and touched the corner of that building, and it didn't go to any doors, and there was just a physical touching of those two, is that sufficient in your mind to make those a single building from a zoning standpoint?

MR. BELLO: No, but again that is a judgment call. The communication in this instance may require no more than the shelter than the cover provides to the nearest door to the two buildings.

MR. MCBRIDE: Oh, okay. All right. Now we may be getting somewhere. So at least we can decide that communication means providing some shelter between at least two doors of the

buildings, correct? Some communication between the buildings, correct?

MR. BELLO: Not necessarily directly in front of such communication.

MR. MCBRIDE: Well, how could it provide shelter if it doesn't get you all the way over there? I mean, let's just assume for a moment, because I need to test this theory.

Let's assume that there was no door here, and this shelter went about halfway down the building and didn't connect to any door. The door is another 40 or 50 down here to get in the building.

Would that be sufficient from a zoning standpoint to make those two buildings, even though there is no shelter provided for a person who is trying to get between the two buildings?

MR. BELLO: Well, technically, yes. But again every reviewer applies their own judgment call on what exactly it is that constitutes communication.

MR. MCBRIDE: Oh, so if I happen to get one person in zoning looking at it, they might decide that a trellis is okay; and another person in zoning looking at it might make me have a roof, and a side, and air-conditioning? I mean, isn't there a standard rule?

MR. BELLO: No, the example that I am giving is that if an individual with a proposed covered walkway between the

principal structure and an accessory structure is located in the rear, which just went nowhere to each back side of a dead end wall --

MR. MCBRIDE: That wouldn't work would it?

MR. BELLO: That wouldn't work.

MR. MCBRIDE: Okay. And what about if they proposed a covered walkway that really didn't get you into under cover of the portion of the building where people were going to actually live and work? It only got you into the ground floor, which didn't give any access up above?

It only gets you into the garage, but it wouldn't get you upstairs to where you would have to go if you really wanted to communicate between the two buildings. That wouldn't work either would it?

MR. BELLO: Well, again, it is a very difficult issue the way you are presenting it. The point is that these are not necessarily means of egress, and that the idea again is that the intent of the regulation is not violated in totality. And again that is a judgment call.

MR. MCBRIDE: And a judgment call by whom?

MR. BELLO: By the reviewer at hand.

MR. MCBRIDE: And I thought we had an agreement that we had to make a connection where we got some egress between the two buildings. Didn't we get that decided earlier on; that it wouldn't make any sense just to run a walkway between two places

that was covered, but didn't let you go from one building to the other?

MR. BELLO: No, my point also was that there is no requirement that says that the egress has to be directly in front of that connection.

MR. MCBRIDE: Well, what is the purpose of a covered walkway if the cover is not going to provide shelter? Isn't that the whole purpose? If I read the definition, it says a structure having a roof supported by columns or walls for the shelter, support or enclosure of persons.

Now, I suggest to you that the cover ought to give shelter into the portion of the building to which persons, animals, or chattel go into. Do you understand that there is no access under this covered walk into the second floor of this building?

That the only way you can get into the second floor of this building is to go upstairs on an outside staircase. Did the zoning people understand that?

MR. BELLO: Yes.

MR. MCBRIDE: Am I correct though as I read the regulation that it must be a structure having a roof supported by columns or walls that provide shelter; is that correct?

MR. BELLO: Columns or walls, yes.

MR. MCBRIDE: And I take it some meaningful shelter, and that is not just shelter between two pieces of --

MS. GIARDANO: Madam Chair, I just think that picking apart all these words, and putting them back together, the zoning administrator has already testified that he thinks that this is qualified.

CHAIRPERSON REID: Thank you, Ms. Giordano. I sustain the objection. Mr. McBride, where are you going with this? He has testified over and over again that, yes, it is considered shelter. I don't know how many ways you want him to describe it.

The fact of the matter is that shelter -- and I guess we can go to Webster's Dictionary, and I suppose it means that it is covered. Now, if it doesn't necessarily say that the shelter for the chattel, person, or -- what is the other category?

MR. MCBRIDE: Persons, animals, or chattel.

CHAIRPERSON REID: Or animals, is continuous. It may infer that for -- the fact that the shelter is there, I guess what I am saying, is the fact that the shelter is there, doesn't mean that if I am standing there that I am sheltered.

But if I happen to walk away, the shelter is still there, whether I am there or not. So I don't understand where you are going with this line of questioning.

MR. MCBRIDE: Well, I am simply going -- and I will move on. I am simply going to find out how meaningful --

CHAIRPERSON REID: How meaningful? Okay. Well, I think it has been established or you have established what you

wanted to establish for us, and that is the fact that based on the definition of shelter that I think that suffices. And you keep asking the same question over and over again.

MR. MCBRIDE: I will move on, Madam Chair.

CHAIRPERSON REID: Thanks.

MR. MCBRIDE: Just a couple of questions and then I will be finished, Mr. Bello. I again need to understand, if I may, about the record lot. When it comes back to zoning from the Surveyor's Office, you know that the property is encumbered by the highway plan; is that a fair way to refer to it?

MR. BELLO: That's correct.

MR. MCBRIDE: Encumbered by the highway plan?

MR. BELLO: Yes.

MR. MCBRIDE: Now, the -- and again I just want to be clear, but if it is encumbered by the highway plan, your practice is just to let the person go ahead and build on it because they can't get a record lot; is that correct?

MR. BELLO: That's correct, unless there were other zoning restrictions that they couldn't comply with.

MR. MCBRIDE: And how does that square with section 3202.3, which does in fact provide for the requirement for a record lot, and actually provides for certain exceptions?

Can you point me to anything in the law that tells you that I can look at that tells me that you get a record lot -- that if you can't get a record lot, you can nevertheless build,

and you don't have to worry about 3203? Is there anything in the law that you can point out to me that shows that?

MR. BELLO: No, but there is nothing specifically in the codes that I am aware of that requires relief if you are unable to obtain a record lot because you are encumbered by a highway plan.

MR. MCBRIDE: Well, I just read 3203 to mean -- and if I read it correctly, it says that --

CHAIRPERSON REID: Which one, sir, 3203 point what?

MR. MCBRIDE: Point 3, I'm sorry. It says that a building permit shall not issue unless you have got a record lot, and then it goes on and provides that there is an exception with respect to buildings and structures related to fixed right-of-way mass transit systems.

But my question to you is that when you can't get that record lot, what authority is there for the zoning people to nevertheless grant a building permit in the face of 3202.3?

VICE CHAIRPERSON SOCKWELL: Mr. McBride, I know that this question is directed to the zoning technician here, the zoning official, but there is absolutely every historical act of construction in the District for the last -- I don't know how many years, much of the City is built; or not much of it, but a fair portion of the City is built on property without record lots for various reasons.

And it is that if you want to stop construction in

the District, then you have got to change the law, because we are not talking about an isolated case here. We are talking about the norm. It's practice.

MR. MCBRIDE: And, Mr. Sockwell, that is all I am asking, is to find out what is it about 3202.3 that would permit them to do this, and I gather his response is that it has always been done, and so that is what we do.

CHAIRPERSON REID: Well, let's let him respond to it.

MR. MCBRIDE: Well, that's what I --

VICE CHAIRPERSON SOCKWELL: And Title VII on highway, streets, and bridges does cover the issue.

