GOVERNMENT

OF

THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC HEARING

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TUESDAY

DECEMBER 5, 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 1:40 p.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:

KWASI HOLMAN	Commissioner
CAROL J. MITTEN	Commissioner

COMMISSION STAFF PRESENT:

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

OTHER AGENCY STAFF PRESENT:

Steven Cochran, Office of Planning

D.C. OFFICE OF CORPORATION COUNSEL PRESENT:

Marie Sansone, Esq.

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(1:40 p.m.)

CHAIRPERSON REID: Good afternoon. First of all, let me first apologize for the delay for starting the afternoon session. The hearing will please come to order.

Ladies and Gentlemen, this is the December 5th public hearing of the Board of Zoning Adjustment of the District of Columbia. My name is Sheila Cross Reid, Chairperson. With me today is Robert Sockwell, Vice Chairperson, and Carol Mitten and Kwasi Holman, representing the Zoning Commission.

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 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.

When 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 in variances is, one, statement of the witnesses of the applicant; two, government reports, including the Office of Planning and the Department of Public Works, et cetera.

Three, the report of the Advisory Neighborhood Commission. Four, parties or persons in support, and cross-examinations. Five, parties or persons in opposition; and six, closing remarks by the applicant.

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

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

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

Please turn off all beepers and cell phones at this time so as not to disrupt these proceedings. The Board will make every effort to conclude the public hearing as soon as possible and before six o'clock p.m.

If the afternoon cases are not completed at six o'clock p.m., the board will assess whether it can 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 relate to whether a case will or should be heard today, such as a request for postponement, continuance, or withdrawal, or whether proper and adequate notice of the hearing has been given.

If you are not prepared to go forward with the case today, or if you believe that the Board should not proceed, now is

the time to raise such a matter. Are there any preliminary matters?

MS. BAILEY: Yes, Madam Chair. Application Number 16635 is the agenda for today, and that case will not be heard today.

CHAIRPERSON REID: What case is that, Ms. Bailey?

MS. BAILEY: It is Fort Chaplin Park, the last case on your agenda.

CHAIRPERSON REID: Okay. It was put on the agenda by mistake wasn't it?

MS. BAILEY: I believe so, Madam Chair.

CHAIRPERSON REID: Okay. So go ahead. What is the date?

MS. BAILEY: That case will not be heard today. I just wanted to make sure that for the record it is noted that that case will not be heard today, but has been rescheduled. I am not sure if there is anyone here.

CHAIRPERSON REID: All right. Is there anyone here?

(No audible response.)

CHAIRPERSON REID: All right.

MS. BAILEY: All right. Are you ready for the first case of the afternoon?

CHAIRPERSON REID: No, I think there was another -- is anyone here with Case Number 16618, the Phillips Collection?

Okay. The attorneys for this particular case, if you would please come forward.

(Brief Pause.)

CHAIRPERSON REID: All right. There was a request within our submission for a continuation. Has anyone requested or is anyone requesting a continuation?

MR. CAIN: Madam Chair, I believe the office --

CHAIRPERSON REID: Please state your name for the record.

MR. CAIN: I am Michael Cain, counsel for The Phillips Collection, the applicant. It is my understanding that the Planning Office --

CHAIRPERSON REID: The Office of Planning, and also I thought there was a letter from the ANC as well.

MS. BAILEY: Madam Chair, it is very important that the persons who are speaking identify themselves for the reporter.

CHAIRPERSON REID: Okay. Give your name and address for the record.

MR. CAIN: Michael Cain, counsel for The Phillips Collection, the applicant, in 16618.

CHAIRPERSON REID: Okay.

MR. CAIN: It is my understanding that the Office of Planning -- and I am reminded that the ANC-2B has also recommended, and that the Planning Office has requested, that the hearing be continued because it is our understanding that they

have not yet been able to complete their reports, the Planning Office and DPW. The applicant is prepared to go forward.

CHAIRPERSON REID: Okay. My understanding is that there has been considerable opposition, and that a part of the ANC's request was so that they could additional time to be able to reconcile from the differences that were apparent within this case.

There is no one from the ANC here. However, Ms. Renshaw, do you have the ANC letter requesting --

BOARD MEMBER RENSHAW: Yes, I do, Madam Chair.

CHAIRPERSON REID: Could you please summarize that for us.

BOARD MEMBER RENSHAW: The letter is dated November 28th, 2000, and it is signed by Vince Micone, M-I-C-O-N-E, vice chair of ANC-2B, on behalf of the commission, and it asks for a continuance so that it can -- it needs additional time to enter into an agreement to mitigate community concerns.

It feels that with this additional time that a voluntary agreement can be reached.

MR. CAIN: Madam Chair, if I may just --

CHAIRPERSON REID: Give your name again, please.

MR. CAIN: Michael Cain again, and if I may just cast us back to October 24th, I believe it was, when we were last here on the first scheduled date. A similar letter had been submitted by the ANC prior to that hearing, and we did consent to

a continuance at that time.

You may recall that three entities or groups had filed applications for consideration of party status. In the interval, we have entered into agreements with two of those prospective parties that you will have to -- an issue that you will have to deal with in a little bit. But we have not been able to reach agreement with the third group of opponents.

CHAIRPERSON REID: What group is that?

MR. CAIN: That is the group represented by Mr. Geld, the gentleman to my left; some individual neighbors, and not institutions. And while we believe that the ANC's heart is in the right place, we are not sure that the issues are close enough that we can narrow them enough to reach an agreement.

We are, of course, prepared to start the hearing and continue to another day if that is what the Planning Office needs in order to do its report and gets its work product before you.

CHAIRPERSON REID: Okay.

MR. GELL: Madam Chair, I am Stephen Gell and I represent the neighbors in opposition. We are also prepared to go forward.

CHAIRPERSON REID: All right. Mr. Collins.

MR. COLLINS: And I am Christopher Collins with Wilkes Artis, an attorney representing the Cosmos Club in this case. We have also requested party status in this case, and at

the appropriate time when we move for party status, we will inform you that we are a party in support, and we are prepared to go forward today.

CHAIRPERSON REID: Okay. The Office of Planning has send a letter to this board, in which they basically stipulated that they had not been able to structure their report in this case because of the fact that there were -- that while they had requested information from the applicant, that they have not received the materials that they requested.

And I guess that their report is predicated upon receiving the information that they requested, and so as such, they don't have the information that they need. So could you speak to that, please.

MR. CAIN: Yes, Madam Chair. Michael Cain again. It is my understanding that we have given them what they wanted, principally in the nature of a transportation analysis, but that they have not had time working together with the Department of Public Works to digest that information and put together their final position. I am not sure what additional information they would be looking for though.

CHAIRPERSON REID: Okay. They say that they requested -- on several occasions the OPS requested that the applicant provide information with regard to the physicalness that would prevent the builders from meeting its mission under matter of right zoning and why a variance is necessary for FAR and lot

coverage.

Also, a loose lays traffic study. Is Mr. Slade here?

MR. CAIN: Yes, he is, Madam Chair.

CHAIRPERSON REID: He is? Where? Oh, he is here, but not in the room right now.

MR. CAIN: He must have stepped out into the hall.

CHAIRPERSON REID: Mr. Slade, the traffic study is to be completed on Friday, and so I don't know if by him being here that he has now finished the report.

MR. CAIN: Madam Chair, the report was included in our supplemental prehearing submission on November 20th.

CHAIRPERSON REID: Okay. In addition to the matters that would normally be considered in traffic by OP and other agencies, we will need to see plans demonstrating that the garage ramp slope meets code requirements, and that the range for turning movements in the garbage will allow a garage to accommodate as many vehicles as The Phillips has been stating. Do we have that?

MR. CAIN: We have that, and I believe the Planning Office has received that at least last week. I know that there were discussions with them prior to that, but the plans themselves were available last week as redrawn.

CHAIRPERSON REID: Okay. Mr. Slade, we will be right with you in just a second. The Phillips Collection has

social management and future parking, traffic and operating measures that might help to negate the impact of the proposed expansion, while a covenant with the neighbors would likely be useful.

It is clear that the neighborhood would also like The Phillips to be considering physical and problematic changes. Apparently there is just an unreadiness on the part of the Office of Planning in getting their report out.

Mr. Slade, they mention here that -- well, your report is done? Your traffic report analysis is done?

MR. SLADE: Yes. It was submitted on the 17th of November.

CHAIRPERSON REID: Okay. Wait one second, because I don't know -- do you all have that report? Hold on one second, Mr. Slade.

(Brief Pause.)

CHAIRPERSON REID: I know that I didn't see it. Could someone direct me to where it is contained in the applicant's submission?

MR. CAIN: It is --

CHAIRPERSON REID: Is it included?

MR. CAIN: It is included in the supplemental prehearing submission filed November 20th. I'm sorry that I don't recall the attachment number. It is attachment number one.

MS. PRUITT: It is Exhibit Number 46.

CHAIRPERSON REID: And my question was do we have it? Did you receive it?

(Brief Pause.)

MS. PRUITT: It is Exhibit Number 46.

CHAIRPERSON REID: Under what tab?

BOARD MEMBER RENSHAW: Here it is.

MS. PRUITT: No, it is just from the log. From this package that you received.

CHAIRPERSON REID: But what tab?

MS. PRUITT: It is not a tab. It is an exhibit number that we pulled from the log. From this package that you received, you should have this in there, and it looks like this. If not, we can get you one.

CHAIRPERSON REID: No, no. I have that. We have this, but where is the staff report in here?

MS. PRUITT: Oh, I'm sorry.

MS. SANSONE: Number 46 is the October 6th filing. I don't think we have the new filing.

MR. CAIN: I have it as Tab 1, Madam Chair, attached to my November 20th letter, which I believe Ms. Pruitt is identifying as Exhibit Number 46.

MS. PRUITT: Exhibit 46 we have as a letter, with a date of October 6th and not the 20th. But it was logged into our exhibit date as received on the 20th.

CHAIRPERSON REID: Do we have it?

MR. CAIN: I have it as Exhibit 46, but I am not going to quibble with the staff.

MS. PRUITT: Do you have a copy of the letter, because we don't appear to have it here. Our letter is dated October 6th.

MR. CAIN: Excuse me one second while I collect my papers.

CHAIRPERSON REID: Okay. For some reason it did not make it into our packages. Wait a minute.

(Discussion off the record.)

CHAIRPERSON REID: I think that what happened was that there was a snafu with the staff, and that the two submissions that look so similar, and one is November 20th and the one is October 6th.

The one that has the traffic report is the one that is the November 20th, and we received the one that is October 6th, and that was SANs traffic report. So we didn't have it within our package.

VICE CHAIRPERSON SOCKWELL: Do you know how many copies you submitted?

MR. CAIN: Either 12 or 15. I am not positive which. I have extras if need be.

VICE CHAIRPERSON SOCKWELL: That's all right. We will find ours if at all possible.

CHAIRPERSON REID: Yes, they are probably here

somewhere. Okay. So now what we are dealing with is the ANC request, and the Office of Planning request, that it be continued, and the applicant and the opposition -- no, the Cosmos Club, which is in support.

And, Mr. Gell, you are representing the opposition?

MR. GELL: I represent many of the neighbors of The Phillips who are opposed, yes.

CHAIRPERSON REID: Okay. And you are ready to go forward?

MR. GELL: That's right.

MR. COCHRAN: Madam Chair, may I ask you something on behalf of the Office of Planning?

CHAIRPERSON REID: Yes.

MR. COCHRAN: My name is Stephen --

CHAIRPERSON REID: I'm sorry, I didn't know that you were down there.

MR. COCHRAN: I just hobbled in.

CHAIRPERSON REID: Okay.

MR. COCHRAN: The Office of Planning isn't necessarily asking for --

CHAIRPERSON REID: Could you give your name?

MR. COCHRAN: My name is Steve Cochran for the record. The Office of Planning is not necessarily asking for a continuation. We simply are not prepared to give our report today because of the timing of the traffic report, and our receiving

information both from the applicant and from DPW.

We have no problem if the applicant, or anyone else for that matter, gives a report, but we would ask that ours be delayed to another date. And it may well be that by the time that you have heard the applicant and some of the other people that there won't be time today for the OP report.

CHAIRPERSON REID: All right.

MR. COCHRAN: But all I am saying is that we do not have a report for today.

CHAIRPERSON REID: Okay.

MR. COCHRAN: It is slightly different than asking for a continuation, but half-a-continuation maybe.

CHAIRPERSON REID: Thank you. All right. So, now it is the ANC that has asked for a continuation. Apparently the ANC feels that there is some issues that are reconcilable given additional time.

MR. COCHRAN: Again, Madam Chair, I just talked to the ANC single member district representative, Vince Micone, who has another meeting at two o'clock, and so he is not likely to be here.

He said that if the ANC were to testify today, he would have to reiterate their position; that is, in opposition to The Phillips, but hope that there would be the opportunity for a continuance so that there would be more time for negotiations.

But if they had to give their position today, at

this point it would be against the application of The Phillips, and he asked me to communicate that to you.

CHAIRPERSON REID: Well, we have to make a determination, Board Members, predicated upon the fact that the ANC typically is afforded great weight in these proceedings, and they have requested that there be a continuation so that they can make some additional type of meetings and some kind of reconciliation of the differences to try to come to a meeting of the minds, which we always encourage.

I mean, that is always the best way to go. Other than that, what happens is that it falls in our laps then to make a determination, with the ANC in opposition, and particularly when you have considerable opposition in a case, I am of the opinion that it is much more difficult for the applicant to make a case.

I am not saying that you can't, but it does make it more difficult, and then invariably what happens is that it falls in our lap, and we are the ones who then have to make the ruling that invariably results in one side not to happy.

MR. COCHRAN: Madam Chair --

CHAIRPERSON REID: In this instance -- yes?

MR. GELL: I wonder if I might speak to the ANC's letter. Mr. Micone does plan to be here at three o'clock.

CHAIRPERSON REID: Well, Mr. Cochran just said that he has a two o'clock meeting.

MR. GELL: I understood that he had a meeting, but

--

MR. COCHRAN: He hopes to come later, but he just wasn't sure that he would make it here, and whatever the ANC -- and if you can postpone their slot, then he would be here later in the afternoon.

CHAIRPERSON REID: Well, his slot would still be today in opposition as I understand?

MR. COCHRAN: That's correct.

MR. GELL: That's correct. But can I read from his letter though, because I think it is instructive. He did say that he had hoped and that he thought perhaps if there were more time that there might be a possibility for an agreement to be reached.

However, he did not specifically ask for a postponement or a continuance. He said either it should go forward and we would oppose, or the board might consider a postponement. That is the last line or the next to last paragraph, where he says that we respectfully request that the BZA oppose the special exception and variance request at this time.

Or to issue a continuance to allow several months for substantial and meaningful negotiations to occur. I think he made it quite clear --

CHAIRPERSON REID: What are you reading from?

MR. GELL: This is from his letter --

MS. PRUITT: From page two.

MR. GELL: -- of November 28th.

MS. PRUITT: The last paragraph at the bottom.

MR. GELL: It is the next to last paragraph above the signature.

CHAIRPERSON REID: That's not the November 28th letter.

MR. GELL: That's what I have, yes.

CHAIRPERSON REID: It is not the page two that I have.

MS. PRUITT: Yes.

MR. CAIN: Madam Chair, I believe --

CHAIRPERSON REID: The page two that I have, I have a paragraph above the signature on page three. Is there another letter?

MR. COCHRAN: I believe, Madam Chair, that Mr. Micone's letter attempted to amplify on the language that the ANC actually passed. But what Mr. Gell was reading from was part of that amplification, and not the actual language; is that correct?

MR. GELL: Yes. Yes, I believe the substance of the motion is contained in the indented paragraph on page one.

CHAIRPERSON REID: Right.

BOARD MEMBER RENSHAW: Of the letter of November 28th.

MR. GELL: Of the letter of November 28th.

CHAIRPERSON REID: All right. Then here it says that -- and this is the pertinent part, that it is ANC-2B's belief

that with additional time that a voluntary agreement could be reached to mitigate community concerns, and according, ANC-2B requests consideration by the BZA of a further continuance in this matter.

Nonetheless, be that as it may, what we have before us right now is a situation where the applicant is ready to move forward, and the BZA is asking for a continuation.

And let me also interject and state that if it fact it were continued, when would be the next date available?

MS. PRUITT: The first available date would be March 20th.

CHAIRPERSON REID: March 20th. And then we have to find out how does that impact upon the applicant or the other parties, or the other entities involved here. I am not saying that it will be, but just if in fact it were postponed.

MR. CAIN: That is a long time away, Madam Chair. We are trying to -- with the staff's cooperation, we have been trying to get our hearing in this year, and we were able to swallow the first continuance because the timetable looked like it could be met.

CHAIRPERSON REID: Met to do what?

MR. CAIN: To get to today, which is still within the calendar year of 2000.

CHAIRPERSON REID: No, my question is, how is that -- what kind of impact does it have on you if it were delayed?

MR. CAIN: That is going to make our lives a whole lot more difficult.

CHAIRPERSON REID: And how so? Please, you are speaking in generalities. We need to know specifically what the problem would be, and how would it adversely affect the applicant, and that's what we have to hear.

MR. CAIN: Well, we have a property to acquire, and we have funds to borrow. All of those things are a lot easier done when we know whether we are in or out of the project. But we are still under contract, but we haven't taken title to the adjacent property.

CHAIRPERSON REID: You are the contract holder right now; is that your status?

MR. CAIN: Yes, of the adjacent property.

CHAIRPERSON REID: Okay. All right. Thank you.

MR. CAIN: Which is part of the application.

CHAIRPERSON REID: Mr. Gell.

MR. GELL: Yes, Madam Chair, I would just say that the people that wanted to speak from the neighborhood are here. They would like to have an opportunity to make their statements, and we would like to have an opportunity today to put on our case.

It obviously is discombobulating to have to stop, and then wait three months, and then start the whole process again. I think people are geared up to at least put their case on, and have asked me to specifically request that you go forward

with the hearing.

CHAIRPERSON REID: All right. Board Members, what is your take on this?

VICE CHAIRPERSON SOCKWELL: Well, it seems, Madam Chair that the applicant has stated that they do not feel that an agreement could be reached with a continuance, at least in regard to the parties that Mr. Gell represents.

The Advisory Neighborhood Commission, he is not here to express his feelings outside of what is written with regard to the potential of an ANC agreement.

So it is a little difficult to determine whether or not a continuance would be of any particular benefit to either the applicant or the opponents for the sake of getting a more consolidated case.

CHAIRPERSON REID: Okay. Ms. Renshaw.

BOARD MEMBER RENSHAW: Well, it seems that with all of the neighbors and other parties here wanting to put on their case that that is a big consideration for the board.

However, with the ANC-2B wanting to come into some kind of an agreement on this matter, that is not going to be done today. That will have to be done before the ANC at a regularly scheduled public meeting, which may be this month, and then again it may not be until next month.

So we are going to be a bit delayed on this in any case. However, I would perhaps urge that the case move forward so

that those who are here can be heard, and then we will just have to leave the record open to receive additional comments from the ANC and others.

CHAIRPERSON REID: If we move forward on the case today, then before we make a decision, maybe that would give the ANC time to be able to meet, or to have some type of interaction with the opposition, and come to perhaps -- come closer to some type of an agreement.