MR. BELLO: Okay. It has been the practice of numerous previous zoning administrators to allow building permits to go forward on lots that are encumbered by highway plans where a subdivision is impossible.

MR. MCBRIDE: I have no further questions.

CHAIRPERSON REID: Thank you. Now, Ms. Giordano, do you have any questions, and if not, you can come up and present your case. You can come up.

Before you start though, we do have a board member who has to leave at 5:00. However, we do have a quorum. Yours won't take more than about 30 minutes you said?

MS. GIARDANO: Yes.

CHAIRPERSON REID: And we have a quorum, and Ms.

Renshaw, would you like to address the record?

BOARD MEMBER RENSHAW: Yes. I am going to read the record and catch up with the proceedings after I have to go at five o'clock. But I should also state for the record, Madam Chair, that this case came before ANC-3G, and I am a Commissioner of that ANC.

I chair that ANC, and I recused myself from debating or participating in the case when it came before the ANC, and I would like that in the record, please.

CHAIRPERSON REID: Also, Ms. Renshaw, you did also indicate that the ANC-3G has not taken any position, and will not take a position on this case?

BOARD MEMBER RENSHAW: That's correct.

CHAIRPERSON REID: Okay. Thank you.

MS. GIARDANO: In relationship to that, I would just --

CHAIRPERSON REID: Give your name.

MS. GIARDANO: My name is Cynthia Giardano, with the Arnold & Porter law firm, representing the intervenor. I would just like to raise the issue of whether -- I don't know the answer to this question, but whether it is an ex parte contact for a member to sit at an ANC meeting where the case is discussed, and then participate in the case.

CHAIRPERSON REID: Ms. Giordano, we had some concern about that as well, and we had gotten a read from

corporation counsel. And, Ms. Sansone, could you please speak to this issue that is being raised.

MS. SANSONE: Madam Chair, I did not hear all the discussion that was held with Mr. Bernstein.

MS. KRESS: I did.

MS. SANSONE: Thank you.

MS. KRESS: And I don't know if I am going to represent it as well as he did, but the posture that he had was that if the ANC decided to take a stand, then even if she had recused herself during or while this was being discussed, she would not be allowed, and she would have to recuse herself from the case.

However, if in fact as an ANC member from the beginning, she had recused herself with the ANC regarding these discussions, and the ANC decided not to take a stand on it, that he did not feel anything in appropriate or improper had happened.

MS. SANSONE: And if I could address the issue that Ms. Giordano is raising, which really goes beyond that, which is that there are things that are said and representations that are made, regardless of whether the ANC takes a position, she has outside information that we are not privy to, and I believe that is the issue that is being raised; is does she have some information that she gained outside of the context of this hearing.

MS. GIARDANO: And I am not saying this to draw a

particular conclusion, but it just seems to me that there is a possibility of a court appeal here, and I think the question should be flushed out.

That my understanding of ex parte was that all the information is on the record, and that it is not from outside sources. And that is something that the board may want to consider.

BOARD MEMBER RENSHAW: All right. I am judging this case on what is being presented today, and I want you all to understand that, what is in the testimony.

CHAIRPERSON REID: Ms. Renshaw, I think the point that is being raised here is were you present -- even though you recused yourself, did you leave the room during discussion, or were you there when this case was being discussed? I think that's what the question is.

BOARD MEMBER RENSHAW: I was there when the case was discussed, but I did not participate in any way.

CHAIRPERSON REID: But your ears were there.

MS. KRESS: Can I suggest that this is fairly complex, and we should not be resolving it here today.

BOARD MEMBER RENSHAW: It is complex, and it has never been --

MS. GIARDANO: I am not suggesting that we resolve it, but I just think that it is an issue that maybe should be taken up by Board Counsel at another time.

BOARD MEMBER RENSHAW: I appreciate your comments on that and bringing it to our attention, Ms. Giordano, but it has never been brought to my attention that it was necessary to leave the room. If that is going to be the judgment call later on, then that will be done.

CHAIRPERSON REID: Well, I think as a practical matter that this Board has taken the position that even when we have hearings here, we ask people not to come up and talk to us so that we don't want to even give the appearance of there being ex parte conversation.

And I think that in an instance like this that where there may be an appeal, I think it jeopardizes the position of the Board if in fact there is a perceived conflict. And as such, I think that we really need to take this up further.

MS. KRESS: I think we should, but I don't know that this is the appropriate place.

CHAIRPERSON REID: Yes.

BOARD MEMBER RENSHAW: It was going to be the case that it was going to be discussed by corporation counsel.

MS. KRESS: And by myself as well. I was going to be following this up and I will be.

CHAIRPERSON REID: Once we get the proper information, Ms. Giordano, we will make a decision as to whether or not it would be proper or not for Mrs. Renshaw to recuse herself in this particular case. Thank you very much for

bringing that to our attention. And thank you, Ms. Renshaw, also.

MS. GIARDANO: Good afternoon. We are going to try and be as brief as possible. I am just concerned about the show outside, I'm sure, as everybody else, and in getting home.

But just a few preliminary comments, and then what I would like to do is ask Mr. Shiner, who is an architect, and who designed this project, to just run through a basic chronology of what he did, in terms of procuring the permits, and sort of start to finish to give you a total picture of what happened.

And lest we get too far away on the highway plan issue, I just continue to raise the objection of whether that is something that is within the perview of this Board.

This whole issue I just wanted to mention of the DPW sign-off is one that I think is absolutely not within your jurisdiction at all. And as far as whether it is required or not though, I am going to put my own two cents worth in.

And I did take the oath, and I have been trying to find out myself whether that is a requirement or not. It is not an easy thing to find out, I can tell you that.

If you go to the people who represent DPW down in the permitting office, that is the public space office, and basically they will tell you that this is not public space, and this has nothing to do with us, and this is not something that we need to look at.

While I was there, I happened to see Trish Cooper,

who some of you may know, headed up the permitting office for a number of years, and now her profession is to expedite and process permits, and she told me the same thing.

That there is no requirement for DPW sign-up. There is nobody at DPW that has responsibility over the sign-off process. And I question even if there was somebody at DPW who looked at this what they would look for, because if there is no building restriction line, if this is private property, and clearly the law says you can build on it, how could they prevent you from doing that?

What authority would they have to make any kind of a comment on whether or not you could build in this highway plan area. And so I just submit that I think the whole issue is a red herring, and I share the appellant's frustration in just trying to get to the bottom line on that issue.

And I just think that there are a number of different ideas floating out there about whether there is this magic person at DPW who signs off on these things. But I have not been able to find that person.

With that, I would like to go ahead and jump right into Mr. Shiner's statement. He, as I said, is going to start with 1992 when he originally designed this project, and briefly take you through his history with the project. Thank you.

Oh, first of all, just let me note that Mr. Shiner is an architect who has a particular affection for modern

architecture, and I am going to ask him to just put up on the easel for you another project that he did in Denver.

I think part of the problem here is the appellant's have characterized this as a commercial structure, and I think that it is a modern architecture structure that people are reacting to. It doesn't read necessarily commercial to someone who likes modern architecture.

But that is a personal preference, and I think that you will see from the pictures that Mr. Shiner is going to present that that could be part of the problem here, is just the style of architecture that some people may have a problem with in the neighborhood. Thank you.

CHAIRPERSON REID: Are you presenting him as an expert witness?

MS. GIARDANO: He is an expert. He is a licensed architect in the District of Columbia.

CHAIRPERSON REID: But has he been here before? Has he been accepted as an expert witness here before?

MS. GIARDANO: I think you told me that you presented a variance case?

MR. SHINER: I least three previously.

MS. GIARDANO: Without a lawyer, he told me, by the way.

CHAIRPERSON REID: Well, can you just briefly give us your background and first give us your name.

MR. SHINER: Well, good afternoon, Madam Chair, and Members of the Board. My name is Thomas S. Shiner, and I am a member of the AIA, and I have been licensed as an architect in the District of Columbia since 1983.

I am primarily a residential architect, but presently I have moved into the area of furniture design, and I would have to say that my practice now has receded somewhat.

And I just wanted to have this opportunity to go through the chronology of the project, and I have some pictures here and so forth, and just interrupt me if you have any questions, but some of this stuff is pretty interesting.

Even though I am an architect, I want you to think of me, too, as a homeowner, you know, in this community. My wife and I bought this lot in February of 1992, with the idea of building this project.

And we are now, just now, completing the project that started in 1992. We have been working on it off and on as finances allowed over the years.

Quickly, in February of 1992, we bought an empty lot. It is actually one large lot, and one very small adjoining lot, located near North Hampton and Moreland. And in the rear yard there is a very tiny sliver of a lot that is connected. It is not shown on this napkin sketch.

I began design work on a single family house. The lot was an easy lot to build on, except for a large beech tree

located almost exactly in the center of the lot.

We had a choice. We could cut down the tree, and design whatever shape and size we wanted, or we could preserve the tree and incorporate it into the design.

I reviewed the applicable zoning regulations and completed a master plan for this lot, for developing this lot. I drew a U-shaped footprint for the house, forming a courtyard surrounding the beech tree.

And you can see on this napkin sketch how I did that. And I would also point out that the footprint of the design staggers to respect the line of North Hampton Street.

MS. GIARDANO: Can I just interrupt you for a second and give the board a little better description of the beech tree.

MR. SHINER: The beech tree is about a 30 inch caliper, magnificent tree, and I would estimate it as over 80 feet tall. I have had at least three experts look at it, and talking about the root systems, and talking about the age of the tree.

One of the experts indicated to me that he thought that the tree was probably about 175 years ago, and I had never thought that the tree could be that old.

But he said -- and I have some pictures of the tree as well, and because of the compression lines and the tree, and the diameter of this tree, he thought that it predated the civil war.

So it is a historic part of the neighborhood. I would also add that if I was developing this as a developer, it would have been the first thing to go before any protection of the tree galvanized in the neighborhood, that they would have been gone, but my wife and I fell in love with it.

We wanted to incorporate this tree, and we wanted to celebrate it and build around it. It is a really magnificent tree, and I think I have -- this gives you an idea of the trunk of the tree, just the trunk alone. It has a 30 inch caliper.

So the structure of -- you know, the structure had to be far enough away from the tree so as not to disturb its roots. For this reason, I pushed the garage away from the trees, or from the main body of the house, and connected it to the house with a wall, a walkway, and a gate.

Okay. In October of 1992, I completed the design work, and I applied for a record lot and a building permit. The routine record lot application to the surveyor for combining the two lots did not proceed because one lot is encumbered by the highway plan.

The permit application was therefore referred to the zoning administrator, Mr. Joseph Bodner. The next step in the application process was a meeting with Joe Bodner, and his assistant, Gladys Hicks.

And if I recall correctly, I paid for that meeting. I think there was a review charge made of $155, and I had to wait

for the meeting with Mr. Bodner, and/or Ms. Hicks. The meeting was held at the zoning office at 614 - 8th Street, Northwest.

As I recall, I spent almost an hour reviewing the plans and the official plat. Mr. Bodner and Ms. Hicks made it clear that even though we could not combine the two lots because of the highway plan encumbrance, we would be able to build.

Both Bodner and Hicks pointed out that the walkway connecting the garage and the main house would have to be covered. Hicks indicated that a trellis incorporating columns would suffice as the connection, and they also discussed a glass covered walkway.

I revised and resubmitted the documents showing a connecting element referred to on the official plat as a covered walkway. The documents called for a single story, two-car garage, which would provide the required off-street parking for the R-1-A zoning.

The garage was specifically discussed as connected to the house. I, Bodner, and Hicks discussed the regulation that an accessory building could not be located in the front yard. The garage as applied for was never considered to be an accessory building by any of those present.

This plan was thereafter approved. Hicks signed the plat, and Mr. Bodner initialed the permit application. In June of 1993, we completed the main house and the connecting wall as phase one of our master plan.

However, because of limited finances, we were not able to complete the garage as permitted. Now I take you to April 2000. We received a building permit to construct the garage to complete our master plan.

We added a second floor to the garage, which was not included in the original plan. The permit was applied for and granted as an addition, and not as an accessory building.

Work on the addition commenced in the first week of May, May of 2000. In July 2000, coinciding approximately with framing completion, we received a letter from Mr. Serwer, dated July 17th, threatening legal action.

Now, to depart from my written thing here, I would tell you that my wife and I were very upset by this letter, and we of course considered responding to it.

And we talked with neighbors, neighbors directly across the street from us, and directly next to Mr. Serwer, who had suffered a similar complaint, and had suffered through a stop work order.

I recall at that time that the neighbor advised us to not try to satisfy Mr. Serwer in any way, that it was not possible to negotiate with him, or satisfy him, and to go on with our work, and to do what satisfied us.

I understood it to mean that this could possibly be not so much a zoning problem, but as a nasty neighbor problem. So on July 27th, 2000, last July, we were notified by the Building

Inspector to stop work.

All work on the structure was thereafter suspended. As a result of the stop work order, contractors notified us that they would reschedule only after we withdraw the stop work order problem.

We called a land use attorney immediately. The land use attorney advised us to meet with Edgar Nunley as soon as possible. I will take you to July 31st, 2000.

My wife, Lynn Shiner, met with Edgar Nunley on July 31st to review the nature of the complaint. Nothing was resolved at that meeting. However, Nunley requested a drawing showing a detail of a connection.

On August 8th, 2000, we met at the site with Mr. Nunley and a land use attorney to discuss the situation and review the requested construction detail of the covered walk.

We also gave Mr. Nunley documentation of the 1992 plat with Gladys Hicks' signature and explain the correlation. We personally submitted the requested detail as a revised permit application per Nunley's requirement on the afternoon of August 8th.

The application was approved. Thereafter, a revised permit, quote, adding a detail of the covered walk, and not adding a covered walk, was issued, and the stop work order was lifted.

We encountered a number of problems restarting

construction because of the difficulty of rescheduling contractors. In my professional judgment, we lost approximately 5 to 6 weeks on the construction schedule.

In September 2000, a neighbor notified us that a letter written by Serwer and McBride, dated September 3rd, was circulating in the neighborhood. In the letter, Serwer and McBride made accusatory and false statements about our project and our intentions.

They solicited money and petition signatures for an ANC solution to stop work on our addition. Excuse me for acting a little bit emotional right here because I keep having this image of watching this neighbor of mine working his way through the neighborhood with a clipboard.

On September 7th, 2000, I arranged for a second walk check verifying locations of the covered walk, piers, and columns as required at the time by the building inspector.