And they then could amend their letter to us, or they could perhaps submit a new letter to us to replace the existing letter, predicated upon that meeting having come or having taken place, and hopefully they were able to achieve some resolution.

That may be a way to go at this. I have no problem with proceeding today, and asking that hopefully recommending that in the interim, that during the time of the hearing and the time of our deliberation, that perhaps we could get the ANC to have an opportunity to meet with some of the community members and come to some different position maybe.

And then on the other hand, too, I think that realistically that we all realize that sometimes no matter how much wrangling and negotiations that is done that there is still -- that their position may still be the same.

So there is no guarantee that there would be a change. So I think that on compromises that is probably the only

thing to do, is to give deference to those persons who have come here today to participate and allow them an opportunity to do so.

And I dare say that the decision will be made today, and then when we do make the decision, which will be probably on the first decision date, which will be January now --

MS. PRUITT: It will be January 2nd, but that is really based on how the hearing goes.

CHAIRPERSON REID: Yes, and then that will give them some time to perhaps make some other adjustments. Okay.

MR. COCHRAN: Madam Chair, Mr. Cochran, Office of Planning. Would that mean then that our report would be submitted during the time frame that the record is left open, but we would not necessarily be giving oral testimony?

MS. PRUITT: Madam Chair, the concern that the staff has about that is that if the OP's report is sent in without testimony, we then need to leave time for --

CHAIRPERSON REID: For cross-examination.

MS. PRUITT: Exactly.

MR. COCHRAN: Exactly.

MR. CAIN: Yes, Madam Chair, Michael Cain. We would want an opportunity to respond. We don't know if we would be supportive or asking questions. Maybe we would not be asking any questions, but we would need to have some sort of opportunity to protect the record.

MS. PRUITT: Madam Chair, I think that in all

likelihood that we would not be able to put this on for the January agenda. It is just kind of too soon, and the January agenda actually has a pretty --

CHAIRPERSON REID: You mean for a decision?

MS. PRUITT: For a decision, correct. And I guess depending upon the testimony and how it goes today, we may not get through all of the testimony and the whole case today. So another hearing would be required, or a continuation of the hearing may be required, and at that time --

CHAIRPERSON REID: When?

MS. PRUITT: Well, the first available date would be in March, which is a long time.

CHAIRPERSON REID: Well, that is what they are trying to avoid. Okay. The only thing we can do is let's just go ahead and proceed, and find out how far we can get.

Now, the problem is that the Office of Planning does not have a report to give, and cannot be cross-examined, correct?

MR. COCHRAN: Correct.

CHAIRPERSON REID: And basically your sole purpose in being here is to say that you can't participate?

MR. COCHRAN: And to take notes.

CHAIRPERSON REID: Well, that's basically what you are saying, right?

MR. COCHRAN: Yes, that's correct, Madam Chair.

There were a number of changes that were made very, very recently, and the Department of Public Works -- well, the crux of many of the issues relates to traffic impact.

The Department of Public Works has not had an opportunity to review some of the changes that have been made in the applicant's plans recently, and because that is so close to the core of the case, we feel that it is inappropriate for us to make a recommendation today until we hear back from DPW.

MS. PRUITT: Madam Chair --

CHAIRPERSON REID: Wait one second before you ask your question. You keep that point. Is it possible to hear part of the case today?

MS. PRUITT: Exactly. You know, we have a very short case. It is very short and should not take a long time. We can start the process here, and in looking at the calendar, we can squeeze, push, as much as we can. I believe we could probably finish it up on the afternoon of January 9th.

CHAIRPERSON REID: Could that work? If we started today and tried to get as far as we can, and then conclude on January 9th, would that work for everyone concerned here?

MR. CAIN: That works for the applicant, Madam Chair.

MR. GELL: I would have to ask a number of people.

MS. PRUITT: And obviously we don't have the ANC person here who is requesting the continuance. The only concern I

guess I would have is that a lot of times during the holidays ANCs don't meet, and we are kind of falling right in between there.

CHAIRPERSON REID: Yes, that would be a compromise wherein we could go ahead and try to hear as much as we can today, and give the Office of Planning an opportunity to get their report in.

The ANC would have an opportunity to try to see what magic they could work in the community, and then we could conclude with whatever part we haven't done, even though we may have to take a few things out of order.

But we have to just kind of wing it here, and if there is no objection from my colleagues or to anyone here either in opposition or in support, or the applicant, then we have to just kind of make it work. And our schedule is so ambitious that we are now having hearings every week.

And it is just so hard to get you back on, but if Mrs. Pruitt can see a time frame to be able to squeeze it in on January 9th, then perhaps that might be the best that we can do under the circumstances if no one objects.

All right. I see no objection, and so let's go ahead and move forward.

MR. COLLINS: Madam Chair, Christopher Collins, Wilkes Artis. Before concluding this discussion, is it appropriate to ask the first case this afternoon how long that case might be so that you can be better informed about decision

making on your schedule for this afternoon?

CHAIRPERSON REID: They don't know.

MR. COLLINS: Because my understanding is that --

CHAIRPERSON REID: We anticipate that it is going to be relatively short, Mr. Collins, only because we have only the last part of it, the opposition, and the closing remarks to do. So it is a continuation of a completion of a case.

And so it is anticipated that it would be relatively short, but if you are asking for a specific time, there is no way we can tell you.

MR. COLLINS: Well, we heard something different outside in the hall.

CHAIRPERSON REID: What did you hear?

MR. COLLINS: That it was not going to be short.

CHAIRPERSON REID: You did?

MS. PRUITT: Madam Chair, based on our record, when we pick back up on this case, we will start --

CHAIRPERSON REID: With the opposition?

MS. PRUITT: Yes, Mr. Brown's testimony, or his case in chief, following by cross-examination, and the OP report.

CHAIRPERSON REID: Well, nonetheless, we will do the best that we can. Mr. Collins, we don't know whether to go ahead with the first case of the afternoon, and then try to get as much of your case done as possible before we have to conclude

today.

MR. GELL: Would it be possible, Madam Chair, to consider the parties in The Phillips case now while people are here?

MS. PRUITT: No.

MR. GELL: Because I understand that the chair and the board very much wants to have people here in order to be able to speak how they are going to be affected.

CHAIRPERSON REID: You mean to actually determine who would get party status?

MR. GELL: That's correct.

CHAIRPERSON REID: Sometimes that can be a very lengthy process. How many people here are requesting party status?

(A show of hands.)

CHAIRPERSON REID: Yes. You see, that is a prolonged process. Is it party status as a group or individually?

MR. GELL: I was going to be requesting individual party status for several people.

VICE CHAIRPERSON SOCKWELL: How many is several, Mr. Gell?

MR. GELL: I believe it is eight, approximately eight.

CHAIRPERSON REID: Mr. Gell, what we would ask is that while we are considering the first case that you caucus those

parties, those persons who are asking for individual party status, and see if there can be some way that they could somehow combine so that we have -- if you are asking for individual party status for eight people, rather than you representing eight people as a party, and you would be the one who would cross-examine?

MR. GELL: Well, they are happy to have me manage the case and our presentation is very coordinated.

CHAIRPERSON REID: Well, okay. Well, that's fine. We have no problem with that. Just as long as we don't have to have eight people who would have to do the cross-examination, and we would be here until eternity.

MR. GELL: No, I am representing them all.

CHAIRPERSON REID: Okay. Other than the ones who are with Mr. Gell, how many people are asking for party status?

(A show of hands.)

CHAIRPERSON REID: Oh, just two? Three? Four?

MR. GELL: The Indian Embassy, you may recall, had requested party status. I have received a copy of a letter that I believe was being delivered to your office today, indicating that they are withdrawing their request to be named a party.

CHAIRPERSON REID: All right. Well, we can't do it now. There is too many. It is just too much. So we will just go ahead with the first case, and then we will get through that case, and then pick up with your case. Thank you very much.

(Brief Pause.)

CHAIRPERSON REID: The meeting will now begin. Would you call the first case of the day, and also you have to do the swearing.

MR. BROWN: Madam Chair, I did have a preliminary matter, but we can wait until the case is called.

CHAIRPERSON REID: All right.

VICE CHAIRPERSON SOCKWELL: And your name is John Patrick Brown, representing the firm of?

MR. BROWN: My name is Patrick Brown. My father goes by John Brown.

VICE CHAIRPERSON SOCKWELL: Oh, okay.

CHAIRPERSON REID: Excuse me. Those of you who are still in the hearing room, be mindful of the fact that the hearing is now in process. If you have some discussion, please do so outside of the hearing room. We would appreciate that. Thank you.

MR. BROWN: Madam Chair, my name is Patrick Brown, and I am from Greenstein, Deloreman, Lux.

CHAIRPERSON REID: I don't think they have called your case yet.

MR. HART: No, I haven't.

CHAIRPERSON REID: Nor has there been a swearing in. Ms. Pruitt, do you want to do that, or Ms. Bailey.

MS. BAILEY: Application Number 16521, of Charles A. Sisson, pursuant to 11 DCMR 3103.2, for a variance from the

front yard setback requirements under Subsections 1543.4 and 1543.2, from the allowable percentage of lot occupancy of a dwelling for the construction of a front porch, rear addition and accessory garage, in the Wesley Heights Overlay District, R-1-A, at premises 3020 - 43th Street, Northwest, Square 1621, Lot 70.

All those wishing to testify, would you please state to take the oath. Please raise your right hands.

(Whereupon, all witnesses were sworn.)

CHAIRPERSON REID: Okay.

VICE CHAIRPERSON SOCKWELL: Madam Chair, when we last left this case, the hearing was on October 17th, and at that time you requested the staff to send a letter to Advisory Neighborhood Commission 3D.

On the 17th the board ascertained that the correct zoning relief was advertised for the project based on a new building permit provided by Mr. Sisson. This is a remedial building permit.

The Board will be considering the application only as it pertains to the roof of the front porch, and whether it should remain or be removed. The zoning administrator has determined that all other zoning requirements for this project have been met, and the addition and garage can be constructed as a matter of right.

As I indicated, we do have a copy of the response, and we did write to ANC-3D, and they responded, and a copy is in

front of the board. I think that was passed out today.

CHAIRPERSON REID: A copy of what?

MS. BAILEY: And I believe if I am not mistaken that Mr. Stephen Griswold, who is the ANC Commissioner for 3D01 has stood up to testify, and this is where the case picks up.

CHAIRPERSON REID: Ms. Bailey, what did you say was passed out today?

MS. BAILEY: The response from ANC-3D. We had informed them of what occurred on October 17th, and informed them of the remedial building permit that was submitted at that time by Mr. Sisson, and they responded with an exhibit that was passed out today.

CHAIRPERSON REID: Okay.

MR. BROWN: Madam Chairman, before we proceed, I am still Patrick Brown from Greenstein, Deloreman, Lux. I am counsel for Mrs. Mildred Crary, who is here today. She is the adjacent property owner and has been granted party status in this matter.

I want to bring to the board's attention one matter of direct importance and then a request. Last week -- and let me back up for a second. When we were here last, Mr. Sisson produced what I refer to as the sixth building permit, five previous ones having been invalidated in the BZA appeal case.

Unbeknownst to myself, the board, and the staff, he had obtained a sixth permit which was handed to us on the day of the hearing. Subsequently -- and that attempted to narrow the

scope of this case and where we are today.

Subsequently, an appeal of the issuance of that building permit has in fact been filed. It raises substantial issues as to the validity of that permit, and probably most troubling for myself and for perhaps the board who have been working on this, Chairman Reid, particularly since the very beginning, is that the permit issue directly contradicts the board's earlier findings of fact and conclusions of law in the underlying appeal case, which invalidated five previous permits.

That appeal is basic and substantial, and fundamental to what in fact the variance relief that Mr. Sisson needs. I would point to, and this is a point that I think Mr. Sockwell will take notice of, that the application, that the sixth building permit application which I have obtained and provided, and hopefully the board has gotten copies of the appeal, doesn't even contain the signature of the applicant, critical because that is where you attest that it is accurate and being submitted in good faith, and what not.

It is required by law, and the permit application and the permit issued as a result of it in my view are void on its face and suspect. The real problem we are going to have in this case, which dates back to --

CHAIRPERSON REID: Excuse me, Mr. Brown. What document are you referring to?

MS. PRUITT: Madam Chair, maybe I can shed some

light on this.

CHAIRPERSON REID: Okay.

MS. PRUITT: Mr. Brown did file an appeal to the agency last week, and we are in the process of -- you know, it's just that we have not done any of the referrals yet. That is a separate process than this particular case.

Therefore, I did not give you the information because it is really -- they have a right to appeal the zoning administrator's determination separately from you determining the variance relief on this case.

CHAIRPERSON REID: In other words, the appeal isn't properly before us today?

MS. PRUITT: Well, it hasn't even been scheduled for a hearing. There is no information on it.

CHAIRPERSON REID: My question is that the appeal is not properly before us today; is that correct?

MS. PRUITT: Correct.

CHAIRPERSON REID: Thank you.

MR. BROWN: It has been filed and docketed, and given a number, but the crucial --

CHAIRPERSON REID: But it has not been advertised or anything?

MR. BROWN: No, no, no.

CHAIRPERSON REID: So it has to go through the right procedures, Mr. Brown. I am sure that you are well aware of

that.

MR. BROWN: Oh, absolutely. And in lies the problem with that point that we are faced with, both my client, Mr. Sisson, and the board, and the problem that we have had in this application, this remedial application since it was filed almost 14 months ago, is that we are working in cross-purposes.

This application as you will recall was filed even before the Board even issued its decision in the appeal case. As a result the two crossed and the application was inaccurate based on the decision.

So we have got -- and in my view, certainly the appeal raises some serious issues as it relates to the underlying appeal decision, as well as other issues.

And we get ourselves in a position where we go for it on a case where in my view it has been narrowed to the point where it is almost meaningless, and we go forward on a case like that which may in fact not be the Board's legal conclusion as to what is properly before them.

So again we come back to chasing an answer that we don't have. The likelihood of the scenario is that to go forward today, we decide potentially a variance case that is not in fact complete and relevant to the real issues at hand.

From a practical standpoint -- and my great frustration when we met last time, and I suspect today, is that by narrowing the case to a point where we are talking about simply a

roof over a front porch, albeit built without a permit, we miss the point and the real fundamental issues in the case which go beyond just a roof over a front porch.

CHAIRPERSON REID: Okay. Mr. Brown, what are you asking us to do?

MR. BROWN: I don't think it is appropriate to go forward on this case until the issue of what is before the board is appropriately settled. This appeal goes to the very basis of what Mr. Sisson needs to file his application for. And we need to decide that before we proceed on an application.

MS. PRUITT: Madam Chair --

MR. BROWN: Because it goes to not just the issues, but the scope of cross-examinations, the scope of witnesses, the scope of material that can be entered.

MS. PRUITT: Excuse me for a minute, Mr. Brown.

MR. BROWN: Sure.

MS. PRUITT: It's my understanding that at the last hearing that the board did determine that the correct -- because we had originally asked the zoning administrator to confirm whether or not the correct zoning relief was requested.

We have not gotten anything back from him, but my understanding is, or my recollection was that you did determine that the correct zoning relief was being requested.

CHAIRPERSON REID: Yes, I think so.

MR. BROWN: And I think it was one of accepting the

permit on its face value, and without any scrutiny, certainly without any scrutiny available by myself.

MS. PRUITT: But then you have the right, Mr. Brown, to appeal that building permit through a separate process.

MR. BROWN: And that has occurred. But the concern that I have is that we move forward on dual tracks, likely to end up with conflicting answers.

CHAIRPERSON REID: So what do you want us to do?

MR. BROWN: I think in all fairness to the process, and to my client, and even to Mr. Sisson, this matter ought to be continued until we have reached the point where we have some reasonable -- and I am afraid that the board is going to have to grapple with what in fact their earlier decision meant in the appeal case, and how it specifically impacts on what Mr. Sisson needs to or doesn't need to apply for.

And we are a long way from that. We can't even agree quite frankly on the discussion we need to have, and the issues, and so going forward I think is wasting the board's time, and likely to create an even more confused result. And so I think we ought to continue the matter.

MS. BAILEY: Madam Chair, I just wanted to bring to the board's attention that this is the seventh session that the board has heard this particular application.

CHAIRPERSON REID: Thank you, Ms. Bailey.

MS. PRUITT: And you actually did say on the 17th

that you would not ever continue this again. So we have already passed that limit by one.

MR. BROWN: Madam Chair, I recognize painfully that this is the seventh hearing, and again quite frankly, most of those continuances are a result of the inadequacy of the application being filed, and failure of the applicant to follow the procedures.

Either not providing copies of documents to parties, changing their mind on the application, filing documents that in fact they later had to correct as to the physical characteristics of the property.

So while it is in fact the seventh time, the blame for that unfortunately needs to be put at the applicant's foot, because they bear the burden of going forward. The last hearing didn't go forward because he shows up with a building permit without bothering to provide copies to anybody.

So I think that while that is relevant in the big picture, using that as the basis for not going forward, or the basis that we would like to proceed in this situation where it really is wholly inappropriate to proceed, I don't think that should outweigh the fact that it is not appropriate to proceed.

CHAIRPERSON REID: Thank you, Mr. Brown.

MR. SISSON: Madam Chair, I don't know where to begin to talk about this, because it has been 14 months that I have been trying to get permission to put a roof on my porch,

which I don't think is a Federal case, but Mr. Brown seems to think that it should be one.

The points that I would make is that it has been more than a year that I have been with this application. We have had seven continuances, all at Mr. Brown's request. He raises at this last moment that there is an appeal that he has filed, which I have never seen any evidence of whatsoever.

But he claims that it is germane to this case. I would argue that it is irrelevant entirely, because all I am asking is if it is all right -- can I have permission to put a roof on a porch that I want to build on my house.

I don't care about anything else. We can talk about the things that he wants to talk about in some other venue, but at this point, and I think the staff is in accord, it is relevant to talk about can I get permission to put a roof on a porch.

CHAIRPERSON REID: Board Members, can I get some type of input?

COMMISSIONER HOLMAN: Yes. I just wanted to refresh my recollection. When was the last time that we heard this?

MS. BAILEY: October 17th.

COMMISSIONER HOLMAN: And when was this latest appeal filed?

MR. BROWN: It was filed a week ago today with the

board. A copy was simultaneously provided to Mr. Sisson's counsel. Unfortunately, he hasn't received that.

I provided him an additional copy, but the information that is in this appeal was not ascertainable until after the last hearing. First, we found out that a permit had been issued, and second, we had to find out what that permit was, and get a copy of it.

So again it keeps coming back to -- Mr. Sisson changes the nature of this case, and not Mrs. Crary and myself.

COMMISSIONER HOLMAN: Madam Chair, what I was trying to clear up was that I thought that application -- I mean, that permit was available as of the time of the hearing it would have seemed to me.

I am just confused about why it took the amount of time that it did for this to arrive to us basically on the day that we are about to --

CHAIRPERSON REID: And that is the question that you have to answer.

MR. BROWN: And I would be happy to answer.

COMMISSIONER HOLMAN: Well, this is the question that I have, and whoever is responsible can speak up. It's just that it is frustrating.

MR. BROWN: And Mr. Holman, it is frustrating, one, when I obtained the permit for the first time on October 17th, I literally -- and just like the board -- obtained a xeroxed copy of

the physical one half-sheet permit.