On September 11th, 2000, at an ANC meeting, Serwer presented a petition and read a statement asserting that our addition was in fact an accessory building, that it quote, looked like a commercial building, that it, quote, will be used for commercial purposes, and other inaccurate, alarmist, and misleading charges.

We presented information about our project and answered questions from concerned neighbors. Several neighbors objected to Serwer's characterization of our home and of our

intentions.

On September 25th, 2000, at the following ANC meeting, ANC Commissioner Frank Bucholtz shared facts that he had collected regarding the matter. Bucholtz reported the ANC would be asked to review the matter again once the appeal was forwarded to the BZA.

He commented at length about our addition, and the pertinent zoning regulations. Bucholtz recommended that the ANC reject Serwer's request for a resolution. The ANC vote against Serwer's resolution was five to zero.

The ANC allowed time for Serwer to speak, and another neighbor, Mr. Fishman, to read a statement against the project, and Mrs. McBridge (sic) to question me. We made no presentation at that meeting at all.

On September 29th, 2000, we got a third revised permit clarifying changes to the additions floor plan and window sizes as required by the building inspector. I would just add here that this was because he was very, very concerned about every possible appearance of diligence in this matter and so was I.

We were very careful about this, and these are minor details that were covered in our revised permit. Approval for the close and inspection of the addition was thereafter forthcoming.

In October 2000, we received a copy of the BZA

notification of appeal, which was in the first week of October. According to information from the ANC website, members at the October 23rd ANC meeting considered two resolutions, one by Commissioner Bucholtz, and one by Commissioner Beech. No final position was taken. Neither we nor the appellants were present at the meeting.

On November 13th, 2000, we attended the ANC meeting, where there was no discussion of our matter.

On November 21st, 2000, we received a copy of the McBridge letter to neighbors dated 11/14/2000. We noted calls for reconsidering the matter at the next ANC meeting, and continued false assertions, and charges that Bucholtz's white paper was, quote, partisan.

On November 27th, we attended an ANC meeting, at which Mr. McBride informed the ANC that he had complained to the zoning commission about lack of actual notification of the previous meeting's agenda, and asked for a reconsideration of the matter so that he could make a legal presentation.

One commissioner made a motion for a reconsideration of a previous motion to advise the BZA not to grant the Serwer-McBridge appeal. There was no second to the motion for reconsideration and it died.

December 1st, 2000. Based on the suggestion by ANC Commissioner Bucholtz, I applied for a home occupation permit for my architectural practice, even though I have one already as a

furniture designer for my furniture design company.

That's it for my chronology. I would also add one other fact that I thought of. The adjacent property on Moreland Street owned by Mrs. Shadeed has a building restriction line, and my garage is well behind that restriction line, even though that restriction line is not shown on the plat for my property.

I would also add that the installation of the glass for the covered walkway is under contract presently. Thank you.

CHAIRPERSON REID: Thank you very much.

MS. GIARDANO: I just wanted to submit for the record a copy of Mr. Shiner's home occupation permit, and I would like Mr. Shiner to just describe for the Board the use that you currently have, your current home occupation, and how it will change with the new addition, and what the level of traffic is that is associated with the business.

MR. SHINER: Presently, I am president of a limited liability company in the District of Columbia. It is basically a one-man show. I am a furniture designer. I work on a computer, and I have a drafting table.

I have been doing this for years in my family room. I do not see clients in my house. Recently we have had a number of contractors. We have had telephone systems coming in, and we have had consultants for this and consultants for that.

And I have had contractors coming in. We have had some new wiring installed, and I have renovated the main part of

the house as well. So there has been a lot of traffic, but under normal circumstances it is a very quiet business.

And I don't see why making drawings is much different from making books, or making articles, or writing lectures, or all of the other things that people do in their houses in my neighborhood.

I would estimate that a UPS truck may come to my house at the most three times a week. There may be a pickup of documents once a week. And I am aware of the zoning regulations for home occupation, and I am well within those regulations on every point in my opinion, and the ANC has agreed with me on that.

MS. GIARDANO: Do you see clients in your home office?

MR. SHINER: Pardon me?

MS. GIARDANO: Do you see clients in your home office?

MR. SHINER: I see clients occasionally. I think my wife recounted three times in the last eight years when I have met clients in my house. It may be a few more than that. But it certainly is not a weekly affair.

MS. GIARDANO: And how do you communicate with your clients?

MR. SHINER: Most of my projects are off-site; either that or I am talking on the phone, or by E-mail. There is no conferencing area in my house other than my dining room.

MS. GIARDANO: Does the board have any questions of Mr. Shiner at this time?

CHAIRPERSON REID: No, I have none. Ms. Mitten or Mr. Sockwell?

VICE CHAIRPERSON SOCKWELL: Mr. Shiner, the relationship that you expressed with the advisory neighborhood commission appears to have been one of some fairly extensive discussions and openness with the neighborhood through that organization.

At any time were any particular objections raised by the ANC members to your proposal?

MR. SHINER: Yes.

VICE CHAIRPERSON SOCKWELL: Aside from the one document.

MR. SHINER: Yes, in the first meeting after my wife and I -- and I don't want to make a long story of this, but my wife and I found out about the first ANC meeting approximately three days before it happened.

We weren't notified by the ANC, and if it hadn't been for a neighbor telling us that our project was going to be discussed there, we would not have known about it.

We prepared as best we could, and at that meeting, I was lambasted by one of the ANC members for having a commercial operation, and to my knowledge he had no information about me other than what was given to him by these appellants.

So given the chance, my wife and I presented information in a calm, methodical way about the project, about what I do, and the ANC came out to the site. Four members came to the site to visit the construction site.

We were completely open, and I certainly provided them much more information than -- well, I just gave them everything that I had on the project. And to my knowledge the point man for the zoning issues I had never met before, Mr. Bucholtz, and he not only spoke to me and my wife, but he also spoke to the appellants at length about their complaints and other neighbors.

MS. GIARDANO: And government officials as well?

MR. SHINER: Yes, government officials. So I hope that answers your question completely.

MS. GIARDANO: Did you want to show the pictures?

MR. SHINER: Yes. I can show you a few pictures of the house. This is a photograph of the house on the axis of the front door. This is a metal gate with a latch, and this is the glass covered walkway. The glass has not been installed yet.

The glass covered walkway extends to this wall, and curbs on the first floor. It is held up by walls and columns, and it is also held by the wall of the garage. This is the second floor of the garage, which has been referred to as the warehouse.

I think this is a clear photograph, and I hope that you have a copy of it, but it shows the gap between the two

elements of a building. In late modernism, it is very normal for us architects to express ourselves in elementalist ways.

Things are disjointed and we pull apart the massing of the building. This is completely normal for me. In fact, this building is pulled apart so that you can see this magnificent beech tree. This tree is twice the height of the 40 foot house.

If you have any questions about it, ask me. This is a slight copper outcropping over the entrance here. This is a masonry wall, and this is the main portion of the house, which by the way is six distinct elements in itself.

This is an element, and this is an element, the tower, and two shed elements behind, all respectful of North Hampton Street I must say. Here is a view from the interior courtyard.

The courtyard is defined by the root ball, the root system of this beech tree. In the new addition here, I went to some expense, and this thing is built on pier footings and grade beams so that any roots can extend underneath that portion of the building.