As a result of that, we had to go back down to records management in the Department of Consumer and Regulatory Affairs, and not only find the permit, the application form which is attached, and which is not even signed, and then also the plans, which often times are not kept separately.

It took a substantial period of time for my paralegal to obtain that information, such that I had it to review, other than the single piece of paper, the substance of it.

Additionally then as you will see, the appeal was filed by the Spring Valley Wesley Heights Citizens Association, who are allowed to file appeals like this without a fee.

They had to be brought into the mix, educated, and participate in it. So in fact it happened as quickly as possible, and certainly there was no intention to delay it.

It is urgent that it be filed and acted on, and so my apologies for the circumstances, but it was done as quickly as possible, and as the documents, the backup, which is critical, was available.

CHAIRPERSON REID: Well, the fact of the matter is that we are here, and we have already set forth this date for the hearing on the matter of the roof on the porch.

The appeal in my opinion is something that is separate from apart that has to be done in the correct procedure. So even if we were of the mindset to proceed, we could not even

hear the appeal today.

MR. BROWN: Absolutely, Madam Chair. And I am not asking that.

CHAIRPERSON REID: Okay.

MR. BROWN: I mean, in their --

CHAIRPERSON REID: Excuse me, Mr. Brown, but let me just interject this. As I understand it, what you are asking is for us to continue this case to allow the appeal to run its course, and bring both back at the same time.

MR. BROWN: I don't -- and I am certainly prepared to hear the matters consecutively. I would like to put the appeal first because that is deciding the issues that are before you.

The practical effect here is -- and it goes to the very heart of the situation, is that Mr. Sisson is trying to bring his property into compliance with the zoning regulations after his first five permits were invalidated.

CHAIRPERSON REID: Okay. But let's not get into the merits of the case. The fact of the matter is that we are here today, and the case was continued until today, the seventh continuance.

We only have a little bit to finish up, which is the opposition, and the closing remarks, and rebuttal. And then if in fact there is an appeal, then we can hear that at the appropriate time.

But, Mr. Brown, we don't need to continue to argue

whether or not we are going to continue today. Let us just take a vote on that, and then we can decide and proceed.

MR. BROWN: All right.

CHAIRPERSON REID: All right. The motion on the floor is to continue the case today or to proceed. That is the motion on the floor. Is there a second to that motion?

COMMISSIONER HOLMAN: What is the motion?

CHAIRPERSON REID: To continue. So the motion is to continue the case today, continue it to another date. Is there a second on that motion?

MR. SISSON: Excuse me, madam Chair. Are you making that motion?

CHAIRPERSON REID: No, the motion was made by Mr. Brown.

MR. SISSON: Can he make a motion?

CHAIRPERSON REID: Yes. He is a party in the case, and so therefore he can make a motion.

MS. SANSONE: Well, Mr. Brown is requesting a continuance and the board can vote on that request. And the board should either make a motion to grant the request for a continuance or to deny the request, and then vote on that.

CHAIRPERSON REID: Okay. Just so there is no uncertainty, I will move that we continue this case. Do I get a second?

BOARD MEMBER RENSHAW: Second.

CHAIRPERSON REID: All in favor?

BOARD MEMBER RENSHAW: Aye.

CHAIRPERSON REID: Opposed?

(A chorus of ayes.)

CHAIRPERSON REID: All right.

MR. BROWN: I am ready to proceed.

CHAIRPERSON REID: Well --

BOARD MEMBER RENSHAW: It was continued.

CHAIRPERSON REID: No, it's not. The motion was to continue the case, and you said yes, and everyone else said no.

BOARD MEMBER RENSHAW: They said aye.

CHAIRPERSON REID: Well, same-same.

COMMISSIONER HOLMAN: Well, I'll say nay.

CHAIRPERSON REID: Nay.

VICE CHAIRPERSON SOCKWELL: Nay.

CHAIRPERSON REID: All right. Now, Mr. Brown, now we move to the case, and the case picks up with the opposition. Now, would that be you right now?

MR. BROWN: Yes, Madam Chair, and we are prepared to proceed. I did have a question. There was some uncertainty about whether cross-examination of Mr. Sisson, having given his testimony, had been completed. I would ask for guidance on that.

I really only have one question that I would like to ask of him. When we had some wrangling on --

CHAIRPERSON REID: Okay. How many people are here

to testify in opposition?

(A show of hands.)

CHAIRPERSON REID: Three people?

MR. BROWN: Yes.

CHAIRPERSON REID: All right. You are representing -- you are the attorney for all three or just Mrs. Crary?

MR. BROWN: I am counsel for Mrs. Crary, and with her is Mr. George Watson, the President of the Wesley Heights Historical Society.

CHAIRPERSON REID: And you are the counsel for only Mrs. Crary?

MR. BROWN: Yes, Mrs. Crary. And then Steve Griswold from ANC-3D.

CHAIRPERSON REID: Okay. Has the ANC had an opportunity to speak, Ms. Bailey?

MS. BAILEY: I believe what happened the last time was that the ANC made a presentation, and we sent a letter to them informing them of the remedial building permit, and asking them to respond. So, Mr. Griswold's testimony probably would be specifically related to the ANC's response.

CHAIRPERSON REID: So then the order is not starting with the opposition, but the order should start with the ANC.

MS. BAILEY: You could do that.

CHAIRPERSON REID: And then persons in support. Is

anyone here in support of the application?

(No audible response.)

CHAIRPERSON REID: All right. So let's start with the ANC, and the ANC is to direct their remarks only to the aspect of the case that pertains to --

MS. BAILEY: They are responding concerning the building permit. They wrote a letter in, and I am not sure if there is an exhibit date on it. It is dated November 28th, and that primarily are the perimeters of what Mr. Griswold will be responding to.

CHAIRPERSON REID: All right.

MR. BROWN: Madam Chair, before we proceed, I asked you the question of whether I would be permitted, one, to have a cross-examination question for Mr. Sisson.

CHAIRPERSON REID: Did you not have an opportunity to cross-examine him last week, or at the last hearing?

MR. BROWN: There was an attempt to do so, but the scope of that cross-examination was at best undecided. I have just one question for him. It warrants only a yes or no answer.

CHAIRPERSON REID: Do you have any objection, Board Members?

COMMISSIONER HOLMAN: Madam Chair, I don't have the record in front of me, but I seem to recollect that at the point that we left the case at the last point, we had come to the point where we had cross the threshold, and we were ready to go into

persons and parties in opposition.

And without the record, I can't be any more clearer. Maybe Ms. Bailey can help me, but that is what I seem to recollect, was a rather lengthy cross-examination, but I could be mistaken.

CHAIRPERSON REID: Well, the question is do you have any objection to -- and not withstanding that, but do you have any objection to Mr. Brown asking one cross-examination question of Mr. Sisson that requires a yes or no answer?

COMMISSIONER HOLMAN: Well, my only concern personally would be that since we know that this appeal is ripening, I don't want to have questions that relate to the appeal that we just decided not to hear. That's all I am saying.

CHAIRPERSON REID: No, no, it has to be germane to the case before us today.

MR. BROWN: And, Madam Chair, I would be happy to proffer the question prior and let you decide. The question is simple, and is was the covered front porch built or begun construction prior to obtaining a building permit, or prior to the request for a period to repair that porch, which was Permit Number 4, or prior to Permit Number 5, which was permission to build the porch.

Basically, did in fact Mr. Sisson build a covered porch prior to being authorized to do so. And that is my question.

CHAIRPERSON REID: I would direct him to answer. Do the board members have any problems with him answering that one question?

BOARD MEMBER RENSHAW: No.

VICE CHAIRPERSON SOCKWELL: No.

COMMISSIONER HOLMAN: No.

CHAIRPERSON REID: All right; yes or no?

MR. SISSON: The answer is that I thought, and I did have this Permit 4 before construction began on that porch, yes, Ma'am.

CHAIRPERSON REID: Okay. Thank you very much, Mr. Brown. That's it.

MR. BROWN: We are prepared to allow Mr. Griswold to go forward now on behalf of the ANC.

MR. GRISWOLD: Ladies and Gentlemen of the Board, my name is Stephen Griswold, and I am the ANC Commissioner for ANC-3D01. And I come before you to state the neighborhood's opposition to the granting of this variance, and to allow this roof on the porch to be left on the house.

The ANC voted unanimously to oppose the variance. We do not believe that the applicant should be allowed to keep that roof on the porch. Why is that?

Well, we tried to summarize it in our letter to you, and I would like to just briefly if I may elaborate on that. And let me begin by saying that we would ask you to look at this

application in context.

I understand, and we unhappily, but necessarily, we do accept the narrowing of the issue to this one variance for the roof over the porch. Nevertheless, we do ask you to look at the context of that application that is before you, namely the BZA's own order finding a pattern and practice of building permits that were issued without sufficient information, and where construction was begun before permits were issued, and on down the line.

MR. SISSON: Madam Chair, isn't this exactly what you instructed him not to testify on? Wasn't he instructed to testify specifically about the issue at hand?

CHAIRPERSON REID: Well, he is, isn't he?

MR. SISSON: Well, he is saying that this is in the context of something else.

MR. GRISWOLD: It is in the context.

CHAIRPERSON REID: I'm sorry, Mr. Sisson, I understand your point. I think the way that I was interpreting what he was saying was basically framing the position, and in order to frame it, he has to do it in context. So if you can abbreviate --

MR. GRISWOLD: I have no intention of going on and on, and reviving. I would simply ask --

CHAIRPERSON REID: And we have read the letter anyway. So just give us the gist of it.

MR. GRISWOLD: I will do so, Ma'am. Let me turn to

the particulars of why we are opposed to t his. Well, the neighborhood feels strongly that the roof should not be allowed to remain there.

Why? First of all, because it does violate the requirements of the Wesley Heights Overlay District. This is a provision of law which was put into effect with the support of the neighborhood for a very specific reason, and that is to preserve the character of the neighborhood, in addition to the regular zoning requirements.

I believe that Mr. Watson will testify to that a little bit, but I would like to reiterate on behalf of the ANC, and thereby on behalf of the community, that we take this Wesley Heights Overlay very seriously.

And leaving the roof on the porch would in effect be a slap in the face of that Wesley Heights Overlay, and really render it -- to give a strong signal to whoever wants to listen that that Wesley Heights Overlay doesn't really matter a whole lot.

You can go through flagrant disregard of the zoning permits, and have a BZA order against you, and still have your cake and eat it, too. So that is part of it, and that's why I want you to take a look at the context. We feel that this is not in a vacuum.

Second, as to the roof of the porch itself, just looking at it in isolation, we still oppose it. Contrary to Mr.

Sisson's suggestions at the last hearing, we don't feel that this is consistent with the neighborhood, both as a zoning issue and for what it is worth, as an architectural matter.

It is not similar to the buildings nearby, and that is precisely the kind of issue which the Wesley Heights Overlay was designed to address, to keep a certain character to the neighborhood, and a certain consistency, and a certain amount of space between the houses, between the houses and the yard, and son on.

So we do not view this as a dominus application as it would seem if you walked into it at just looking at the narrow issue before you. Review it as an issue which must be taken in the context of the BZA's own order, which must be taken in the context of the effective that what this has as to the meaning of the Wesley Heights Overlay District.

And which in and of itself is not a variance that should be granted. We don't feel that it is appropriate and that we would ask the board to deny the variance request, and to have the roof which was improperly placed there removed. Thank you.

CHAIRPERSON REID: Thank you. Any cross-examination or questions by the board members?

(No audible response.)

CHAIRPERSON REID: Thank you very much.

MR. GRISWOLD: Thank you.

CHAIRPERSON REID: All right. The next witness,

please.

MR. SISSON: Do I have the right to cross-examine?

CHAIRPERSON REID: Yes, you do.

MR. SISSON: I would like to ask some questions.

MR. GRISWOLD: Sure.

MR. SISSON: Mr. Griswold, how long have you been a member of ANC-3B?

MR. GRISWOLD: I have been a member since last winter. I don't remember the exact date that I was sworn in, but I believe it was about February or so.

MR. SISSON: So 10 months or so?

MR. GRISWOLD: Yes.

MR. SISSON: How many times have you communicated with Mr. Brown during that time?

MR. GRISWOLD: On this issue?

MR. SISSON: Just in general; five times, fifth times?

MR. GRISWOLD: What do you mean by just in general?

MR. SISSON: How many times have you communicated with Mr. Brown?

MR. GRISWOLD: I have no idea.

MR. SISSON: Well, 5 times, 50 times, 500 times?

MR. BROWN: Madam Chair, I am not so sure that this is leading towards anything relevant.

CHAIRPERSON REID: Thank you, Mr. Brown. Mr.

Sisson, where are you going with this?

MR. SISSON: Well, I am just kind of curious, because I have not communicated with ANC-3D at all, and I am just concerned about the impartiality. I am just concerned. Mr. Griswold has been talking about the neighborhood, but in fact I have never heard anyone from the neighborhood make any complaints except --

CHAIRPERSON REID: Well, you can bring that out on cross-examination.

MR. SISSON: Well, I would like to.

CHAIRPERSON REID: Well, you can. I mean, just ask the questions that are basically extracted from Mr. Griswold's information that you ant.

MR. SISSON: Sure.

CHAIRPERSON REID: But this is only on cross-examination.

MR. SISSON: Okay. Then with respect to the neighborhoods opposition, have you heard anyone from the neighborhood, except for Mrs. Crary, or her representatives, to protest the construction that has taken place at my property?

MR. GRISWOLD: Yes, we have heard at the various meetings from the Wesley Heights Citizens Association, as well as the Wesley Heights Historical Society, both of which have large memberships in the neighborhood.

MR. SISSON: I have been to several of the meetings

with ANC-3D, and I never heard anyone, except for Mr. Brown and Mrs. Crary. I did hear a lady come from the audience who said that it would be a mistake for the ANC-3D to cut off the noise to spite its face to take off the porch roof, because you --

CHAIRPERSON REID: Sir, you are testifying. Mr. Sisson, you are testifying.

MR. SISSON: Sorry.

MR. GRISWOLD: Shall I respond? I am here to represent the unanimous opinion of the ANC board members, and if it seemed to imply that it was the unanimous opinion of every single person in Wesley Heights? Of course that would be absurd. But it was a unanimous opinion of the ANC commissioners.

CHAIRPERSON REID: Do you have another question?

MR. SISSON: No, that's all.

CHAIRPERSON REID: Thank you very much.

MR. GRISWOLD: That you.

CHAIRPERSON REID: Okay. Next witness, please.

MR. BROWN: And this would be the party in opposition, Mrs. Crary.

CHAIRPERSON REID: Yes, a party in opposition, or if there are any persons in opposition as well. There are no persons here or parties here in support, okay?

MR. BROWN: Yes, that's correct, Madam Chair. If I could ask Mrs. Crary and Mr. Watson to come up to save some time.

CHAIRPERSON REID: Sure. Mrs. Crary and Mr. Watson, could you take a seat in the front row, please.

(Brief Pause.)

MR. BROWN: Madam Chair, I would like to introduce Mrs. Mildred Crary, who lives next door to Mr. Sisson's house, and has lived there since the 1960s.

On the other side of me is Mr. George Watson, the president of the Wesley Heights Historical Society. Mr. Watson is -- and he may blush at this, but he is one of the principal persons involved in the enactment and enforcement of the Wesley Heights Overlay District.

And so he takes a long term professional interest in this matter. If I could -- and I think this will help in everybody's testimony, obviously both parties are in opposition.

Mr. Sisson, considering the narrow variance and where we are, still must face the difficult variance test, which is that there is some practical difficulty, physical condition of the property, that creates a practical hardship, such that he should be granted this variance without undermining the integrity of the regulations, and without a negative impact.

It is important to note -- and this comes out clearly in the Board's order and in my cross-examination question -- that the practical difficulty in this case is the roof is there.

Well, one, the roof was built illegally, and

without a permit, and there was a subterfuge at least twice trying to get permits to repair an existing roof, or to build a roof that had already been built.

And this is important from a legal perspective, as well as factual, that Mr. Sisson's practical difficulties, the condition is the roof, which in fact he created that hardship himself, and the court's have indicated that that should not be recognized as sufficient.

Also, and you have heard from Mr. Griswold, and I am sure that you will hear from Mrs. Crary and Mr. Watson, that this isn't a minor case. This goes to the entire impact of the Wesley Heights Overlay District, which were created to create certain purposes or achieve certain goals, and as measured by the front yard and lot occupancy, both of which in this case were in my view, and in the board's earlier appeal order, knowingly violated.

So again the integrity of that regulation is important, and with that, I think the board has the context in their mission in front of them. I would like to let Mrs. Crary, who has been living with this for some time, give you her personal views. And thank you for your attention.

CHAIRPERSON REID: Thank you.

MS. CRARY: First, I would like to ask you that from what has been going on today, and what went on, on the 17th of October, it is now my understanding that in this particular

meeting that I am not allowed to be saying anything except about the porch, and the porch roof.

CHAIRPERSON REID: That's correct.

MS. CRARY: Therefore, I am going to have to cut out half of what I was going to say. I had the impression that I was supposed to be allowed after 2-1/2 years to have one word of my own to say.

However, since I am going to have to cut out everything that doesn't have something to do with the aesthetics of the house, such as the porch roof, I will be crossing that out, and hope that some day I will get a chance to say my mind.

VICE CHAIRPERSON SOCKWELL: Mrs. Crary, if I might just interrupt. The issue of aesthetics is not as much the board's responsibility as would be the issue of zoning compliance.

MS. CRARY: Okay.

VICE CHAIRPERSON SOCKWELL: And therefore we are dealing with the zoning compliance issue primarily, and because the case has narrowed, I would hope that you can make your testimony compelling with regard to the impacts of this relief.

MS. CRARY: Just talk about the roof?

VICE CHAIRPERSON SOCKWELL: Yes, please.

MS. CRARY: However, I do need to say that my objections to what Mr. Sisson has done to this nice four-bedroom Cape Code house next door to my house are aesthetic, financial, and legal.

Financial as it has an appreciable, a severe financial impact on the value of my house, but I am going to cut that out because you don't want to hear it. However --

VICE CHAIRPERSON SOCKWELL: You can make the financial case and you can back into the aesthetics, but it's just to use one to support the other.

MS. CRARY: I think that back in is the wrong word to use.

VICE CHAIRPERSON SOCKWELL: How you rotate it.

BOARD MEMBER RENSHAW: But, Mrs. Crary, you have given us a copy of your statement. Therefore, it is going to be in the file, in the record.

MS. CRARY: And that means that nobody will read it. Excuse me, but that is my belief. I am not going to read you this whole thing. I am just going to read you the stuff about the porch.

CHAIRPERSON REID: Give us your testimony in regard to the roof over the porch. That's what is before us today.

MS. CRARY: That's what you want today.

CHAIRPERSON REID: Yes, Ma'am.

MS. CRARY: Yes, I understand that. I am saying that I am leaving out a lot of the things that I would like to have one chance in 2-1/2 years to say.

CHAIRPERSON REID: We heard you the first time and the second time that you mentioned that.

MS. CRARY: I beg your pardon?

CHAIRPERSON REID: We heard you the first time and the second time that you mentioned that. We do need to move on, and unfortunately the information that we have in this case is about this thick. And I am sure that what is contained therein is -- that we have much, if not all, of the salient points of this particular case.

MS. CRARY: No, you don't.

VICE CHAIRPERSON SOCKWELL: Mrs. Crary --

MS. CRARY: Nothing about my own finances, and you don't know anything about how it affects me financially.

VICE CHAIRPERSON SOCKWELL: Mrs. Crary, I don't want you to feel that we are not sensitive to your need. Personally, I was expecting to hear testimony, and/or cross-examination from you in the previous hearing, at which time Mr. Brown was your representative, and you were mute.

MS. CRARY: We came to 5:30, and you all decided that you wanted to leave.

VICE CHAIRPERSON SOCKWELL: I understand, but I was looking for a little bit of activity. We have the opportunity to hear you now, and unfortunately we are just narrowed to the porch issue.

MS. CRARY: Contrary to what Mr. Sisson --

CHAIRPERSON REID: And let me just assure you that we have your complete testimony and I can assure you that this

board member will personally read your entire testimony.

BOARD MEMBER RENSHAW: As I will, Mrs. Crary.

CHAIRPERSON REID: Mr. Sockwell.

VICE CHAIRPERSON SOCKWELL: I will, too.

COMMISSIONER HOLMAN: As I.

MS. CRARY: May I continue?

CHAIRPERSON REID: Yes. We will do that for you.

MS. CRARY: Contrary to what Mr. Sisson alleged at the October hearing, his alterations and additions to the front of the house, namely the porch, in violation of the front property line setback, do not make it similar to and consistent with the architectural style of the other houses on the street.

Not a single house on this segment of 43rd, nor on the entire length of New Mexico Avenue, from beginning to end, has a large front porch, violating the setback law, and a showy front.

This ostentatious monstrosity occupies what looks like the smallest lot in the neighborhood. I have not gone out and measured them. The only porch anywhere near is Hawthorne, on the old grandfathered Reston House, which is facing on to Hawthorne, and is set well back, and the porch is hidden from the street by a fence and bushes.

There is no other porch on that segment of 43rd or anywhere on New Mexico Avenue. I continue to support the Wesley Heights Historical Society and the Spring Valley Wesley Heights

Citizens Association in their objection to Mr. Sisson's failure to comply with the legal requirements of setback, and the nature of the new covered front porch at 3020 - 43rd Street.

I had a paragraph about speaking of aesthetics, and about the trash, and the leaves, and the weeds that are there, and the dead vehicle with a flat tire in the back yard and so forth, but I will skip that.

I do think that minimal care at least should be taken of those aspects of the property which affect the neighborhood. Okay. Financial concerns. I will skip that page. I do think that I have got to mention taxation.

The building of this house there, I cannot help believing had something to do with the fact that all of a sudden my assessment was increased $300,000 (sic) over the three years, and we are in that period right now. My taxes will be 75 percent higher than they were.

The legal concerns. That is just an expression of my belief that the ANC -- not the ANC, but the BZA was the ultimate authority, and in the BZA, in June of 1999, unanimously rejected Mr. Sisson's appeal and accepted mine. I thought that meant something. I thought that it was the truth, and I was a fool. I was naive.

I am concerned especially with the impact on the Wesley Heights Overlay. It seems possible now that Mr. Sisson, at the October 17th meeting, happened to have here in his pocket a

new white wash permit allowing him to go back and justify all of the things that he had done for which he did not have a permit.

When that occurred, it seems to me that if he wanted to, he could build a condominium there, with 3 or 4 units in it, or he could build a duplex, or he could build a little hotel and go back afterwards and get a permit for that.

It would never had been given to him in advance, but if somehow it is possible to get around the BZA and the law, it is possible that that could happen in Wesley Heights, anywhere in Wesley Heights.

On the 8th of April, a strange man came to my front door, and he said why are you mad at me, and I said who are you, because I had been inquiring at the zoning office downtown, and I had been calling people and trying to find out what was going on.

I was concerned because I was going to China, which unfortunately I told him. Just before I went to China, there was a stop work order. At that point, Mr. Sisson could have examined exactly what was required in permits, and where his permits were deficient, or where they didn't exist, which for the most part they didn't.

MR. BROWN: Can I interject, Mildred? That was April of 1998.

MS. CRARY: April of 1998, yes. There was a stop work order in effect before I left, and I left on the 29th of

April, 1998. At this point, he certainly knew what permits he had to have and the zoning limits applicable before he went over the head of the zoning office to circumvent them.

If he had stopped at that point and regularized his position, he would not be facing losses because of his failure to get the appropriate permits.

He has created his own hardship in the first place, and by resuming construction the week before I returned from China -- I got double-pneumonia in China and I had to come home early -- if he had examined h is position and regularized it at that point, he would not have compounded his own hardship.

When I came back, I was sick for another four months, and I was not really in a condition to be taking care of this. A little while ago, Mr. Brown asked Mr. Sisson when he got the permit for repairing the roof of the front porch.

In fact, on the 8th of July, 1998, they were digging in the front yard for that porch. I took photos of that. He got a permit -- and that was on the 8th of July. On the 17th of August, more than a month later, he got a permit to repair the existing roof.

That is to say, to repair the existing roof, which was the brand new roof on the brand new porch, for which he had no permit. He had no permit to tear down the stoop, and he had no permit to put up a porch, and he had no permit to put a roof on that porch.

But he did ask for and received a permit to repair the existing roof. That is the entire permit for the porch. And we were confused, and we didn't understand what was going on, and I asked, and apparently the zoning office was not consulted about resuming work after the stop work order.

That Mr. Sisson had gone up to the 11th floor and gotten permission up there to resume the work. At that point, I had to decide whether I was going to continue to be entangled in this and lose more money.

And I was still believing that the alley was a proper public access alley, and he had blocked it, and that diminished the value of my property value considerably. Nobody can get to my back half of my double lot without going up that alley. There is no way to do it.

There is a wall at the end of my driveway, and steps, about 10 steps going up. You cannot get back there. And on the other side there are trees. Okay.

MR. BROWN: That is a result of the garage that was built illegally there; is that correct, Mildred?

MS. CRARY: That he blocked it, yes. Yes, he blocked the alley. But the alley used to be treated as a public alley for garbage purposes and for children's sledding, and for people cutting through in order to get to 43rd Street. I thought it was a public alley.

I decided that it is better to pay my lawyer now

than over the years pay my inflated assessment without having my property actually increase, and actually having it diminish in value.

The sales value of my house when the back is entirely inaccessible is lowered.

Then another thing that bothered me, and this has to do with the Wesley Heights Overlay, he consistently wrote down that there was six feet between the side of the house and my property line.

Until you all made him have an as built survey made last spring, and that is more than two years after he started his original construction work, that as built survey showed -- he made it look as though he had five feet, which is the absolute minimum with the variances that he can get by with.

But it turned out that there is several inches, because he measured from the foundation and not from the side of the house, and that means that he was violating the Wesley Heights Overlay. I suppose that is where I should just quit. I quit. Does anybody have any questions?

VICE CHAIRPERSON SOCKWELL: Yes.

CHAIRPERSON REID: Board Members?

VICE CHAIRPERSON SOCKWELL: Sure. Mrs. Crary --

COMMISSIONER HOLMAN: Before you continue, I want to apologize, but I do have a personal emergency that I have to attend to, and I will read the record, and consider all the

testimony, and I do apologize.

CHAIRPERSON REID: And Mrs. Crary's letter.

COMMISSIONER HOLMAN: Yes. And I have read your letter twice, Mrs. Crary, and I will read it again before I consider this.

MR. BROWN: Thank you, Mr. Holman.

VICE CHAIRPERSON SOCKWELL: Mrs. Crary, your testimony has been that the house that Mr. Sisson owns has a large front porch. Exclusive of the roof of that porch, it is your testimony that the porch was reconstructed?

MS. CRARY: The old stoop, which was approximately 5 by 5 feet, and the old little, sort of a cap over the top of the stoop, a little roof over the stoop, were torn down. There was no permit for that.

He then proceeded in July of 1998 to dig and put up the large front porch, which is not only a large front porch all the way across, but projects even further towards the setback line. Is that what you wanted?

VICE CHAIRPERSON SOCKWELL: Yes. It was the testimony of Mr. Sisson that the porch was an existing condition, and that existing condition --

MS. CRARY: To repair the existing roof, which was a brand new roof on a brand new porch.

VICE CHAIRPERSON SOCKWELL: So it is your testimony that the existing original porch was removed in its entirety, and

replaced with a new full-length porch that also projected beyond the original porch foot print, or porch front property?

MS. CRARY: Yes, sir.

VICE CHAIRPERSON SOCKWELL: And that the roof was constructed on top of that porch, all of which were different from the stated extent of construction in the permits that Mr. Sisson acquired?

MS. CRARY: The only permit was for the repair of the existing roof, and it was obtained more than a month after they had actually put up the new porch and the new roof.

So the existing roof was the new roof, and that is the only permit that has anything to do with porches.

VICE CHAIRPERSON SOCKWELL: Okay. Just one other -- well, two things, and one thing in particular. You speak to the loss of access to what you perceived to be a public alley. And were you using that access on a regular basis?

MS. CRARY: On a regular basis. I went sledding with my son when we lived there when he was little. I didn't, but people regularly walked through both the De Van's yard and -- and Freda told me one time that they got a new dog. So they put a chain-linked little fence to keep the dog in, because it was not used to living there.

And she put a gate at the back end of that, and a gate on the side right above the hill which is part of my driveway, the side of my driveway. So that way people would not

feel that they couldn't walk through her yard.

Joel Buckwald told me over the telephone last week that he used to walk through my yard. They didn't go all the way around up to Harthorne, and around the corner of 43rd and so forth. They just cut through, and people did it regularly, and I thought it was a public right-of-way.

VICE CHAIRPERSON SOCKWELL: All right. But the property in effect was part of Mr. Sisson's property?

MS. CRARY: It turns out that part of what I thought was an alley is an easement, and I have been told that. There are people who live at the far end on Harthorne Street who didn't know that. They don't even know that there is an easement there.

VICE CHAIRPERSON SOCKWELL: Okay. But the easement has or has not been violated by construction or permanent fixtures?

MS. CRARY: I wouldn't know, because I don't have any data on the easement. I just meant that I had always assumed that my property could be sold to somebody who wanted to build a swimming pool, and now I see that unless they cut down the trees on the north side, they can't do it. They can't get in.

VICE CHAIRPERSON SOCKWELL: The only thing I was saying was that if there is in fact any easement that you should be aware of, and if there is no stated easement, and it could be proven that for a particularly long period of time public access

had been achieved and not restricted --

MS. CRARY: Since 1969, at least that I know of, since I lived there.

VICE CHAIRPERSON SOCKWELL: That there is actually some legal recourse. But the third question, and my last question, is that you stated that your assessment had gone up --

MS. CRARY: I'm sorry?

VICE CHAIRPERSON SOCKWELL: You stated that your assessment had increased by approximately $300,000 over a three year period?

MS. CRARY: Yes.

VICE CHAIRPERSON SOCKWELL: And that you had done no alterations?

MS. CRARY: No improvements. Well, I repaved the driveway. I had done that.

VICE CHAIRPERSON SOCKWELL: It would be my suggestion that there is relief available to you through the Board of Equalization and Review, or whatever it is called now.

MS. CRARY: I am in the process.

VICE CHAIRPERSON SOCKWELL: And the process should be --

MS. CRARY: I went through the process once before, and it took -- I had to go to the court after I went through the appeals, and I went to the court seven times, and there were four separate corporation counsel.

VICE CHAIRPERSON SOCKWELL: How long ago was that, Ms. Crary?

MS. CRARY: Oh, '89, or '88.

VICE CHAIRPERSON SOCKWELL: Well, things have changed since then.

MS. CRARY: Well, I don't have the time, or the energy, or the will to do it any more.

VICE CHAIRPERSON SOCKWELL: It might offset some costs that you have incurred with regard to this. I am just suggesting it.

CHAIRPERSON REID: Okay. Thank you very much. And the last witness.

MR. SISSON: I have some questions.

CHAIRPERSON REID: Oh, cross-examination. I'm sorry.

MR. SISSON: I have just a couple of questions. Mrs. Crary, you said there was a stop work order issued with respect to the construction on my property, which I think you instructed your attorney to obtain?

MS. CRARY: I didn't instruct him to obtain it. I had been calling down to the zoning office to find out what was going on, and they said they would send out an inspector.

And at that point, Mr. Nettler, I believe it was, he said that he could come out and look at it, and all of a sudden you stopped the work, and I was told that was because of a stop

work order.

MR. SISSON: And in fact there was a stop work order issued. Why didn't you do the same thing when the porch was under construction?

MS. CRARY: I had double-pneumonia, and I was still ill when I came back, and my doctor said that I would be ill for another four months, and he was quite right.

MR. SISSON: I see. So you --

MS. CRARY: I was ill until about October. I really finally got over it about October. I didn't have the time or energy to take care of it. It was not at the top of my list of priorities.

MR. BROWN: Madam Chair, I object to the question. He is essentially trying to blame Mrs. Crary for not catching him.

CHAIRPERSON REID: Mr. Brown, the question has already been asked and answered.

MR. BROWN: Well, I see where he is leading, and it is not Mrs. Crary's --

CHAIRPERSON REID: Well, first of all, you made your objection, and it was moot because it had already been answered. And then you are interjecting your own testimony, and basically trying to make a speculation as to what in fact the motive was, which is not appropriate right at this point.

MR. SISSON: And if I could add. And I don't mean

to make this to indicate something. But she said there was only one permit --

CHAIRPERSON REID: Well, you can question, and ask her a question, but you cannot testify.

MR. SISSON: You are not aware that there was a second permit related to the porch?

MS. CRARY: No, I was not.

MR. SISSON: You are just aware of one permit?

MS. CRARY: It is not in your application, which has copies of the permits. This is the only permit having to do with the porch. They have got xeroxed copies of the five permits, I think, or the top four anyway.

CHAIRPERSON REID: Okay. Thank you. Let's move on.

VICE CHAIRPERSON SOCKWELL: Mrs. Crary, just one question. Are you aware that in Mr. Sisson's submitted testimony that he stated that the plans were filed with the Department of Consumer and Regulatory Affairs on January 13th of 1998, and the first building permit was issued on January 29th of that year?

And while those plans showed the extent of the overall improvements to the property, which included the rear addition, two-car garage, and front porch, the phasing of the work was such that the first permit covered only the two story rear addition. Are you aware of that testimony?

MS. CRARY: No, sir, I did not know about that.

VICE CHAIRPERSON SOCKWELL: Okay. What that testimony appears to say is that he submitted documents showing all of the construction to be accomplished, but for a reason that would have nothing to do with the requirements, nor the duration of the building permits, chose not to have a permit issued for anything but the construction of the two-story addition.

MS. CRARY: Well, the first permit up here in his -- this is his document, and it is a photocopy, and the first one is dated 1/29/98, is for a two-story addition. I can't read it.

MR. BROWN: A two-story addition on -- well, it is not legible there. Cam I interject, Mr. Sockwell, and help Mrs. Crary?

VICE CHAIRPERSON SOCKWELL: Yes.

MR. BROWN: And if you go back to the appeal decision, one of the primary findings and issues that the board raised was that in fact a series of five permits were sought and issued to incrementally increase the size of this project so that a consideration at any given moment until after the project had been completed about issues involving the Wesley Heights Overlay District was impossible.

And part of this was the failing of the permit applications to be complete to show, for instance, that you are getting a permit to build the front porch after you have built it. But nevertheless trying to get a permit.

Well, you can't accurately consider the lot

occupancy issue unless you show on those plans that you have in fact built recently a garage, which in fact you built larger, substantially larger, than the permit that was issued.

Or that again for lot occupancy purposes, that you built a two-story rear addition. So what occurred is that this thing was considered in little slices, rather than the big picture.

If you look at the original January 19th, 1998 plans, at that time and in Mr. Sisson's testimony in the appeal hearing is, is that he had an integrated plan. And that he basically bit off pieces as he went along, and got what he could without the big picture review.

VICE CHAIRPERSON SOCKWELL: It would appear from your testimony, or from the testimony that has been delivered on your behalf, that Mr. Sisson's permits were -- with the exception of the first permit, were all remedial, as opposed to generally to do pieces of work independently. Or is it your testimony that most of them were remedial?

MR. BROWN: If I could go through them. The first permit was for the 2-story addition. He did that certainly. He went beyond that because before getting any other permits, build the front porch, the covered front porch.

He demolished the garage, and he got a second permit which provided for the construction of an addition to the garage. He had previously demolished the old garage and build a

new two-story, two-car garage, which then in fact substantially exceeded what he got the permit for.

The third permit was to repair the existing -- actually, the second permit was in addition to the garage, which he demolished and built new.

The third was after he got the stop work order, and was to build the new garage. That permit again substantially understated the size of the garage. He was only off on the width by approximately 10 feet and length of 3-1/2 feet, and with height, it depends on whose number you believe, but about 6 or 7 feet.

The fourth permit was to repair the existing roof over the porch, which he had in fact already built. And the fifth permit, which was actually filed after the initial BZA appeal was filed, was to finally to build a new porch, which in fact had long since been completed. The sixth permit --

VICE CHAIRPERSON SOCKWELL: Well, actually, the fifth permit was to build a new porch roof, with porch in place.

MR. BROWN: Yes. But again that is remedial in nature, because he had already built the roof over the porch. The entire porch replaced a very small stoop, and I think Mr. Watson can help explain that.

It had a little front stoop, with a couple of steps up, and a little overhang. And then he built a front porch, which at its widest almost 10 feet wide, and 41 feet long. And then he

built a roof over that.

CHAIRPERSON REID: Okay. Thank you, Mr Brown.

MR. BROWN: Have I helped, Mr. Sockwell?

VICE CHAIRPERSON SOCKWELL: Yes.

CHAIRPERSON REID: Can we move along, please, so that Mr. Watson can have an opportunity to speak, and so that we can get to the next case. Mr. Watson.

MR. WATSON: I am George Watson, President of the Wesley Heights Historical Society. I have to apologize because I have had a persistent cough and sore throat for the past three weeks. I hope that I will be able to get through this.

I have a copy of what I am going to present, although I have added a couple of things today so that I can give you an amended copy. I am also a 31-year resident of Cathedral Avenue in Wesley Heights.

My home is less than 300 feet from the property in question, at 3020 - 43rd Street. I have known the party in opposition, Mrs. Mildred Crary, her late husband, Albert, and then the three De Vans, who occupied the house at 3020 - 43rd Street that has been recently altered, for at least 28 years.

I have been a frequent guest in both homes, and I know the properties very well. As I have previously testified before this Board of Zoning Adjustment, the Historic Preservation Review Board, and Advisory Neighborhood Commission 3-D, the Wesley Heights Historical Society was established in 1989, in response to

perceived overdevelopment that threatened ot change the open, well-wooded character of our streets that add so much to the quality of life in Wesley Heights.

At that time, two small 1923 homes in the 4400 block of Klingle Street, which were among the very first that the Millers build in Wesley Heights in 1923, had been demolished, and two enormous adjoining, mirror image detached townhouses were erected on minimal R-1-B lots, and a modest, rambling Tudor Home, at 2914 - 44th Street, had been demolished and was replaced by a huge house, more than 40 feet high, that virtually filled the half-acre lot zoned R-1-A.

The neighbors immediately to the east of the two townhouses on Klingle Street sold their home, and moved to Montgomery County as a result of the intrusion on their privacy by the larger houses.