Believe me, the only reason that I have gone to all of this trouble is to save this precious tree. Sometimes I wonder why we went to the trouble.

And here is another view of the tree, and you can see that this is almost five feet here. This walkway is six feet wide, and you can see that he base of the tree is probably six

feet as well.

This is the covered walkway, and these are 4-by-4 purlins that support the glass. The glass is going to be quarter-inch wire mesh reinforced, and it will be installed with a metal clip system.

I just brought two other photographs. This is a house that I completed a year ago near Aspen, Colorado, near the Roaring Fork River. It is of a very similar vocabulary, modernist, elements pulled apart, distinct massings.

You know, I can point to 5 or 6 elements in this building and you can see a correlation. And, you know, in Chevy Chase -- I am a native of Chevy Chase, and we don't live in an area with covenants, or homeowners associations.

There is a diversity and people in the ANC would tell you that we have quite a collection or mix of architecture. And I can understand how someone with a brick colonial might be upset by this architecture. But, you know, tough.

I do a very purist modernist architecture in this area of Chevy Case, and that is what I explore as well.

VICE CHAIRPERSON SOCKWELL: One other question. What is the need for the third garage door that opens into the court?

MR. SHINER: It is pleasant to work on the car, and to bring the lawnmower into the courtyard. The courtyard would be isolated otherwise. It allows for a 9 foot wide opening to bring

equipment, landscaping trees, lawnmowers.

You know, I could pull a sail boat through there. But I wouldn't do that because it might damage the root system of the tree. We can't really have vehicles or anything heavy on the root system of the tree.

VICE CHAIRPERSON SOCKWELL: And it seems like an unusual condition for an unpaved yard situation with a tree of some significance, and putting vehicles there with the potential of leakage of oils, et cetera.

MR. SHINER: Bear with me for a moment. I have always had the fantasy of walking through both garage doors into the courtyard for a party, and have some classical music in there.

The garage is very nicely finished. I wouldn't call it -- you know, it is a garage, and it is 21 by 21, and that's all it is. It is meant for two cars, and there is no reason that we can't use it from time to time as a passage way into the courtyard.

I mean, that's what I thought about, in terms of that overhead door opener. And since it has been there, I have used it many times for home projects. You know, getting into the garage. In fact, the hinged door isn't operable yet.

CHAIRPERSON REID: Okay. Thank you very much. Is that it, Ms. Giordano?

MS. GIARDANO: Just about. In closing, I just wanted to say that the zoning administrator --

CHAIRPERSON REID: Excuse me, but are you getting ready to go into your closing remarks?

MS. GIARDANO: Yes.

CHAIRPERSON REID: Well, Mr. McBride, did you have any questions of these witnesses?

MR. MCBRIDE: I do.

CHAIRPERSON REID: Okay. Who did you want to question?

MR. MCBRIDE: Well, I am not going to question counsel. I may when I get my turn come back and testify about --

CHAIRPERSON REID: No, this is it.

MR. MCBRIDE: We get closing argument also.

CHAIRPERSON REID: No, you do not.

MR. MCBRIDE: Certainly we do. We are the appellants. We certainly get to have closing argument and rebuttal.

CHAIRPERSON REID: Well, wait one second.

(Brief Pause.)

CHAIRPERSON REID: The order is the statement of witnesses, the building administrator, owner, the intervenors case, rebuttal by the appellant. I'm sorry, my mistake. My mistake. You don't get the closing remarks.

MS. GIARDANO: I get a closing statement at the end of our presentation.

CHAIRPERSON REID: No, you do not.

MS. GIARDANO: Not after him, as he speaks last.

CHAIRPERSON REID: The order is that after the intervenor's case, rebuttal and closing statement by the appellant.

MS. GIARDANO: Right, but I get to close our case is what I am saying.

CHAIRPERSON REID: You already closed your case.

MS. GIARDANO: No, we stopped for cross-examination of Mr. Shiner, and then I said that I was just going to make a few more remarks.

CHAIRPERSON REID: Okay. All right. Mr. McBride. Quickly.

MR. MCBRIDE: I will be very brief. Mr. Shiner, I am James McBride, and we have never spoken in this matter have we?

MR. SHINER: I had never seen you before the November 25th ANC hearing. I don't remember meeting you or seeing you ever before then.

CHAIRPERSON REID: Let's get to the cross-examination. Let's move on. We do have some weather concerns.

MR. MCBRIDE: All right. Mr. Shiner, I am going to be quick. I just need to get a couple of quick things on the record if I may. When you made your application -- and that was the application in 1992 that Ms. Giordano handed out to me -- that application was solely to build your house; is that correct? The building permit application.

MR. SHINER: Yes, that's correct.

MR. MCBRIDE: And you did not make a building permit application to build your garage or anything else at that time?

MR. SHINER: The garage was included in the 1992 building application, the building permit application.

MR. MCBRIDE: Oh, it was? Can you just show me where it was?

MS. GIARDANO: It was on the plan, but if you look at the language of the comment, it just mentions the house.

MR. SHINER: Single family house, two story wood frame.

MR. MCBRIDE: And so you really didn't make application to build the garage in '92?

MR. SHINER: Absolutely. It is on the plat, the 1992 plat. Do you have a copy of that?

MR. MCBRIDE: I do have the plat.

MR. SHINER: It goes with this when I applied.

MR. MCBRIDE: But I didn't see it when you described what you were asking to build. As I look at the square footage, you only talk about the square footage for the house, isn't that correct, in the building permit application?

MR. SHINER: If I built it in 1992, it would not be an addition. It would be part of the house.

MR. MCBRIDE: Would you just simply go back -- and

I don't want to belabor the point, but go to page 2 of your application and show how many square feet you asked to build as part of that building permit?

MR. SHINER: I believe it says 3,200 square feet.

MR. MCBRIDE: And that's your house isn't it? That is just your house.

MR. SHINER: Well, that would be the entire structure.

MR. MCBRIDE: Including the garage?

MR. SHINER: Yes.

MR. MCBRIDE: And all of the underlying property?

VICE CHAIRPERSON SOCKWELL: If I might interrupt. That seems to be -- there seems to be something that I don't understand, because if the garage was part of your permit in 1992, and you chose not to build the garage, you would have had to secure a revision to the permit to eliminate the garage portion, even if it had been shown as an attached garage.

And you would have had to do get a revision, because otherwise the City could not have granted you a certificate of occupancy. They could not have completed final inspections on the house until it was all there.

It wasn't designed as a multi-phase project. It would have been included in the application, or somehow at some point should have been excluded from the construction if the documents were approved with the garage portion included. There

seems to be something amiss.

MR. SHINER: I stand corrected. It appears to me that it was an oversight on my part, and that I should have gone back and revised the permit to exclude the garage.

But it was simply a matter of not having enough money to finish that part of it. We made it as far as the extension of the wall. And, you know, at the time, I thought that we could commence construction on the garage in three months or six months, sometime close to when we ended.

And things drew out. I mean, we just got into it now. You know, six months became six years, and it is my oversight. I think you are right. I think that's correct, but I did not intentionally mislead the City with regard to that.

I always intended to build a garage, because if you look at it, we need offstreet parking, and I am aware of those zoning regulations.