Our members therefore sponsored an overlay that was adopted July 13th, 1992 by the D.C. Zoning Commission as a means for keeping new building or additions to existing homes to a reasonable level.

We believe that ours was the first or one of the first zoning overlays in the District, and it has served as a standard for other neighborhoods to propose similar zoning overlays.

Consequently, we are interested in seeing to it that the existing zoning regulations, as well as the Wesley

Heights Overlay District, are followed by architects, developers, builders, and residential owners, and are enforced in a fair and even-handed manner by the District in a way that allows residents to make reasonable additions to existing homes, but does not impact negatively on the character of the neighborhood, or the quality of life of the immediate neighbors.

Over two years ago, Mrs. Crary told me about her concerns with the alternations that were taking place at 3020, and just before she left for an extended trip to the Orient in early spring, 1998, she asked me to examine the property with her.

We were not able to take precise measurements. It was raining, and we did not want to trespass. But based on my personal observations on that visit, I drew a sketch of the property showing the foundations that had been poured for the addition to the back of the house, and the replacement garage.

That allowed me to make some rough calculations based on the 6,563 square footage of the already non-conforming small lot published in the then current edition of the Lusk List.

Incidentally, all properties from the north side of Cathedral Avenue south in Wesley Heights are zoned R-1-A, and minimal lot size is 7,500 square feet. North of the middle Cathedral Avenue the lots can be 5,000 square feet.

I told Mrs. Crary that it appeared that the provisions at that time of the R-1-A zoning regulation, and the Wesley Heights overlay District were followed so closely in

respect to the footprint and the floor area ratio of the house itself that the architect must have had them in hand.

In addition, I noted that the side yard setback of the existing house, at least on the north side facing Mrs. Crary's property, seemed to be non-conforming; i.e., less than 8 feet. But the non-conformity was grandfathered because the home was constructed before the current R-1-A zoning was in force.

My eyeball calculations of the south side yard setback was that it was less than four feet from an irregular fence. I also noted that the garage foundation appeared to be on or beyond the property line in the private alley.

I therefore told her that there seemed to be no immediate cause for action by the Society, but that was of course before the first and second floors of the addition, and the walls of the garage were built.

After that time the very small front stoop, with a modest protective roof, was removed. And then a nearly full-width, i.e., 41 foot long, 8 foot deep, roof porch in front of the house was added, which significantly increased the footprint, and thus the construction was no longer in conformity with the Wesley Heights Overlay on the basis of either the allowed 2,000 square foot lot coverage, or the 21.3 foot front yard setback for the west side of 43rd Street.

My rough measurement is 2,390 square feet of coverage, and the plans show a 17-foot setback for a portion of

the front porch. In addition, the north wall of the new construction on the back of the house is less than 8 feet from the property line, something not clear from the poured concrete basement walls or the plans.

Mr. Brown has provided details of the measurements based on the construction plans that are on file, and those show that there is some 16 percent variance needed and that is substantial.

Because most of the lots in Wesley Heights were laid out some 70 to 80 years ago, and before the R-1-A, and R-1-B zoning regulations were adopted, some of the current lots, particularly those on corners, are smaller than the 7,500 and 5,000 square foot respective lower limits.

The Wesley Heights Overlay District recognized these special cases, and the hardship that owners of small lots faced, and therefore made special exemptions for these lots from the lot coverage limits and the floor area ratio.

The lot under discussion is 6,562.5 square feet, almost 1,000 square feet smaller than the 7,500 square foot R-1-A minimum, and therefore is permitted a 2,000 square foot print, rather than the m ore restrictive 30 percent.

The new owner, however, seeks a further allowance easing the Wesley Heights Overlay District lot occupancy limit. It is precisely for this sort of case that the neighborhood voted to adopt the overlay, and why the zoning commission concurred in

1992.

The Wesley Heights Overlay District front yard setback on the 3000 block of 43rd Street is 21.3 feet, but the newly added covered porch is 15 feet, i.e., 6 feet or more than 25 percent short of that standard.

It is the only covered porch, front porch, on that side of 43rd Street, and one of the few in Wesley Heights. There is a covered front porch immediately across the street on an 1890s vintage Waggaman farm house built in the period style prevalent in Cleveland Park and Chevy Chase.

Only five such 1890 homes still persist in Wesley Heights, but the house in question is obviously not one of them, nor is it in that 1890s style.

The zoning regulations call for a side-yard setback of 8 feet, and the existing structure is less than 5 feet. I believe the zoning regulations call for additions to conform to the full 8 foot setback when the original structure is less than 5 feet from the property line.

In addition, I note that Mr. Sisson's architect and his builder are licensed to operate in the District of Columbia. No matter what Mr. Sisson, and in previous presentations his lawyers say about Mr. Sisson's naivete, ignorance, or good faith compliance under his permits, his professional architect and builder should and indeed must have been aware of the provisions of the Wesley Heights Overlay District, and where the border

between R-1-A and R-1-B were in Wesley Heights; i.e., in the middle of the blocks on the north side of Cathedral Avenue.

As I have said, the very evidence that the original footings for the addition to the house, and the new two-car garage were very close to the Wesley Heights Overlay District limits for a footprint, and just under the FAR limits, I think shows prior awareness and not naive accident.

That was the case when Mrs. Crary and I made our measurements and estimate in March of 1998, well before the 3rd, 4th, and 5th permits were applied for, and before the porch and roof construction began.

For these reasons, the Wesley Heights Historical Society very strongly opposes the granting of the requested ex post facto variances to make legal the illegal construction. That is an insult to the Wesley Heights Overlay District, and a threat to our neighborhood integrity.

The hardships that Mr. Sisson has claimed are the only ones that he, his architect, and builder created, and should not be reasons for the BZA to reward their violation of the D.C. zoning regulations and the Wesley Heights Overlay District.

I ask you to uphold the integrity of the zoning and building permit process so that we are all operating on the same level playing field under the same rules.

And I have one little piece that I want to add. There is one footnote, which is the same point that I made several

weeks ago in a residential zoning matter about a garage in Spring Valley before you.

In our neighborhood, private residents have spent large sums on filing fees and attorney hourly charges to fight what we regard as zoning decision errors made in the DCRA. Why, I repeat, why should citizens have to spend their time and money to make city officials do their job competently? Thank you.

CHAIRPERSON REID: Thank you, Mr. Watson. Mr. Sisson, do you have any questions for this witness?

MR. SISSON: Yes, I have a couple. The first one is that you said the history of the restrictions that were imposed on the Wesley Heights Subdivision were related to houses that were one-story houses that were torn down and rebuilt, and two-story monstrosities built.

This house, however, nothing was done to the front of it. It was not raised one inch, but there was a porch added to the front; is that not correct?

MR. WATSON: You are talking about your house?

MR. SISSON: My house, yes.

MR. WATSON: Yes. And incidentally, those were not necessarily one story houses. They were small bungalow type houses. If you want, I can go into the history of the Miller Company and why they put up cheap houses in the beginning so that they could make enough money to do larger buildings.

MR. SISSON: Well, my point is that from the

street, the size, the silhouette of the house, is uncharged except for the fact that there is a porch on the front now?

MR. WATSON: From the street, that is so, with a little exception. I have always noticed that there was sort of a piece missing from the back of the house originally. I believe you have filled that in. Did you not on the south side? The roof line is now complete rather than incomplete?

MR. SISSON: I'm sorry. I don't remember. You may be correct, but I don't remember. My second question was that you mentioned the distance from the street to the porch on my property, but did you happen to notice what the distance from the street to the front of the house was on the adjoining property to the south?

MR. WATSON: All the other properties are more or less in that same general range.

MR. SISSON: They are about 15 feet from the street?

MR. WATSON: Yes. None of those, however, are additions to the front of the house, and none of them are covered porches. All of those houses have the front stoop of the same sort that your house originally had.

MR. SISSON: So you are saying that it is the front of the houses of all the other houses that is within 15 feet of the street, and not just the front porch?

MR. SISSON: I have to explain what that front yard

setback is based on. We took measurements of every single one of the 523 houses in Wesley Heights.

Those were then averaged for each individual street or section of street, and it was the average of those back at the time that the zoning overlay was adopted that formed the front yard setback that is required under the Wesley Heights Zoning Overlay.

MR. SISSON: Thank you.

CHAIRPERSON REID: Okay. Thank you very much. Mr. Sisson, do you have closing remarks?

MR. SISSON: Yes.

CHAIRPERSON REID: All right. Mr. Brown, would you and your witnesses please take a seat on the first row and let Mr. Sisson conclude.

MR. SISSON: Yes, I do have a few points. Again, I think that I have never tried to deny that I am in an awkward position here, in the sense that I am trying to get a variance on something that has already been built.

I would like to hasten to add in my defense that I didn't realize that I was doing anything illegal. I did procure permits, and I was assured that the permits were valid. They were obtained from the District of Columbia to do all the work that was done on my property.

And so that at each stage, I attempted to comply with the law. It was only after the fact that I discovered that

the construction was in fact in violation of the zoning regulations, and I want to apologize to the board for this.

I did not in any respect have that intent. But I do want to say that I do think that I have a strong case for the board to approve my application for the variances relating to this porch.

I think I have tried very hard to show that the three part test for the variances to be issued have been met. I did say that the subject site was affected by extraordinary or exceptional conditions, in the sense that I did have what I thought were valid building permits when I did the work.

No one raised any objections to the construction when it was taking place, and even though there had been a stop work order issued early on, I was able to get a revised permit and proceed.

When it came to the porch, I got a permit and I thought it was correct, and I relied on my architect and my builder to do so. I found discrepancies in it, and I went back and asked for a second permit which I thought did address the issues correctly.

And it was only after all the construction was complete that there were any issues raised regarding the construction of the porch. It would have been far easier to deal with this problem if I had been or if these difficulties had been raised in the process of construction, rather than waiting until

the end.

Second, I have no doubt that the strict application of the zoning regulations will cause me practical difficulties, because the design of the building itself is integral to the construction of the porch.

I added a stone facade relating to the construction of the porch, and that if the roof has to be demolished, I will have to reconsider the entire design of the porch.

And, third, I strongly believe that the requested variance relief can be granted without detriment to the public good, and without substantially impairing the intent, purpose, and the integrity of the zoning plan.

It is a beautiful house, and I have a photograph. I don't know if I can introduce it to you now. But I have in fact three photographs, one which shows the house as it is, in the context of the neighborhood.

The second, which I think shows the fact that the house is no closer to the street than the houses to the immediate south of my house; and, thirdly, that the appearance of the house from Mrs. Crary's house has not changed, in the sense that the porch is essentially the same shape, and size, and silhouette, as the stoop which was removed to construct the porch. Can I introduce these photographs?

MR. BROWN: I object. We are in the rebuttal closing phases ,a nd he is introducing new evidence. It will

never end. I have not seen those photos.

CHAIRPERSON REID: Thank you, Mr. Brown.

MS. SANSONE: Madam Chair, in rebuttal, the applicant could introduce evidence in rebuttal to the opponents presentation. However, Mr. Brown would be allowed to cross-examine as to those photographs, or as to anything new in that regard.

CHAIRPERSON REID: Okay. Mr. Brown --

BOARD MEMBER RENSHAW: Madam Chair, there is a photograph in our material --

CHAIRPERSON REID: Do we have any photographs?

MR. SISSON: These are photographs that I just took a couple of weeks ago.

BOARD MEMBER RENSHAW: Tab 4, page one.

MR. SISSON: Well, you have some photographs, but they are not wide-angled that give a better dimension.

MR. BROWN: I think the photos are instructive. They show the abandoned vehicle and the poor condition of the property Mr. Sisson has. I would like an opportunity to cross-examine him on that. I think we ought to move on.

CHAIRPERSON REID: So we are going to accept it?

VICE CHAIRPERSON SOCKWELL: What is the photograph of, Mr. Sisson?

MR. SISSON: There are three photographs. One is a wide-angle photograph of the area, of the immediate vicinity,

showing the house in the context of the two neighboring houses.

The second photograph is one taken down the street which shows that my house is no closer to the street than any of the other houses.

And the third one is a photograph which looks past Mrs. Crary's front door to show you how obstructing the porch is from her perspective.

VICE CHAIRPERSON SOCKWELL: I don't think they are necessary myself, Madam Chair. I think we have enough information in our files.

CHAIRPERSON REID: Do we have them already?

MR. BROWN: They are right here, and the file in this case is replete with plenty of photos, including Mr. Sisson's prehearing statement.

CHAIRPERSON REID: I have no problem with them. Did you want to cross-examine him on those photos?

MR. BROWN: I think it would be simpler -- they are repetitive, except for issues that I don't think Mr. Sisson wants to get into. I think they quite frankly distort. They are panoramic in nature, and they distort the characteristics of the area.

And in some respects also point out the enormity of the front porch in context, and they also -- they can come in. I think the board will see them for what they are, including the abandoned commercial vehicle in Mr. Sisson's back yard of the

vacant property.

CHAIRPERSON REID: All right.

MR. SISSON: I would then hand them to you. Anyway, I urge you to act expeditiously in approving the variance request, and I do appreciate the opportunity to appear before you here today. Thank you very much.

CHAIRPERSON REID: Thank you. Mr. Sockwell, you had a question?

VICE CHAIRPERSON SOCKWELL: Yes, Madam Chair.

MR. BROWN: Madam Chair, can I take the opportunity while Mr. Sockwell is formulating his question to ask Mr. Sisson a question about the photo?

CHAIRPERSON REID: Okay.

MR. BROWN: And I don't know how to describe it, but the commercial vehicle parked in the back, does that vehicle belong to you?

MR. SISSON: No.

MR. BROWN: Is it abandoned at the property?

MR. SISSON: No.

MR. BROWN: Who does it belong to?

MR. SISSON: A friend of mine. He is just parking it there for a short time.

MR. BROWN: Is the vehicle in operating order?

MR. SISSON: I'm sorry, I am not quite sure what this has to do with the variance.

VICE CHAIRPERSON SOCKWELL: Mr. Brown, the vehicle doesn't have any relationship to the porch does it?

(No audible response.)

CHAIRPERSON REID: No. Okay. Let's move on. Now, Mr. Sisson, have you completed your closing remarks?

MR. SISSON: I have indeed. Thank you, Madam.

VICE CHAIRPERSON SOCKWELL: I am not going to ask a question.

CHAIRPERSON REID: Let's see. Mr. Watson was a party in opposition?

BOARD MEMBER RENSHAW: Yes.

MS. PRUITT: I don't believe so.

CHAIRPERSON REID: Do you have party status, Mr. Watson?

MR. WATSON: I don't have party status, but I am a neighbor.

CHAIRPERSON REID: Okay.

MR. WATSON: We have had Mr. Brown as an attorney for us on other cases.

CHAIRPERSON REID: All right. Mr. Sisson, two of the board members, Mr. Moulden and Mr. Holman, had to leave. So what we will do is then consider this case at our next regularly scheduled board meeting, which will be January 2nd, and at that time, we will make a decision as to this case.

MR. SISSON: Thank you, Madam Chair.

CHAIRPERSON REID: January 2nd, Mr. Brown, and Mrs. Crary, and Mr. Watson, will be the time that we will make a decision. There is no requirement that you be here on that date. You are welcome to come. It is a public meeting.

You cannot participate, but you are certainly are welcome to be here if you wish. Thank you.

MR. BROWN: Thank you, Madam Chairman, and Members of the Board.

CHAIRPERSON REID: All right. Okay. The last case of the afternoon.

MS. BAILEY: Application Number 16618 of The Phillips Collection, pursuant to 11 DCMR 3103.2, and 3104.1, for variances under Subsections 402.4 and 403.2, and 400.7, and 2001.3, from the maximum allowable floor area ratio, from the maximum allowable lot occupancy, and from the enlargement of nonconforming structures, and for a special exception under Subsection 411.11 for location of roof structures and for a special exception under Subsection 2516.1, for two or more principal structures on a single lot to permit improvements and the expansion of the museum in the D/DC/R-5-B and DC/SP-1 Districts at premises 1600 - 21st Street, Northwest, and 1618 - 21st Street, Northwest, Square 66, Lots 74, 819 and 827.

All persons wishing to testify, would you please stand and take the oath. All those persons wishing to testify in this case, please stand to take the oath.

(All witnesses were sworn.)

CHAIRPERSON REID: Thank you.

MS. BAILEY: Madam Chair, if I could just make a few comments before the case begins if that is okay.

CHAIRPERSON REID: Yes.

MS. BAILEY: Okay. We have already discussed that a Mr. Stephen Gell will be representing several of the neighborhood residents in this case. Mr. Gell, I think, had indicated that there will be eight residents that he will be representing.

He has submitted a letter and there are 11 persons on that letter, and so I am sure that he will clarify what persons may not no longer need party status.

Chris Collins, of Wilkes Artis, has also represented the Cosmos Club, and I think he has indicated that he will be speaking in favor of the application. There was some discussion earlier that the Republic of India would be requesting party status.

They had originally requested party status, and if I am not mistaken, there was some discussion that that request has been withdrawn. I don't have a copy of that letter, but I am assuming somehow it will get into the file, or perhaps that is something that the board may want to clarify.

And as you know, Members of the Board, ANC-2B is automatically a party. The Dupont Circle Citizens Association

have not requested party status. The organization has written, however, recommending denial of the application.

I think we talked about the Office of Planning, and there is no need to go over that. This case was last heard -- well, it was not heard. On October 24th, the Board took the case up and decided to continue it today. So we are starting afresh.

And I think that at the onset the establishment of party status would be where we would start.

CHAIRPERSON REID: Thank you. And also thank you all for your indulgence. I know that this has been a long day. However, as you can see, you can never anticipate how long a case is going to take.

Now, let's start with the party status, and I want to get an idea as to how long the applicant thinks they need for putting on their case?

MR. CAIN: Madam Chair, not counting cross-examination and redirect if you permit it, we are going to try to stick to an hour as best we can.

CHAIRPERSON REID: Okay. So you think you need one hour?

MR. CAIN: I think we do to fully explain our case.

CHAIRPERSON REID: Okay. Now, let me ask you a question. What is your name again, sir?

MR. CAIN: Michael Cain.

CHAIRPERSON REID: And, Mr. Cain, how many witnesses are you calling?

MR. CAIN: We will call three witnesses, Madam Chair.

CHAIRPERSON REID: All right. Is there any way that you can shorten it?

MR. CAIN: Well, we are not trying to drag it out, but we want to make sure --

CHAIRPERSON REID: I know. But given the lateness of the day, as much of the information that is already in the record and that has been submitted, we have it in writing, and certainly you could stand on the record.

So the other salient points and pertinent parts then you may want to give us, so that way we can get through your part and then there is the persons in support, and then we have -- the ANC is not here, and neither is the Office of Planning, and so we don't have any government reports today.

MR. MICONE: Madam Chair --

CHAIRPERSON REID: Now, I am hoping -- oh, I'm sorry.

MR. MICONE: -- I am the ANC Commissioner.

CHAIRPERSON REID: Oh.

MR. MICONE: My apologies to the Board. I work for a Federal Agency and our secretary required me to be at a meeting. So I had to attend that.

CHAIRPERSON REID: And you are appearing in opposition?

MR. MICONE: Correct.

CHAIRPERSON REID: Well, I would bring you up to date then. We talked about continuing the case because of the fact that you did ask for a delay based on the fact that you wanted to get together with the opposition and try and reconcile their differences, and so forth, and so on.

However, for various reasons, we decided to move forward today. But we are not going to -- we don't think we can finish the case today. So we want to try to get through as much as possible today, and conclude on January 9th, at which time to give you time to perhaps meet with the opposition or the applicant, and try to mitigate whatever differences you have, or come closer to some understanding.

And then you can submit your report then at that time, or you can give it today. It is up to you.

MR. MICONE: Okay. I think the ANC is on record of opposing at this time. We received a parking report, which would have been the basis for any negotiations on the 17th or so, and that report was finished.

And so with the Thanksgiving holiday, we didn't have time to analyze the results of the applicants parking and traffic report, which would be the basis for a voluntary agreement or covenant if we were able to negotiate one.

And we would want to work as well not only as the Commission, but with the neighbors in-hand. So at this point, we are in opposition, and we also don't want to hold the case from going forward, because it is our understanding that both the applicant and Mr. Gell's group wish to have the case heard.

CHAIRPERSON REID: And so you are now saying that you have gotten the information that you needed so that you can give a report?

BOARD MEMBER RENSHAW: That he cannot.

CHAIRPERSON REID: You cannot?

BOARD MEMBER RENSHAW: No, they have not had time to analyze.

MR. MICONE: We finished analyzing, and the ANC took a vote, and we are opposed at this point.

CHAIRPERSON REID: After having analyzed it?

MR. MICONE: Based on what we received, yes. We are prepared to give a report, and we could enter into further negotiations.

CHAIRPERSON REID: Okay. So how many people are going to testify in opposition?

MR. GELL: We have about seven, I think.

CHAIRPERSON REID: Oh, okay.

MS. PRUITT: Madam Chair, I was wondering if you are going to establish time frames for individuals and organizations so that people can kind of be aware and gear their

testimony to that.

CHAIRPERSON REID: Now the only reason we are going to January 9th is because of the Office of Planning report, right, and the ability to be able to cross-examine the Office of Planning?

MS. PRUITT: Correct.

CHAIRPERSON REID: So we still have to do that anyway.

MS. PRUITT: Correct, but then this way people can prepare. It is four o'clock, and I don't know how far we can get. We still have party status, and then once the number of parties are determined, they need to then determine how they are going to divide the time that you allot them.

CHAIRPERSON REID: Okay. Then we are going to take a five minute recess before we start, and then we can just keep on going, as we don't know how long it is going to take.

Hopefully at around 6:00, we can then make an assessment, but hopefully we will get to a good point that will allow us to be able to stop at around six o'clock. We will be right back. Thank you.

(Whereupon, the hearing was recessed at 4:02 p.m., and was resumed at 4:09 p.m.)

CHAIRPERSON REID: What we will do is have the staff set forth a time line, and then we will do the parties, and then we will proceed with the applicant's case.

MS. PRUITT: Okay. As indicated by the applicant, they need an hour; and generally then the parties in opposition have collectively an hour. And once you have determined your party status, then it will be up to them to determine how they want to divvy up the hour.

Groups will have five minutes to testify, and individuals will have three minutes to testify. So hopefully you can gear your testimony to those time frames so that you can get your pertinent information out.

CHAIRPERSON REID: And we would ask that you not be redundant, and if someone has already said what you wanted to say, or has voiced your position, then simply echo -- just simply say that you echo the previous speaker's position, and not be repetitive so that we can kind of move things along.

Now, party status. Those persons requesting party status, and those persons are in opposition. The ANC is an automatic party in the case.

MR. GELL: Thank you, Madam Chair. By a letter of December 5th, which was actually a revision of an earlier letter we had done before the earlier scheduled time for this hearing, we submitted actually 12 names. I think 10 of them are here.

CHAIRPERSON REID: Okay. Of those 12 people, for some reason they are asking for party status because they are more aggrieved than anyone else in that community?

MR. GELL: Each one has a different -- well, I

would say a different uniqueness, a different reason why they want party status. Some obviously are closer to The Phillips than others, but each one does have something that they would like to put forth in party status.

CHAIRPERSON REID: Each one has something different?

MR. GELL: That's right. They believe they do, and I will just present them and the board can decide whether they agree or not.

MR. CAIN: Madam Chair, before Mr. Gell gets into the specifics of that, I have an objection. This December 5th letter is not something that has been shared with us.

It is our understanding that at least 14 days prior to the hearing that the parties are supposed to make their intentions known of their desire to seek party status. The last indication that we had was October 10th, wherein eight individuals or families were identified.

And we were prepared to talk about them, and consider some of them without objection, and some with a question.

CHAIRPERSON REID: I'm sorry, Mr. Gell, but you had a new person?

MR. GELL: We do have a couple of new persons, yes.

CHAIRPERSON REID: That came in subsequent to the 14 days?

MR. GELL: That's correct. No, this was 14 days

before this hearing. It was filed --

MS. PRUITT: Madam Chair, maybe I can clear this up. On your Exhibit Number 47, dated November 21st, it was filed on November 21st. Those are a request for parties. I believe that these are the people that you are referring to requesting party status.

MR. GELL: I'm sorry, you're right. November 21st.

CHAIRPERSON REID: November 21st?

MS. PRUITT: Yes. In Exhibit 47.

MR. CAIN: We read that letter as simply identifying potential witnesses, and not adding individuals to the October letter requesting party status. Of course, that is relevant going forward in the event that somebody wants to note an appeal from whatever the Board's ruling in this case is.

CHAIRPERSON REID: Well, there are two letters on November 21st. One is the one that they ask -- well, from Mr. Gell, asking that the application be denied. And the other one is the request for party status.

MR. CAIN: Madam Chair, I have just been handed a copy of that letter, and I would refer you to page two. This letter was not served on us, and as one of only two parties in the case on November 21st, the other being the ANC, I would object to the receipt of this letter.

MR. GELL: Madam Chair, we were not parties at the

time, and I realize that is a technical point, but I think it is applicable here.

CHAIRPERSON REID: Wait a minute. Let me understand. I am not following you. You are objecting to the fact that they filed late?

MR. CAIN: I wold say that they filed late just under the counting rule, because I don't think November 21 is 14 full calendar days before the hearing.

But, secondly, I am objecting because up until this minute I didn't know who these extra people were that are asking for party status.

CHAIRPERSON REID: I'm sorry, but which people are extra? Which people are over and above those that were initially submitted?

MR. CAIN: Well, just a quick scan of the letter, it looks to me like the last three, the Missionaries of Africa, Mr. Hurteau, and Mr. McMahon, are newly identified as potential parties.

CHAIRPERSON REID: All right. Those are the three new people?

MR. GELL: That's correct.

CHAIRPERSON REID: Has it been 14 days?

MR. GELL: We got it in on time, and it wasn't my understanding that we were supposed to -- since we weren't parties, that we had no obligation to send it to anybody except to

the Board.

And obviously Mr. Cain did get copies from the files, because he had the other letter. I regret that he did not get or see that particular letter.

MR. CAIN: I had the other letter, but not this letter.

MS. SANSONE: Madam Chair, until the parties are identified that are requesting party status, they don't have an obligation to serve anyone else with their request.

CHAIRPERSON REID: Well, I think that the point that is being made here by Mr. Cain was that he was saying that it had not been 14 days.

MR. CAIN: Well, that is the technical objection. I didn't know about these people.

CHAIRPERSON REID: Right. But I think the point that Ms. Mitten is making is that the persons who are being requested, requesting party status -- Ms. Pruitt, does that have to be served on the applicant or --

MS. PRUITT: No, they are not parties yet. They can request party status, but until --

CHAIRPERSON REID: I follow you. I have you. In other words --

MS. PRUITT: -- you grant it to them --

CHAIRPERSON REID: -- they didn't have to do that because of the fact that you are not yet a party. Okay. So let's

move forward.

MR. GELL: I might just say that it was an oversight. We were not intending to withhold any information or to make life more difficult for Mr. Cain.

CHAIRPERSON REID: Well, I think we all understand. All right.

MR. GELL: The first person on the list is Solange MacArthur-Mulle, who lives two doors from The Phillips, at 1628 - 21st Street. The rear of her house is also on Hillyer Court, and so she is affected not only by what happens on 21st Street, but by the alley behind The Phillips. And she has particularly asked for the right to have party status. Shall I go on?

CHAIRPERSON REID: Is her house the only house back there?

MR. GELL: There is another house, which is actually right next to the expansion of The Phillips, which has a garage in the back, and has access problems as well.

CHAIRPERSON REID: All right. Again, this situation is not unique as there are other houses back there.

MR. GELL: Can I have her come up?

MR. CAIN: We have no objection to Ms. McArthur-Mulle.

CHAIRPERSON REID: How it is unique and how are you more aggrieved than anyone else?

MS. MACARTHUR-MULLE: I am Solange MacArthur-Mulle,

and I live at 1628 - 21st Street, Northwest, and if the museum expansion or the new art education center replaces the residential apartment at 1618 -- in other words, if this happens -- my family will have the last and only non-institutional residence on the block, which depends on access to the alley that is called Hillyer Court.

CHAIRPERSON REID: Okay. All right. Next.

MR. GELL: The next is Richard and Ingrid Suisman, who live directly across the street from The Phillips on 21st Street.

CHAIRPERSON REID: Do other people live right across the street, too?

MR. GELL: Well, of course, The Phillips takes up most or almost half of the block.

CHAIRPERSON REID: Right. But again --

MR. GELL: So parts of The Phillips will impact different people, and I am not sure how you can pick one person who lives across from The Phillips to say that only they should have party status.

CHAIRPERSON REID: No, I didn't say that. If everyone who lives across from The Phillips would be affected, then no one gets party status. Everyone would have the same problem.

MR. GELL: I would suggest to you that each one has a different problem with the way The Phillips operates. If a bus

is parked in front of the Goh Annex, that may affect the party directly across from the Goh Annex.

If a bus is parked in front of the old building, it may affect somebody who is across from the old building. Then we also have somebody who lives across from the expansion space who would be differently affected by that.

They would also be affected by the views out their window. Each one would have a different view differently affected by the expansion of The Phillips.

So I would suggest that Mr. and Mrs. Schussheim, who live across from the apartment building that is going to be acquired, and Mr. and Mrs. Suisman, who live directly across from a portion of The Phillips further down. Both of those are on 21st Street, and have or should be granted party status.

CHAIRPERSON REID: Okay. Here is the problem that I am having with this, and that is that the idea of party status is for people who will be more aggrieved than everyone else now.

Now, the fact that you have different people who have a different grievance to me does not constitute the premise of being more aggrieved than anyone else.

If the three of us are sitting here and we are across from a building, and Ms. Renshaw is affected by noise, and Mr. Sockwell by smoke, and I am affected by light, then we all have a grievance, and we all have a problem with the project, even though it is different.

But it's not that either one of us has anything that is -- well, we are all affected, and that is the whole idea of party status, something that is unique and different from everyone else being affected.

And so what I have here is different people saying that I am affected because of this and that. The idea is that if everyone is going to be affected some kind of way, but who is it there that has some problem that no one else has.

MR. GELL: Well, I suggest to you that if you hold too carefully and too closely to that, that it is going to be very rare that you grant party status to anybody.

CHAIRPERSON REID: Well, that's the whole point. You see, what is happening, and it is not directed at you, but what is happening is that we are getting so many people coming in and saying, well, I am affected, and this is how I am affected.

But the point of the matter is that party status is supposed to be reserved for those persons who have something that is so unique and different than anyone else, and more aggrieved than anyone else.

All these people are aggrieved, but who is more aggrieved than anyone else.

MR. GELL: Well, Mr. Suisman is preparing to --

CHAIRPERSON REID: Or who would be more aggrieved.

MR. GELL: Right. But Mr. Suisman is prepared to give you a great number of pictures of things that happened

directly across -- and in fact pictures that he took out of his own window, and that is near the alley, which is very much the source of the trouble, because the alley gets blocked up, and that blocks up 21st Street.

I really think that people that live this close to The Phillips ought to be considered differently from people who live a few blocks away, and who may also be affected by the 21st Street traffic problem.

But not in the same way, not as uniquely as people who live directly across the street. I don't know that there is any objection to these folks who live directly across the street.

CHAIRPERSON REID: Okay. Go ahead.

MR. GELL: I would also suggest that the Missionaries of Africa, who live directly next door to the expansion, and who also have specific problems with cutting off light and air to their garden, with privacy issues, are affected in a very different way from everybody else, and that they ought to be given party status as well.

Norman Ristin lives -- there are several people who live on Hillyer Place. Now, Hillyer Place is a street that very often trucks and buses that get diverted away from 21st Street, because it is always

-- because it is so commonly blocked up with deliveries to The Phillips, Hillyer Place takes a great brunt of that backup traffic.

And people are here who will be able to talk to what has happened to them and to the quality of life on their street. They are also within the 200 feet. I think most of them are.

And that applies to Norman Ristin, Michelle White, Dorothy and Susan Dunn, and I believe that is Hillyer Place.

Carole Ridker owns a portion of the building that Mr. Suisman lives in, and if Mr. Suisman is given party status, it seems to me that she ought to as well, but it is one building.

CHAIRPERSON REID: What is her name?

MR. GELL: Carole Ridker. Most of these people will be testifying, and they are all by the way represented by me, and their testimony will be coordinated so that you won't get a lot of repetition. We have been very, very careful to try and keep any sort of repetition to a minimum.

Donna Hayes lives on Q Street, as does Joseph McMahon, and Q Street has another problem, and that is that much of the bus and car traffic is going to be diverted to that if The Phillips gets its way, or not to put it that way, but if their plan is accepted for diverting the bus traffic to Massachusetts Avenue, some of that will also affect them on Q Street.

In addition, Mr. McMahon has told me, although he is not here right now as he had to be out of town, but he has told me that in the back of his house that he has a clear view of The Phillips, and that he has been bothered many times by the

activities at The Phillips.

And Mr. Hurteau, who is also here, lives a little further down the block at 1705 - 21st Street, just a block from The Phillips. That's the group, and I would urge you to grant party status to as many of those people individually as you possibly can.

I think that since I am the one who is going to be receiving any communications from other parties since I am organizing their testimony, I don't think the impact on this board is going to be any greater by granting them party status than if you did not. And I would urge you to be as lenient as possible.

CHAIRPERSON REID: Okay. You basically are going to represent all of these people who are granted party status, and you are going to do the cross-examination only?

MR. GELL: That's correct.

CHAIRPERSON REID: And they will be given three minutes to testify.

MR. GELL: If there is an urgent need for somebody else to ask a question, I would ask them to ask it through me, and try to avoid that.

CHAIRPERSON REID: Wait one second.

(Brief Pause.)

CHAIRPERSON REID: All right.

MR. CAIN: Madam Chair, before you rule, may I have an opportunity to speak?

CHAIRPERSON REID: Yes, please.

MR. CAIN: I don't know if you are ready for me yet. There are a couple of technical things that I think you may need to satisfy yourself about, but let me just address the last point that Mr. Gell made.

As you know, party status carries with it more than the right to ask questions at our hearing. It also carries with it the potential right to file an appeal to the next level, at which time the group may or may not hold together, and Mr. Gell may or may not continue to represent those folks.

CHAIRPERSON REID: Okay. Before you go any further, Mr. Cain, let me clarify something. My understanding is -- and we had this come up before, but Ms. Sansone or Ms. Pruitt, just because a person

-- does a person have to have party status to file an appeal?

MS. PRUITT: For the Court of Appeals, yes.

MS. SANSONE: No, Madam Chair. This came up before.

CHAIRPERSON REID: This did come up before, because people were asking so that they could file an appeal, and I think it was determined that you don't have to have party status to file an appeal.

MR. CAIN: They do have to have some connection with the case earlier on, I believe. They have to be adversely affected or aggrieved, and I submit to you that it is a lot easier

when you are a party to make that standing argument in the Court of Appeals than it is otherwise, but that is a point for your consideration.

CHAIRPERSON REID: Okay.

MR. CAIN: As a technical matter, I would request Mr. Gell to make a representation. When we did our ownership list of the tax rolls, we found that we didn't have some of these folks listed at the addresses that they are identified in, the filing, and I would ask if there is a representation that they are in fact the owners of those properties.

CHAIRPERSON REID: Are these all owners, property owners?

MR. GELL: I have been told that they are. If any of them are not, and would stand up and tell me differently, then --

CHAIRPERSON REID: Everyone who is applying for party status, they are property owners?

MR. GELL: I believe everybody is here, except Michelle White; Mr. and Mrs. Dunn, and Mr. McMahon. Everyone else is here, I believe.

MR. CAIN: As you know, we had to work from the tax rolls, and that question needed to be raised.

CHAIRPERSON REID: All right.

MR. GELL: Excuse me, Madam Chair, but I am advised that the Missionaries of Africa are a corporation which owns the

property, and so the individual that is here is representing the corporation, but is not himself considered an owner.

MR. CAIN: That's not an issue for us, Madam Chair.

CHAIRPERSON REID: All right.

MR. CAIN: The final consideration is the distance of some of these folks from the point of the application. One individual is at 2234 Q, which is more than a block to the west, and one other individual lives closer to 20th Street than 21st Street on Hillyer.

So I would just ask that you satisfy yourselves that their physical proximity is --

CHAIRPERSON REID: Can you tell us who those people are?

MR. CAIN: Sure. Ms. Hayes is at 2234 Q, and Ms. White is at 2014 Hillyer Place.

CHAIRPERSON REID: And they are supposed to be within 200 feet of the subject property?

MR. CAIN: They are beyond 200 feet.

MS. PRUITT: Excuse me, Madam Chair, the 200 foot rule is not a precursor for party status. That is up to the Board to determine whether or not the proximity.

CHAIRPERSON REID: That rule does not apply here.

MS. PRUITT: It only goes for notice.

CHAIRPERSON REID: All right. Let's try to get through the party status first.

MR. GELL: If I can find out from Ms. Hayes if she cares about party status, and perhaps she doesn't, and we can drop her name out.

CHAIRPERSON REID: Okay. Is there anyone else who doesn't care about party status?

MR. GELL: Michelle White, I realize, does live further away than some of the others, and unfortunately she is not here. But I think we can drop her from party status. I really want to get into the meat of the case as quickly as possible, both for your purposes, and also ours.

CHAIRPERSON REID: Okay. Now, I don't know how the other board members feel about this, but from what I can garner from what we have been told so far, the people that I feel would be best candidates for party status would be Morton and Hanna Schussheim, Carole Ridker, the Missionaries of Africa, and that's all. Those three.

MR. GELL: Mr. and Mrs. Suisman also live directly across.

BOARD MEMBER RENSHAW: And Solange MacArthur-Mulle.

MR. GELL: And I thought that you had told her that she would be all right.

MS. PRUITT: The board has not made any determination yet.

CHAIRPERSON REID: No, the only person I talked to was Ms. MacArthur-Mulle on Hillyer.

MS. MACARTHUR-MULLE: No, on 21st.

CHAIRPERSON REID: I'm sorry. Wait a minute. Okay. The Suismans as well. And everyone else I feel have an opportunity to testify in opposition. However, I really don't see how there is any sizeable amount of them being aggrieved more than anyone else. I don't know how the other board members feel about it.

MS. MITTEN: Is that five people then we have identified, or five individuals?

CHAIRPERSON REID: No, four, four individuals. Well, there are two couples.

MS. MITTEN: And what is your feeling about Ms. MacArthur-Muller? I think her representation was a valid one.