VICE CHAIRPERSON SOCKWELL: One issue that I have is in-part the fact that the application for the single-family house as described here, if the 3,200 square feet includes everything?

MR. SHINER: Yes.

VICE CHAIRPERSON SOCKWELL: Including the garage portion?

MR. SHINER: Yes.

VICE CHAIRPERSON SOCKWELL: The description would

possibly, and not necessarily, but could have been more complete as to certain specifics of what you were building, and I am not trying to get into that.

But I do sometimes wonder what I am looking at when the information departs from a certain level of description.

MR. SHINER: Mr. Sockwell, I am not in any way deflecting. I am not defensive about this, but I was working very close with Gladys Hicks and Joseph Bodner. We met on this.

We poured over the drawings, and they gave me a considerable amount of assistance with putting this together; not because I am not able to do this as an architect. I had concerns. I had considerations about zoning here.

I mean, I know enough to sit down with Mr. Bodner and Ms. Hicks and go over this carefully. My wife and I were putting up our hard earned treasure to build our house. So I wanted to make certain that everything -- that all the i's were dotted, and the t's were crossed.

And if you find some typos, and if you find some approximations that aren't correct -- Mr. McBride has found several problems with the applications. I am sure that they are there. But this was meant with the best intentions and good faith.

VICE CHAIRPERSON SOCKWELL: Well, let me just bring this to light. In the '92 application, it does state that the present gross floor area of the building, which I assume is what

you plan to build, is 3,200 square feet, with an occupancy of 18.98 percent of the lot.

In the 19 -- excuse me, but in the year 2000 application, which calls the garage an addition, you list the present gross floor area of the building as 4,200 square feet, and the proposed gross floor area as 5,200 square feet, with approximately the same percentage, albeit a little smaller, a little less, for the total occupancy of the lot.

And that does seem to have some significant conflicts, in terms of dimensions, and lot coverage issues. There may be something here that hasn't been looked at fully. These numbers really do not add up.

MR. SHINER: Maya culpa.

MS. GIARDANO: Well, one thing I can point out is that there was a second story on the garage and that might account for a little bit, which would not have affected lot occupancy.

VICE CHAIRPERSON SOCKWELL: But the present gross floor area of the building is shown at 4,200. And the approved or the applied for gross floor area in the original application was 3,200.

So there is a thousand square feet of gross floor area difference in the -- in what was supposedly built in '92, and what supposedly would have been the existing as built at the time of the application for the garage.

So it may not have represented a floor area, a

gross lot coverage change, but there does seem to be some difference since the records would have been in Mr. Shiner's hands. I am a little bit concerned --

MR. SHINER: Well, Mr. Sockwell --

VICE CHAIRPERSON SOCKWELL: -- and I am bring these things up because they are documented. This is your application.

MR. SHINER: I was just going to add that the -- I would add to that that Mr. McBride has found a mistake here, an error, and the only thing I would say -- and this is not to deflect this. You know, I will take accountability for this, for these things.

However --

VICE CHAIRPERSON SOCKWELL: You had been licensed for 10 years when you did this house.

MR. SHINER: That's correct. However, we are not even close to the percentage of lot occupancy. We are not even close. And if we were a lot closer, I dare say that I would have tightened up, tightened my ship up, you know.

But we are not even close, and I think that is the pertinent thing. I am not near the percentage of lot occupancy, and you can see that in an unscientific way just looking at the site plan.

CHAIRPERSON REID: Okay. Can we -- the next question. Do you have another question?

MR. MCBRIDE: No.

CHAIRPERSON REID: All right. Thank you, Mr. Sockwell. Mr. McBride.

MR. MCBRIDE: Again, I will try to be brief, but I just want to be sure that I am certain about your testimony. Your application was to build 3,200 square feet in 1992, correct?

MR. SHINER: That's what I wrote.

MR. MCBRIDE: And it is your testimony that that was for the whole house, including the garage, and including whatever would be covered by this covered connection, correct?

MR. SHINER: Correct.

MR. MCBRIDE: And you will agree then that there is a difference, because when you filed your application for a permit in 2000, you show that the present gross floor area was 4,200 square feet. And when you just added the garage, it would bring you to 5,200 square feet, correct?

MR. SHINER: Correct.

MR. MCBRIDE: All right. Mr. Shiner, I want to be sure that I understand. We don't have a difference of opinion about what you are going to use that second floor for.

You are going to use it for commercial purposes, right? You are going to run an LLC corporation out of that, correct?

MR. SHINER: Well, the second floor for the garage is not use specific. I may use it for that and I may not.

MR. MCBRIDE: Well, I thought when I heard you

talking at the ANC that you were very clear that you had built that, and your wife said she wanted that to be able to move your business out of your family room and into this second floor?

MR. SHINER: Well, that's our intention, but it is not use specific is my point.

MR. MCBRIDE: But that is what you are planning to use it for right now; isn't that correct?

MR. SHINER: For the present.

MR. MCBRIDE: And so it is being used or going to be used for commercial purposes?

MR. SHINER: It is going to be used for a home occupation, as a studio primarily for furniture design.

CHAIRPERSON REID: I a not sure, Mr. McBride, when you say commercial, I think perhaps we need to define that a little better. Ms. Mitten, could you respond to that as being an appraiser, of the definition in the land use, as far as residential, commercial, and home use, and what the difference is.

MS. MITTEN: Well, I think what you are trying to flush out is appropriate, which is that there is a characterization being made of commercial, which is a broad category, and office sometimes falls into that category.

And then the distinction being made by the intervenor is the fact that he has a home occupation permit, and under certain circumstances -- and he has obviously complied with those circumstances -- people can be issued permits to do what

would under some circumstances be considered commercial within their home.

And it runs to, one, what he does, and how much space he takes doing, and whether or not he has other people working for him, and the effect on the property.

CHAIRPERSON REID: Right.

MS. MITTEN: So I think that unless -- well, maybe just for clarification, Mr. McBride, if you are suggesting that it is something other than a permitted home occupation, then you could try and elicit something from Mr. Shiner about that.

Otherwise, I don't think you put anything in your case about that, all right.

MR. MCBRIDE: Okay.

CHAIRPERSON REID: And also from a real estate point of view, typically when we think about commercial, it is categorized as either office us or retail.

And when I think about a commercial district, where you have an ongoing business, where you have people coming and going all day, as opposed to a home office, which is very -- it is more closely defined, and it is regulated by very strict rules, whereby off the top of my head, I think it is only 25 percent of the facility can be used for a home office, and it also is restricted by the number of employees, and cars, and parking, and all of that, to make sure that there is minimal impact on the community or the neighborhood, that is a very specified category,

the difference from commercial, per se.

MR. MCBRIDE: I will rephrase. I didn't mean to be pejorative about that.

CHAIRPERSON REID: Okay.

MR. MCBRIDE: But let's just say we are going to use it for business purposes, and that's a fair characterization isn't it?

MR. SHINER: Yes.

MR. MCBRIDE: Mr. Shiner, do you have any other office in which you perform your potential projects other than as part of your home occupation? You don't have another office here in D.C.?

MR. SHINER: No.

MR. MCBRIDE: So whatever architectural --

MR. SHINER: I had in the past a partner office.

MR. MCBRIDE: Did you have one in 2000?

MR. SHINER: No.

MR. MCBRIDE: And you don't have one now?

MR. SHINER: I don't have one now.