CHAIRPERSON REID: Yes, but Hillyer Court and Hillyer Place, are they adjacent to each other?

MR. GELL: Hillyer Court is the alley behind The Phillips.

MS. MITTEN: If you could point that out to us on the map that would be helpful to us.

CHAIRPERSON REID: Hillyer Place is a Street, and Hillyer Court is right behind it. All right. And I did say yes to her.

MS. PRUITT: Madam Chair, you have a plat showing that, and it may be a little easier for you all to read.

BOARD MEMBER RENSHAW: Mr. Gell, could you put a

little flag on the people who you are recommending as far as getting party status, or who is being requested, so that we can see their location.

(Discussion off the record.)

MR. CAIN: Madam Chair, with regard to at least the first list of people, I did plot them out and I have a little site plan, and maybe it will help and maybe it won't.

CHAIRPERSON REID: I'm sorry, I though that is what he was doing right here.

MR. CAIN: It is not going to show all the streets unfortunately.

MR. GELL: Richter and Suisman are here across from the Goh Annex.

CHAIRPERSON REID: Okay.

MR. GELL: Schussheim is here. I thought he was directly or diagonally across from the education center, but I am told he is here. The Missionaries are here next to the education center, and MacArthur-Mulle is here and here on the alley and next to the Missionaries.

CHAIRPERSON REID: Wait a minute. I thought MacArthur-Mulle was on Hillyer Court.

MR. GELL: Well, Hillyer Court is right here. So she backs up right on to Hillyer Court.

CHAIRPERSON REID: Okay. Where is her house?

MR. GELL: The front of her house is here, and I

think the garage is back here.

MS. MACARTHUR-MULLE: The property is the main house that fronts on 21st Street, with the garage and carriage house, which is part of all of the same house, that backs out on to the alley. So it has a front on 21st, and a back, and we use both.

CHAIRPERSON REID: Where is your house?

MS. MACARTHUR-MULLE: This whole thing is my house.

MS. PRUITT: Madam Chair, the new information which we gave you, actually she is number three on here, and this is a larger, more detailed, map. It may help you locate it easier.

VICE CHAIRPERSON SOCKWELL: But your new information does not show the alley system as it exists. Something is wrong.

MR. CAIN: Mr. Sockwell, just to clarify that. The alley is subject to an easement on the lower end, and so it would not show up on the tax map, which is what this is, but that's why it is on the site plan.

VICE CHAIRPERSON SOCKWELL: Well, you see, there is something that goes through to Florida Avenue, and I see that. Then it goes up there and the separations don't show up here. It is property descriptions, as opposed to connections.

CHAIRPERSON REID: Right here it has her property as being one parcel.

VICE CHAIRPERSON SOCKWELL: This is just showing

the massing of buildings as gray area.

CHAIRPERSON REID: But she is showing that she has something across that alley.

BOARD MEMBER RENSHAW: And that is that whole square here.

MS. MACARTHUR-MULLE: The whole lot is Lot 66 on some of the maps.

VICE CHAIRPERSON SOCKWELL: You see, that map does not show any lot designations. It just shows buildings, and therefore you can't tell where the property begins or ends. You are just looking at her combined main house and then the attached adjacent construction, which looks like it actually includes part of your property and part of somebody else's in that mass.

MS. MACARTHUR-MULLE: No, it is all one.

VICE CHAIRPERSON SOCKWELL: It is all one mass?

MS. MACARTHUR-MULLE: It is a carriage house, a funny shaped carriage house, and is part of the big house, and we have a very small courtyard between the big house and the carriage house, and there is a bridge that goes across the two.

CHAIRPERSON REID: So what comes up there from The Phillips Collection building?

MS. MACARTHUR-MULLE: I'm sorry?

CHAIRPERSON REID: How are you affected?

MS. MACARTHUR-MULLE: As I said, we are the only single-family house and the only non-institution residence.

CHAIRPERSON REID: So does somebody come back up in the alley behind your house?

MS. MACARTHUR-MULLE: Oh, yes, all the time.

CHAIRPERSON REID: What?

MS. MACARTHUR-MULLE: Trucks. People park there. They love this cul-de-sac.

CHAIRPERSON REID: They have to come down there to get out on Florida Avenue?

MS. MACARTHUR-MULLE: Yes. They come in here and back there.

MR. GELL: Madam Chair, would it be helpful at all if I were to agree to your list, the list that you enunciated? I don't know if the other board members would. I don't want to spend too much time arguing over other people.

CHAIRPERSON REID: What is your question?

MR. GELL: Would it help any if we simply agreed to your list that you enunciated?

CHAIRPERSON REID: Yes, that would help.

MR. GELL: All right. That would include Ms. Muller, Mr. and Mrs. Schussheim, Mr. Suisman, Ridker, the Missionaries --

CHAIRPERSON REID: And that's it. That would, because as I can see it, as far as I can see, everyone else is pretty much -- even though there may be some particular adverse impact or some way that they are affected, but so is everyone else

in there.

MR. GELL: I am very conscious of people's time here, and want to move things along.

CHAIRPERSON REID: Board Members, is there any objection, or do you have anyone else you want to add to that or take away from that list, and if not, we can move on.

So, Morton and Hanna Schussheim, Solange MacArthur-Mulle, Richard and Ingrid Suisman, Carol Ridker, and then the Missionaries of Africa. If we can agree on that, then we can move forward.

MR. GELL: Thank you, Madam Chair.

CHAIRPERSON REID: I move that we accept those persons or entities that I just mentioned as being granted party status. Is there a second?

BOARD MEMBER RENSHAW: Second.

CHAIRPERSON REID: All in favor?

(A chorus of ayes.)

CHAIRPERSON REID: Okay. Mr. Collins, you are with Wilkes Artis?

MR. COLLINS: Yes, and we are representing the Cosmos Club, which also requested party status in this case. We filed a letter, dated October 10th of this year, requesting party status.

CHAIRPERSON REID: And you are in support?

MR. COLLINS: We at the time informed the board

that we would determine which side we would be coming down on, and we are a party in support. The Cosmos Club owns the property abutting The Phillips Collection to the west, and I am pointing on the plat in front of you.

This large building here is the Cosmos Club, and the common property line is right up in this area. The Cosmos Club owns everything bounded by Hillyer Court, and going down towards Q Street over to Massachusetts Avenue, and up Florida Avenue.

CHAIRPERSON REID: Okay. I have no problem with The Cosmos Club being granted party status. Anyone have any objection?

BOARD MEMBER RENSHAW: That's fine.

MR. COLLINS: May I just in the interest of time say that the Club did take seriously your admonition at the last hearing about sitting down and negotiating and trying to come to an agreement.

And since the time of that meeting, the last hearing date, we did do that and have come to some agreement with the Cosmos Club, and the club did -- I'm sorry, the applicant did prepare some revised plans, and the support of the Cosmos Club is based upon an understanding that those revised plans will be submitted as part of the applicant's case to you today.

And these plans modify the lower levels, the two lower levels, and the first and second floors. Primarily our

interest to the club is the modifications to the first floor level and the site plan of the exterior, as well as the lower level parking garage.

And I understand from Mr. Cain that these will be submitted to the record today. Secondly, we have negotiated a list of conditions that the parties have jointly agreed upon that I would like to submit that would be part of or that we would request be part of any order in case this board approves the application.

CHAIRPERSON REID: Okay. So you are going to testify in support, right?

MR. COLLINS: We would like to do that, and again in the interest of time and the fact that Ms. Virginia Watkin, who is here on behalf of the club, Ms. Watkin is a member of the Board of Management of the Cosmos Club, and unfortunately does have to leave this evening, and in case you get to a point where the parties in support would be testifying, she would not be here to testify.

I have her written statement and I also have 10 copies of the proposed conditions that we were to submit, and if it is appropriate I would like to do that.

CHAIRPERSON REID: She is here?

MR. COLLINS: She is here now, yes.

CHAIRPERSON REID: Okay. Then just bring that to my attention, and we will take her today.

MR. COLLINS: Well, it would have to be like now or during the middle of their presentation.

CHAIRPERSON REID: Well, they have not started yet.

MR. COLLINS: If they have 60 minutes, she will not be here then.

CHAIRPERSON REID: Okay. Do you have any objection to allowing her three minutes to testify in support?

MS. PRUITT: Did you say that she had written testimony?

MR. COLLINS: Yes, I have it right here to submit to the record. She is here now, but she will not be here at the close of the applicant's case.

MS. PRUITT: Will she be adding any additional information than what is on her written testimony?

MR. COLLINS: No.

CHAIRPERSON REID: Well, it is up to her. If she wishes to testify while she is here, as she has been here all day, I would grant her that if Mr. Cain has no objection. It is up to her.

MS. WATKINS: Madam Chair, I am Virginia Watkin, a member of the Board of Management of the Cosmos Club. I would not say anything else but what is in my written statement here.

And I think in the interest of time, if no one objects, I think that would make a lot of sense.

CHAIRPERSON REID: That's fine. If you want to do that, then that's fine. I just wanted to give you the option. Thank you very much for coming.

MR. COLLINS: Would you like us to submit that then?

CHAIRPERSON REID: Yes.

MR. COLLINS: Thank you very much.

MR. CAIN: No objection from the applicant.

CHAIRPERSON REID: All right. Thank you very much. And then the conditions, Mr. Collins, you will do later?

MR. COLLINS: Yes.

CHAIRPERSON REID: All right. Go ahead, Mr. Cain.

MS. BAILEY: Madam Chair, prior to Mr. Cain making a statement, I just wanted to put on the record that I have an Exhibit Number 52 in my hands which I will pass out, and this is from the Republic of India.

And they had originally requested party status, and they are now withdrawing that request. So I just wanted to make sure that the record shows that.

CHAIRPERSON REID: Thank you very much. Mr. Cain.

MR. CAIN: Thank you, Madam Chair, and if you are ready, I am prepared to start.

CHAIRPERSON REID: We are ready.

MR. CAIN: Just a brief opening, a few opening remarks to set the stage. My name is Michael Cain, with the law

firm of Hamilton & Hamilton, and I am the attorney for the applicant, The Phillips Collection, and the owners of the adjacent property, Brian and Jennifer Genatozio.

Phillips has a contract to buy their property, which is located at 1618 - 21st Street, Northwest. With me today are my colleague, Diane Pritchard, and co-counsel, Phil Feola, of the law firm of Shaw, Pittman, Potts, and Trowbridge.

Very briefly, the property consists of three contiguous parcels. I think you can get a sense of that from the site plan. The property is split zoned DC/SP-1, and D/DC-R-5-B. We will be talking about the R-5-B portion today.

The zone line runs through the private alley that Mr. Cox will identify for you. Our proposal contemplates expansion into 1618 - 21st Street, and some important improvements to the existing museum properties, both the Goh Annex that fronts on 21st Street, and the Carriage House, which is the square in the box to the rear.

Specifically, we are asking for a variance to exceed the allowable floor area ratio in the underlying R-5-B zone. We are asking for a variance to exceed the allowable lot occupancy.

We are asking for permission to locate a roof structure, which is primarily a stair tower, in a location other than a one-to-one setback from all property lines. Mr. Cox will identify the precise location for you.

In addition, we have filed a protective variance appliance that would allow us in the event that we are creating or adding to some non-conformity we have not figured out given the complex configuration of the existing properties, to allow us to perform an enlargement or addition to a nonconforming structure devoted to the conforming use, rather than have the zoning administrator have to send it back at some other time for some technical adjustment correction.

Finally, we had structured an application for approval for the Carriage House as a separate principal structure. That was done on recommendation of the zoning administrator. Quite frankly, we think it is approveable as an accessory structure devoted to an accessory use.

We will explain the proposed use to you, but it is targeted to be the library and archives for the museum. And we have a memorandum that we would like to submit that supports the conclusion that this is permissible as an accessory use and structure.

We will present our testimony through three witness; Mr. Jay Gates, the director of the museum; Mr. David Cox, the project architect; and Mr. Louis Slade, our transportation and engineering expert.

With that brief overview, unless the Board has any questions, I would like to ask Mr. Gates to step forward. Mr. Gates, would you please state your full name and business address

for the record?

MR. GATES: My name is Jay R. Gates, and I am the Director of The Phillips Collection, and I live at 4200 - 43rd Street, Northwest, in Washington. And The Phillips Collection is located at 1600 - 21st Street, Northwest.

MR. CAIN: And what buildings does the museum consist of, sir?

MR. GATES: The original Phillips home is at 1600 - 21st Street, Northwest, was open to the public in 1921 as an art museum, was added to in the early '60s with a building on an adjacent property on 21st Street called "The Annex."

It was expanded to its present condition in 1989, and with a particular gift is now known as the Goh, G-O-H, Annex.

MR. CAIN: Does the museum also own a carriage house in the square?

MR. GATES: In Hillyer Court, there is a carriage house that is the property of The Phillips Collection, yes.

MR. CAIN: We were previously discussing the alley system in the square. Is any part of that alley privately owned by the museum?

MR. GATES: Part of the alley, which will be pointed out in Mr. Cox's presentation is in fact owned by the museum.

MR. CAIN: And subject to an easement in favor of

the District of Columbia?

MR. GATES: That's correct.

MR. CAIN: Now, Mr. Gates, could you give the board a brief description of the museum and its institutional mission?

MR. GATES: The Phillips Collection is America's oldest museum modern art, opened to the public in 1921 before there was a Museum of Modern Art in New York, and before there was a National Gallery.

And The Phillips Collection became the gift of Duncan Phillips to the District of Columbia's population. This is a place where works of art in the modernists tradition cold be experienced. He was a pioneer, and was arguably the greatest collector of his generation.

And it is a museum that is regularly described as America's favorite museum, and regarded as an indispensable American institution because of the range, and quality, and unity of its collection, and it is distinct in the community art museums in America.

It has over the last several years developed a reputation for exhibits extraordinary, and fine exhibitions of great quality that are known for the quality of their work, the scholarship which supports them, and their accessibility to the public in general.

But increasingly museums are called upon to define what it is that they are going to do with their collections and

exhibitions, and increasingly museums are held accountable for their educational and intellectual missions.

The expansion that the museum proposes into 1618 - 21st Street, Northwest, serves two primary functions. One is to increase the quality of services that we offer to our visitors, but primarily for the creation of an entity called, "The Center for the Study and Appreciation of Modern Art."

It is intended to be a research and development center, a place where 5 or 6 carefully selected Fellows can come through in a rotating way so as to be able to provide the most lucid and contemporary thinking with regard to the ways in which the experience of works of art can be delivered to targeted audiences.

The principal audience that the museum seeks to serve through its educational mission is the public school system, the formal public education system.

And one of the principal ways in which it does that is an outgrowth of the museum's unusual circumstances, because the museum is small and noted for the intimacy of its circumstances, because there is a limit to the number of children that we can receive on an annual basis, we can only get about 5,000 school kids a year into the museum.

The museum, The Phillips Collection, had to become a pioneer in a particular form of museum education involved in teacher training, where the museum brings in teachers to train

them to go back into their classrooms so that the images in the collection become accessible to children who are not in a position to come to the museum.

Teacher training and the creation of specific educational programs, using images from the collection, the most prominent probably is the Art of the City, which focuses heavily on the museum's collection of the works of Jacob Lawrence, are an example of how the museum uses its resources in ways to reach out into the educational community.

Since it has limitations on the number of people it can actually draw in, one of the principal purposes of the Center for the Study and Appreciation of Modern Art is to find ways in which we can reach out to the educational community through extensive teacher training, and through the creation of new electronically based forms of sharing the collection in an organized educational way with the formal school system.

Increasingly, museums are called upon by the Institute of Museum Services, a Federal Agency, by the American Association of Museums, to find ways to bring the surface to their community, an engagement with educational systems to the Center of their mission, and to their vision for the future.

The Center for the Study and Appreciation of Modern Art seeks to do that in the most efficient, effective, intelligent, creative, and selective ways that we can so as without creating new destinations in the museum; to be able to

find new ways of serving the educational community here regionally and nationally.

This is a direct outgrowth of the expertise that the museum has developed in its last 20 years in particular specifically in the area of teacher training, and bringing our assets as it were to the surface of the educational community.

MR. CAIN: What are some of the specific educational programmatic features that you would like the board to approve as part of the proposed plan for the property?

MR. GATES: The museum desperately needs to create or recreate its library in ways that make it a modern efficient information service, to be able to go on-line to provide the facilities for its library, and the irreplaceable archives that are a part of The Phillips Collection.

Libraries are standard accepted features of art museums. There is a long, long, long, long list of major museums who regard their libraries as indispensable to their public and their educational missions.

So library and archives is considerable. The expansion allows us to take very limited conservation facilities, and that is the means by which the museum conserves and preserves the collection for future generations.

Our conservation studio now is so small that pictures of a certain size cannot be conserved there. We have to go to the galleries, and closed galleries in order to conserve a

picture.

Conserving a picture is not something that is done today, or tomorrow, or next week. It takes a period of time. We can conserve more objects from the collection in a more efficient, and in a safer way by expanding conservation facilities.

Conservation facilities are obviously in-house functions that serve the mission that are not destinations for the public, but that serve the public interest.

Conservation facilities would be expanded adjacent to storage facilities. Storage facilities are not used simply to store works of art when they are not on view, but when a museum receives an exhibition, a traveling exhibition -- the exhibition that we will open in May is an exhibition devoted to the work of Jacob Lawrence.

The exhibition that we will do in the fall is devoted to impressionist still-life painting. Those exhibitions are made possible by museums and private collectors around the country and around the world who lend those pictures to us and to other venues traveling the show.

Those pictures have got to be taken into storage, and they have got to be conditioned, and they have got to be looked at by conservators. By being able to put expanded conservation next to the storage -- the expanded storage facility, the museum is in a position to pursue its public mission better, despite the fact that that is a function that necessarily happens

behind the scenes.

MR. CAIN: Is there any other space in the proposed addition that would relate to the education center; for example, an auditorium, or other space?

MR. GATES: The museum wishes to build a studio so that we could have an artist in residence as one of those 5 or 6 Fellows. Duncan Phillips had a studio in the house originally, and he had an art school, and there was an artist in residence.

This is deeply in the traditions of The Phillips Collection. We would like to be able to have an artist in residence to be able to work with area universities, and to be able to participate and work with teachers in teacher training.

The museum also requires for the Center for the Study and Appreciation of Modern Art a basic technology laboratory, so that it is possible to work with digitized imagery and find ways where they could be net cast in effective and innovative forms. And innovation is the name of the game, since it changes almost constantly.

We have a long term relationship with the local school districts, and have been approached recently by a major on-line provider wanting to find out if there is in fact the possibility for a relationship between the museum and this organization so as to find ways of net casting the images of the museum in an organized way directly into the schools.

To do that the museum needs basic R&D facilities.

These aren't facilities that will be occupied by the Fellows and by visiting teachers. They are not intended to be spaces that will attract significant new audiences.

The museum does propose the construction of an auditorium, and the principal function of that auditorium will be day time use for the purpose of people who are in the museum.

For instance, a year ago the museum was doing a major exhibition called, "The Eye of Duncan Phillips," universally regarded as one of the most important exhibitions of the year.

At the time we did that exhibit, we did an hour long documentary, and that has since won two Emmys, that we did in conjunction with WETA. We can't show that on-site at The Phillips. There is no place for us to show this documentary to people.