MR. MCBRIDE: And do you have any other office out of which you run your furniture design business other than out of your house?

MR. SHINER: No, that's it.

MR. MCBRIDE: And you said that you understood the home occupation laws. You are limited to one employee; is that

correct?

MR. SHINER: That's correct.

MR. MCBRIDE: For both of those businesses?

MR. SHINER: For both.

MR. MCBRIDE: Not each, but just one?

MR. SHINER: For both.

MR. MCBRIDE: Okay. How many people did you have working for you in 2000? And I use the word working advisedly, and not necessarily employee. Maybe under contract. How many people did you have working for you?

MS. GIARDANO: Excuse me. I am just wondering. If Mr. McBride is challenging the home occupation permit, he needs to appeal that. I mean, that's not the issue in this case.

MR. MCBRIDE: Now, Madam Chair, this witness got up here and he said that he understood the home occupation law, and he made a big point about telling you --

CHAIRPERSON REID: That's true.

MR. MCBRIDE: -- how he was in compliance with them.

CHAIRPERSON REID: That's true, but the point is being made that that is a different case. We are not hearing an appeal for the home occupancy permit today.

MR. MCBRIDE: Then I think that all of his testimony about how he is complying with the home occupation permit, if I am not allowed to cross about it, should be stricken from the record.

I didn't object to that, but he spent at least five minutes talking about how he was complying with home occupation. And I don't want to belabor the point.

CHAIRPERSON REID: Well, I think that what he was doing was demonstrating to us what type of business he had, and as such, define it as home occupation now. He did not get into the specifics of how he complied with the home occupancy regulations in his testimony.

CHAIRPERSON REID: The board members were trying to clarify the difference between commercial and home occupancy, and we did go into a little explanation as to that. But nonetheless it is not a home occupancy permit appeal here today.

MR. MCBRIDE: I agree.

CHAIRPERSON REID: We don't want to get sidetracked on that.

MR. MCBRIDE: Okay.

MS. MITTEN: And, Mr. McBride, just to assure you, the fact is that that is not the issue. So it may have been mentioned, but it doesn't bear on the issues that are before us. So I don't think you have to have undue concern about that.

MR. MCBRIDE: Okay. Mr. Shiner, may be we can move very quickly and get just some agreement about some things or some facts which I think are not in dispute. Can you agree with me that a portion of your lot is physically under the paved street of North Hampton?

MR. SHINER: I would agree with that.

MR. MCBRIDE: Do you know how much? I have never seen a survey.

MS. GIARDANO: Again, I just question the relevancy. We tried to be very brief because of the weather outside, and now we are back on the highway plan, and whether this lot is --

CHAIRPERSON REID: Well, I will overrule that.

MS. GIARDANO: It just is not relevant.

CHAIRPERSON REID: I think that is okay. Go ahead, Mr. McBride.

MR. SHINER: Madam Chair, could I say something?

CHAIRPERSON REID: No. Basically, it is his turn to testify, and you will have closing remarks.

MR. MCBRIDE: I will be quick. I just need to get some agreements to a few things.

CHAIRPERSON REID: How many more questions do you have, Mr. McBride?

MR. MCBRIDE: About four.

CHAIRPERSON REID: All right. Quickly.

MR. MCBRIDE: Would you agree with me that your garage is actually built within the highway plan on the property that is --

CHAIRPERSON REID: I thought that we were not going to talk about the highway plan.

MR. MCBRIDE: I am just trying to make a record for what I believe is going to become important. I think this is a valid question, and I think --

CHAIRPERSON REID: Well, strike that question and your next question.

MR. MCBRIDE: Pardon me?

CHAIRPERSON REID: Strike that question, and next question.

MR. MCBRIDE: You are not going to let him answer the question about whether his property is built within the highway plan?

CHAIRPERSON REID: No. We have discussed that early on preliminarily, and we decided, I think, that we were not going to get into that. That is very nebulous. The whole aspect of the highway plan is very nebulous, and that is not a zoning issue, per se, as it pertains to this case.

MR. MCBRIDE: You made that ruling, and I understood that you were going to hold off on that, and that we were going to talk about it, and look at the evidence with respect to that.

CHAIRPERSON REID: Well, the fact of the matter is that we have not allowed any other testimony to that effect. We have not allowed any other testimony other than questions that the board members had to the zoning administrator's representative.

MR. MCBRIDE: Okay. I have no further questions.

CHAIRPERSON REID: Thank you. All right. Now, Ms. Giordano, do you want to wrap it up?

MS. GIARDANO: Yes. I just wanted to summarize and say that the zoning administrator's determination, both with respect to allowing the building permit to be issued without a record lot, and the connection, are decisions that are consistent with years of administrative practice.

The zoning administrator, I think, makes a reasonable determination to allow construction without a record lot in the instance where the property is encumbered by a highway plan to reconcile the law, which I submitted for the record, which says in one part that no subdivisions are permitted for land encumbered by highway plans.

But that a highway plan encumbrance does not bar somebody from building on a piece of property. And there is no magic to a record lot other than that we have record lots to provide a boundary line in which to measure for zoning computations setbacks, et cetera, FAR.

They also are preferred by title companies in dealing with -- in terms of the fact that they are on the record, and make for ease of transactions in this City involving property.

But the zoning regulations then require a record lot, and make exception in certain circumstances, and one circumstance is where there is a fixed mass transit right-of-way, and I don't think it is a big leap to get from there to a highway

transit encumbrance situation.

I think that the zoning administrator -- I don't know the reason why the original interpretation was made. There is no record of it unfortunately, but I think it is a reasonable inference given the law allows you to build on a highway encumbered property, but doesn't allow for a subdivision.

And there is some acknowledgement in the zoning regulations of exceptions where there are certain right-of-ways involved that prevent a subdivision of property.

With respect to the connection, I have over the years dealt with numerous cases involving connections. That is a very common situation in a commercial context, where in many instances we have corner lots in the City, and the height, and it is more advantageous to take the height off of one street, as opposed to another, and buildings are connected for that purpose.

It is a well-established principle in this City that you can connect two buildings with a walkway or another type of connection, and they become a single building for zoning purposes.

I just wanted to bring to the Board's attention, too, that I think the Board has given some tacit recognition in the past of that concept. And there was just a very recent case which I handed out, where a gentleman came before the Board to get a rear yard variance.

He was trying to connect his house with his garage

with a covered walkway, so that he did not have to get wet when it was raining walking from his house to his garage.

And he was told by the zoning administrator's office that he could not do that as a matter of right. He was referred to the Board of Zoning Adjustment to get a rear yard variance, because that garage was an accessory structure as it was in the rear yard.

And he would be creating basically a single building and therefore the rear yard setback would require and the garage was not located 15 feet back from the rear lot line.

So he came before this Board and the Board said, well, a variance has a pretty tough standard, and he didn't have an attorney, and he really had trouble articulating a uniqueness standard and a practical difficulty standard.

And the Board advised him to work with the staff and find a matter of right solution for that problem. And in the case that I handed to you, you can see what the solution was to open up an area of this covered walkway to alleviate the problems.

So I think that even the Board has had some familiarity with these issues, although most of the context is in a matter of right scenario, and is not one that the Board is probably familiar with.

So with that, I just wanted to close our case, and ask that the Board deny this appeal. Thank you.

CHAIRPERSON REID: Thank you, Ms. Giordano. Mr.

McBridge, closing remarks.

MR. MCBRIDE: Madam Chair, I will be brief. Let me say that I have also spoken to people at DPW, and not the people on the ground, but people like Michelle Persow, and people at the right-of-way office who tell me that they believe that they should have been consulted with respect to this matter.

And that it is an issue that may be of some grave concern to them. They are continuing to look into this matter, but certainly I have not found from the DPW people that there is the cavalier attitude that Ms. Giardano would suggest.

I will make really three points with respect to this. I still must say as a homeowner and as a resident of the District, I simply do not understand the rules with respect to record lots.

There is a very clear regulation that says that you can't get a building permit without having a record lot, and it says that there are certain exceptions. Now, the exception with respect to mass transit.

The highway plan is not a mass transit. That is covered in other sections of the D.C. Code, and it is talks about carriage for hire. I am not suggesting that you would never allow people to build where you couldn't get a record lot.

But I am suggesting that there ought to be some grounds and some reason for doing it, and perhaps a better review of it than was done in this case, because we have gotten off on to

this slippery slope because that happened.

And, number two, let me talk about the connection and the accessory building. This rule that I see, and in the case that Ms. Giordano just handed out, really makes the point about how ludicrous and ridiculous this slavish adherence to this covered walkway is.

This person was permitted to get away with building a covered walkway between two buildings if he opened up a little piece of it, just a little section of it. But apparently he had to do that. This is a crazy way to administer the zoning laws, and that is an interpretation that is going on.

That is not something that is in the regulation. That is an interpretation that is going on in DCRA. As a matter of fact, Mr. Bello said it is a matter of judgment and different people would decide different things differently.

But I urge you to go look at the property at 5655 Moreland, and determine whether that is two buildings or one building. And I urge you to also look deeply at whether or not the accessory building limitations mean anything if the only thing you have to do is build a walkway between the two matters.

Now, I am not going to take any more of the Board's time with respect to the Department of Public Works's matter, except to say this. I am a lawyer, and I am not a land use lawyer. I practice in a completely different area.

My eyes have been completely open by looking at

what goes on, and the real disadvantage that people in the community have in order to find out what is happening with respect to these things.

And in order to at least make and put their case together, it cost a tremendous amount of money just to appeal here on this matter. And when we work diligently -- and I will tell you that I worked desperately on this Department of Public Works matter.

And I know completely what we are dealing with here is a tremendously unique situation. And yet when we come here, we find, well, this may not be a zoning problem. It may be a DPW problem.

You are not really in the right thing, although I will tell you when we sat with the zoning administrator and talked to him, he told us categorically that the Department of Public Works had to have signed off on this and that's what the people have.

There needs to be a forum where people can get problems with respect to the building permits worked out and decided, and not come in here and find out that each -- that the zoning people can simply pass the buck, and say, well, it is not really a zoning question. It is a matter of somebody else.

Well, I will tell you that Ms. Giordano is an accomplished land use lawyer, and she has not been able to figure out and find out what ought to happen yet. I can tell you that I

have spent about a week talking to a dozen people in the District government, and nobody can tell me.

What I do know is that what has happened here is that a building permit has been issued and approved to build within the highway plan, which is the only provision that provides for setbacks. And there ought to be a remedy for that matter, and we urge you to grant our appeal.

CHAIRPERSON REID: Thank you, Mr. McBride. The only thing I would say in regard to procedures as they are germane to the DCRA, we are aware of the fact that there are problems, and there have always been since I have known about them.

Nonetheless, the forum for trying to get any resolution of those problems rests with the Director of the DCRA, or I think perhaps through the City Council.

Unfortunately, we don't have -- it is beyond our perview to get involved in or to have any ability to change any of the procedures, or to interpret them. I'm sorry, the only thing we can do is to interpret them and use our best judgment based on what is put before us to make a determination.

And unfortunately while there is rules and regulations, and we are supposed to follow certain procedures, nonetheless a lot of it is strictly based on judgment calls.

And understandably so, but we don't have any or can't do anything about that. And also a practice. There are some things that are based not only on regulations, but just on

practice, and the judgment of whoever the interviewer is, and whoever the zoning administrator is and whatever determination they make.

MR. MCBRIDE: Well, please understand that I understand that there are time honored practice matters that go on, but with respect to this DPW matter, it is not a matter of anybody -- well, it is a matter, at least as far as I can see, of everybody passing the buck.

CHAIRPERSON REID: Well, in that regard, Mr. McBride, I think that in fairness that if you can procure for us a document that would substantiate your contention that there was a signature needed.

I don't think that we are going to make a decision today, and we can leave the record open for that to come in prior to us making a decision.

MR. MCBRIDE: If you would do that, that would be very helpful from our standpoint.

CHAIRPERSON REID: I have no problem with that, unless any of the other Board Members have any objections to that.

VICE CHAIRPERSON SOCKWELL: If I might make a suggestion that could be helpful. You might speak with Mr. Lennox Douglas of the Permit Issuance Branch of DCRA.

MS. GIARDANO: Of course, Ms. Reid, we would like the opportunity to submit a response to anything that is submitted.

CHAIRPERSON REID: Sure. Sure. I mean, this is the issue that has not been resolved here today, and that is one of whether or not DPW -- whether or not a DPW signature was required, and on the one hand we have DCRA, the zoning administrator's representative, saying that it was not and Mr. McBride saying that it was. We don't have anything in writing to substantiate either one.

MS. GIARDANO: I would still submit that it is really irrelevant to the Board's determination.

MR. MCBRIDE: Let me make an offer to Ms. Giordano if I will. I am happy to work with her and work together to find the answer to this question.

MS. GIARDANO: I think that it is an issue that is intriguing, but the problem is that my client has also incurred a lot of costs here. And I have to confine my time to what is relevant.

I mean, I will make some more telephone calls just because I am curious myself about this. But there is a limit to how much time I think that he can spend on it given the fact that it is not relevant.

CHAIRPERSON REID: Okay. Well, look, let's not belabor this. We can just try to get this tied down and leave here at six o'clock, I think that would be great.

We can have a decision meeting, Mr. Hart, on the next decision date, which is February 2nd, perhaps?

MR. HART: That's correct, Madam Chair.

CHAIRPERSON REID: And in the interim, if you can procure that letter for us; and, Ms. Giordano, if you want to give a time line if you wanted to respond to it, and we will have that prior to making a decision. Mr. Hart, do you have a time line?

(Discussion off the record.)

MR. HART: Given with the holidays in between, and so we are looking at a decision date of the meeting of February 6th, 2001.

CHAIRPERSON REID: Is that okay for both sides?

MR. HART: Hold on, let's back up. We need to get this to the Board on the Thursday before, which would be February 1st, and the middle of January, a date in the middle of January, should be reasonable for your submission.

MR. MCBRIDE: That's absolutely reasonable if I can get an answer.

MR. HART: The 16th of January for your submission, and that gives you for your response to his submission for February 1st, Ms. Giordano. Is that good?

MS. GIARDANO: Yes.

MR. HART: February 1st, and January the 16th, and a decision will be at the February 6th meeting. Thank you.

CHAIRPERSON REID: All right. That does it. Thank you very much, and happy holidays to everyone.

(Whereupon, the Public Hearing was concluded at

6:02 p.m.)