But by being able to have our own auditorium during public hours the museum can share its legacy, and its history, and its traditions, and its educational mission with the kind of facility that requires the facilities characteristic of an auditorium.

And it is a place where children visiting the museum can receive specific instruction, and is once again a function that is basic to museums. I cannot off the top of my head tell you a major institution with the status of The Phillips Collection that does not have an auditorium, and doesn't have a real library.

And does not have education facilities of the kind that we are proposing in a way that we think is responsible and architecturally reasonable.

MR. CAIN: Does the museum work with the D.C. Art Education Association, and/or the D.C. Public Schools?

MR. GATES: We have ongoing teacher training and relationships with both of those organizations. It is central to the museum's mission, and part of its basic educational fabric with the community.

It is worth pointing out as well that these are relationships that we are called upon by our professional community to maintain. I have a publication here from the Institute of Museum and Library Services, which is a Federal Agency, that talks about museums and schools working together, and transforming education.

The forward for this publication is written by the Secretary of Education, Secretary Reilly, that encourages museums and schools to work together, and find ways in which to share the resources with the educational museum, or with the educational community. I beg your pardon.

The American Association of Museums that accredits organizations like The Phillips Collection, has a standard publication on the subject of education in the public dimension of museums called "Excellence in Equity," and which it calls upon museums to bring education to the center of their mission, to work

colloboratively with school districts, to find new ways of engaging new technologies to be able to work with teachers, and establish relationships with schools, and further extend their educational reach into the educational community.

MR. CAIN: Madam Chair, we would like to submit a copy of the book that Mr. Gates was just referencing, published by the American Association of Museums.

CHAIRPERSON REID: All right.

MR. CAIN: Mr. Gates, you referenced The American Association of Museums. Is there an accreditation process for museums?

MR. GATES: There is. We have been accredited and in the last year reaccredited with an accreditation team that was sent to look at various and all, and sundry, aspects of the museum's operations, and the museum was in fact reaccredited, but the one specific issue that they pointed to with greatest criticism that the museum's educational facilities are inadequate to the tasks that it should be addressing.

Our traditions of teacher training have been praised, and our commitment to relationships with public education as well, but they did find fault with us for lacking the facilities that are necessary to do the kinds of work that we should be doing.

Are there any features of the proposed improvements or addition that relate more specifically to the operation of the

museum and a little less directly to the educational mission of the museum?

MR. GATES: We need to reclaim gallery space. The principal function for museums, of course, is to put people into touch with great works of art in ways that are life enhancing. But increasingly the museum has had to take gallery space and turn it over into functions that we think this architectural change will improve upon.

We have lost gallery space to coat check, and we have lost gallery space to being able to provide equipment for audio tours, which is something that our community calls upon us to do.

The architectural changes allow us to gain some -- to regain galleries for the purpose of showing works of art, and to increase two new galleries; one for permanent collection, and one for special exhibitions.

It allows us to relocate our museum shop, which is a standard feature in museums, and to find a new space for an enlarged cafe, which is once again a kind of standard feature for museums.

Right now our cafe is so small that we turn away more business than we can accept, which means that we are not serving our public, and we are not able to do as well as we would like in terms of a revenue stream for an institution that has real financial needs and tries to meet them in a way that serves its

public well.

We have proposed those increases in ways that are not huge, but they can make a difference, and we anticipate that in the process the museum's contributions to sales tax will increase from about $86,000 where they are right now, to -- if we can build on the schedule that we would like -- somewhere in the neighborhood of $125,000 in sales tax by the year 2004.

MR. CAIN: What does the museum use the Carriage House for currently, and how did you select that as the location for the library and archives?

MR. GATES: The Carriage House is a fancy name for a beat up two-story garage, and it is now used for storage and for parking whenever necessary. It constitutes a valuable asset sitting in the middle of Hillyer Court as it does, and can be accommodated for both library and archives in ways that are very significant.

We chose Kress-Cox as our architects because they had experience in transforming these kinds of buildings that are part of the fabric of this city, and who have worked with educational institutions before, and who have worked with colleges and universities before, and who have dealt with institutions that have an educational and scholarly mission, and feel that this is an opportunity to take a building that needs serious attention and rebuild it in a way that makes it useful and beautiful at the same time.

MR. CAIN: To the extent that you are forced to retrench from any elements of the proposal that you are asking the Board to approve, would there be any practical impact on the museum?

MR. GATES: The museum's mission is clearly devoted to the experience of the works of art, and the programmatic support of that experience. And to the extent that the museum cannot expand with the facilities that allow it room for research, development, and education functions, for conservation, for storage, it seriously impacts the capacity of the museum to pursue its mission.

Museums are mission driven kinds of institutions, and the expansion that we are proposing has been carefully thought through. It is the result of over or nearly two years now of careful planning, of presentation to the community on several cases, of looking at ways in which to be able to accomplish in one expansion those things which the museum needs as part of its mission to do.

To the extent that the building isn't built according to plan, then we will do us. The mission will be negatively impacted. The facilities are not there, and the ability to do the things that we are supposed to do diminish.

MR. CAIN: Now, have you had occasion to make any presentations or have any discussions regarding the project with either the Advisory Neighborhood Commission or any of your

neighbors?

MR. GATES: At the recommendation of our ANC representative, Mr. Micone, we held a public reception over a year ago, and invited people from the neighborhood, people who are in this hearing room, to get a presentation by our architects to see what we were going to build.

And to talk to the architects, and to talk to us, and to ask questions, and to pursue the conversation with Mr. Micone thereafter. We made our presentation, and we received no negative comment.

Mr. Micone, I believe I am correct in saying, received no negative comment. We proceeded then to meet with the ANC on its February 9th, 2000 meeting, and made our proposal with 50 people in attendance, including our neighbors from the Cosmos Club, and the ANC unanimously approved our proposal.

MR. CAIN: Mr. Gates, the document that you are looking at, is that a recapitulation of various efforts you and other representatives of the museum have made?

MR. GATES: Yes, it is. From beginning in July of 1999 through November 17th of 2000.

MR. CAIN: Madam Chair, we would like to submit that list rather than having Mr. Gates go through it, in case the Board Members are interested in the chronology of the development activity of the museum.

CHAIRPERSON REID: Very well. Thank you.

MR. CAIN: Now, Mr. Gates, did there come a time when the museum undertook to at least try to solve some of the issues that have been brought to your attention, particularly with regard to valet parking and on-street parking?

MR. GATES: After having been unanimously approved by the ANC twice, and by being approved by the HPRB and the Mayor's Agent, we went back to the ANC last fall because of concern that had been raised in the neighborhood with regard to parking in the neighborhood and attendance at opening events at museums.

The ANC suggested that we delay our appearance before this panel so as to be able to work out differences with individual members of the neighborhood.

By working with the planning department, we came up with a series of offers that we wish to make, and conditions that we regarded as acceptable to us, so as to address specific issues that related to parking, and that related to traffic, that related to buses, that related to events, that related to servicing of events.

At the request of the ANC, we put those two together in various forms, and we met together with individual members from the neighborhood. Unfortunately, we did not get much of a response; not yes, not no, and pretty much not anything.

MR. CAIN: And did there come a time when you took unilateral action and reached an agreement with your valet parking

provider?

MR. GATES: Yes, we have explained to the valet parker that his contract with The Phillips Collection depends upon his being able to find parking spaces off-street and off-site, and we are in the process right now of working with him to identify specific garages where that will happen so that we can do our best to mitigate and minimize the effect of attendance at museum events while parking in the neighborhood. This is a problem that we want to help solve.

MR. CAIN: Is this document a copy of such an agreement?

MR. GATES: Yes, sir, it is.

MR. CAIN: Thank you. Madam Chair, we would like to submit a copy of the document for the record.

(Brief Pause.)

MR. CAIN: Mr. Gates, before we have Mr. Cox come up, is there anything else that you would like to have the Board know about your education center or the other improvements that we have proposed for the museum?

MR. GATES: Only that this is an expansion that we think is completely -- that basically completes the fabric of Duncan Phillips' vision for his collection. This is one of the great acts of American Philanthropy that this extraordinary collection is now in the public trust.

Duncan Phillips did so because he believed as he

said throughout his life, and in the journal that he published, "Art and Understanding," and in his various monographs, he regarded the experience of works of art as joy giving and life transforming.

And he said so over, and over, and over again. It is now part of the professional responsibility of museums to find ways in which to share that experience.

The primary function of this expansion is for us to devote the intellectual and financial capital necessary to do that in the most effective way, while at the same time with design changes specifically intended to mitigate negative effects upon the immediate neighborhood with regard to parking.

And as a matter of fact, we built in a parking garage specifically, because we thought that would be a contribution to the neighborhood; to take parking off the street, and to put night time parking for the museum underground and off the street.

And to take museum employees off of street parking, and this is an expense to the institution which it is not required to make, and which it has chosen to make because it wishes to contribute a solution to this particular issue.

And I submit to you that our efforts now are to try and provide as many services as we can while mitigating as many difficulties as we can.

MR. CAIN: Thank you, Mr. Gates.

MR. GATES: Thank you.

MR. CAIN: I have no further questions for Mr. Gates.

CHAIRPERSON REID: I think we will wait until after you are finished with your presentation, and then the Board can ask questions if it is okay.

MR. CAIN: That's fine. My next witness will be Mr. David Cox, the project architect. The first order of business, unless the Board is prepared to accept Mr. Cox as an expert straight up, is to qualify him as an expert in architecture.

CHAIRPERSON REID: I believe Mr. Cox has been before the Board a few times, and I have no problem with accepting him as an expert witness. Do any of the board members have any objections to that?

(No audible response.)

CHAIRPERSON REID: All right.

MR. CAIN: May we proceed?

CHAIRPERSON REID: Yes.

MR. CAIN: Mr. Cox, would you please launch right in to your description of your assignment and the work that you have undertaken on behalf of The Phillips Collection in this regard?

MR. COX: For the record, my name is David Cox, and I am a principal with Kress-Cox Architects in Washington, D.C. My

address is 5115 Cathedral Avenue, Northwest, D.C.

I was retained by The Phillips in February of 1999 to explore possible ways The Phillips could expand, and to provide specifically for the Center for the Education and Study of Modern Art as Mr. Gates has already explained.

Our task was basically to provide The Phillips board with concepts on how the physical expansion could take place, and that involved doing a zoning analysis of all of the existing properties that The Phillips has, and also to look at possible purchase of new or of existing property in the immediate vicinity.

About perhaps just weeks into our study, we were informed that the property immediately to the north of the Goh Annex at 1618 - 21st Street could potentially be purchased by The Phillips, and used for its purposes for expansion.

When we got to this point, we pretty much abandoned looking elsewhere in the neighborhood for other possibilities, because this was so rich with promise, mainly because it was contiguous. It was one of the few properties we could find that had a physical connection with the museum buildings.

The only other property that would satisfy that criteria would be the Indian Embassy, and that of course was not up for sale. The thrust of our concept at that point then started to focus on ways that the 1618 apartment building could be combined and integrated into the adjacent GOH Annex building and

thus tied into the overall internal circulation of The Phillips.

And overlaid with that were zoning issues, historical preservation issues, service and parking issues, and of course trying to satisfy the program that The Phillips had given us to try to work with.

It was a very complex series of criteria that we started to look at. Ultimately, what we recommended to The Phillips is what we of course are coming before you with today. And if I could go to the boards.

I understand that there is no hand microphone today. If I can, I would like to just orient this so that I can have both hands free.

I have two panels up here; one that shows the site plan, and which I think we have gone over already. I just wanted to show you some of the existing photographs of the properties in question. This is a view looking south on 21st Street that shows the original Duncan Phillips' house in red brick.

And the so-called Goh Annex, which is shown in a number of these other pictures, built in the middle '80s. The original house was built in approximately 1917, and had later additions built in the late '20s.

This is the one property that is on the National Historic Register as an individual landmark building. It already has been added on to, and was the subject of a lot of our attention in the study, because the house as a national landmark

building, right now in my opinion is just bursting at the seams.

It is a delicate historic structure, and it happens to have the cafe for the museum off of Q Street right at this corner, and the museum shop, both located in it, as well as gallery space in the intermediate floors.

And on the third and fourth floors are all of the administrative staff. So this building is just intensively used all the time by both the public and the staff. Whereas, the Goh Annex, the later building, is primarily given over to museum exhibition space.

One of the things that The Phillips has difficulty with is that there are a whole series of what appear to be entrances all the way along the 21st Street side. What they have had to do to counteract this, and to define what actually is the way the public is to get in, is to put sort of an unsightly blue canvass awning out in front of this building that you see extending out on to 21st Street.

And this is where the tour groups get off the buses and begin their tour of the museums. These two buildings are connected by an elevated bridge over this 15 foot alley that is really an extension of Hillyer Court.

As we have heard already, Hillyer Court basically had been a series of carriage houses that connected to these larger buildings facing on to 21st Street. The carriage house that exists in the back is the last one of what had been a row of

buildings. They were all built in the late 1880s.

Hillyer Court then is entered into off of Florida Avenue from the west, and off of 21st Street on the east. It is two-way throughout its length. Primarily, it is set up to give access to the backs of all of these residences on the northern side of the property, and emergency vehicle access to all of the internal parts of the block, and a primary part of the circulation of traffic is for the Cosmos Club, with its valet drop-off right at this point.

The Cosmos Club, as you know, has an interest off of Mass Avenue, primarily just for taxi drop-off, but members drop of their cars in the back, and park on the surface lots.

This is also the area, the only area, that The Phillips has for its total servicing operations. It has a very ungamely set-up right now with a cafe kitchen off of Q Street way down at this end, and its catering kitchen located here, built as part of the Goh Annex.

So all the servicing for the cafe has to happen back here behind the Goh Annex, or on 21st Street, and brought into the kitchen here at the lower level. Not a very workable situation.

Also, the only way for art, and sometimes priceless art, to get into the building for its exhibits are one of two ways. If it is a large vehicle, it has to stop on 21st Street.

And the people bringing the art in have to go

directly into the museum through the main entrance that the public uses, and back to its freight elevator to get it up to the conservation area.

If it is a smaller truck, it can be brought back into Hillyer Court and off-loaded in a kind of peculiar situation, directly into a door in the freight elevator off the back of -- and so there is no loading dock, per se.

So right at this corner, you have got the confluence of a lot of vehicles coming in on a daily basis to service the Cosmos Club, to service The Phillips, and for patrons of the Cosmos Club to park, and to have their valet drop-off.

And I would submit to you that this has been the thrust of our working out an agreement with the Cosmos Club, and to figure out how to streamline by at least or from the areas that we can control on The Phillips.

I would like to say that the project then consists of three parts, and I will go over them very quickly. The intensification of use of the existing 1880s carriage house, and to bring that into play, right now it is just -- it is unheated, and dry paper storage space. Not very well used.

The second piece of this is to reorganize visitor services and visitor arrival into the Goh Annex, and reenforce this as the way to get into a world class museum.

The third piece of this is how to intensively and most functionally use the 1618 property and tie it into the

integral circulation of the museum, and at the same time fulfill its problematic function as an art education center.

So quickly on the carriage house, as we presented this to the Historic Preservation Review Board, a kind of contrast here between what you see today, a rather badly abused historic little carriage house, and over the years the openings that face on to the alley as shown in this bottom photograph, have been dealt with pretty poorly I have to say.

What we are proposing is that these large openings be turned back into what we think was consistent with a carriage house of the day. That is, a segmental arch element, and take out this flat concrete beam.

Take away these large scale overhead doors, and place a series of double-hung windows, with painted wood panels, in them. It will no longer serve as any kind of a vehicle storage, and certainly not a carriage that it was originally meant to be.

MR. CAIN: Mr. Cox, you mentioned historic preservation review. Could you just briefly tell the Board what the status of the historic preservation review is to date?

MR. COX: We have received a complete approval from HPRB for this project as we are presenting it to you today. As part of their review, they did recommend that we -- that for the 1618 property, we were asking for partial demolition of that property.

They referred us to the Mayor's agent to make our case on the partial demolition. We then presented to the Mayor's agent in October of this year, I believe, and received that written other from the Mayor's agent. So that project has received historic preservation approval.

MR. CAIN: Madam Chair, a copy of the Mayor's agent order was in our supplemental submission -- and if you don't have it, I have extra copies -- and basically approving the application for both -- the subdivision by consolidation of the three lots, and partial demolition of 1618.

Well, I have approximately five minutes left, and it is going to be impossible to get through this, but I want to just turn to the second piece of this, which is the reorganization of the Goh Annex entrance.

What we are proposing is a thin, 8 foot deep addition, one story high, stretching across the total frontage of the Goh Annex, which would provide a kind of rotunda entry space to replace the campus awning that is there now.

Internally, that will give us a way to capture back very valuable gallery space inside that is now used as Mr. Gates said for coats and audio-tours. By adding this thin strip, believe it or not, we were then able to reorganize this whole entrance experience.

And at the same time, we will bring this facade out to match that of the adjacent 1618 apartment building, so that

these two actually work in the same plane. And this is all part of what we received approval on from HPRB.

The third and final piece of this expansion proposal is the most complex. And it involves the 1618 building, and how we tie it into the adjacent Goh Annex. On this floor plan, which is the main ground level floor, shown in yellow is the extent of new construction.

And 21st Street is at the bottom of the drawing and the alley is at the rear. All we are proposing doing is adding a footprint that basically aligns with the Goh Annex, and to tear down the apartment house except for the contributing portion of it, which is its historic facade.

The building itself is -- we have done a full analysis of the structure. It is a wood frame structure that will not support the non-combustible code requirements to tie this building and every floor into the adjacent building.

What we are doing instead is keeping the portion of the building that contributes to the neighborhood with its facade, but replacing everything behind this facade, with new floors 30 feet deep -- the floors are going to be put back in exactly the same position.

But the rear portion of the building will have floors that tie into the Goh Annex at every floor. Unfortunately, the existing floor levels have absolutely no relationship, and it is impossible to tie them in. So we are splitting that so that we

have a back half of the building tieing into the Goh Annex, and a front half that works with the historic facade itself.

In this drawing, which is a cross-section through the site taken this way, and looking at what has been cut away, you can see the extent of the project. We are proposing to build up one level below grade. This being the grade level.

One level below that would be the parking garage that would tie under the carriage house in the back, and that would become the parking garage a level below that, so that we are not too levels below grade, and that would be the auditorium space, the 255 seat auditorium.

This gets progressively more difficult to build on here, because there are so-soil indications that we have rock at about 20 feet. So we are trying to minimize the amount of L-L-2 construction that we need.

MR. CAIN: Mr. Cox, just as a technical matter Have you revised the plans for L-L-1, and L-L-2, first and second floor from the plans that were originally submitted to the board?

MR. COX: Yes, I have. The one revision that we have made, which has come about because of our discussions with the concerns that the Cosmos Club had, have to do with how the entrance ramp is made to get down to that level below.

On our previous plans the entrance to the ramp was closer to this intersection, where all of the Cosmos Club turning

movements were happening. We have now placed the ramp so that one makes a perpendicular 90 degree turn off the alley, and essentially opposite the carriage house, and that will take a very direct route down into the parking garage level.

MR. CAIN: Mr. Cox, can you very briefly quantify for the board what the specific variances are that we are asking for, and locate the special exception request on the roof.

We are asking for two variances dealing with -- the first one deals with lot occupancy, and the second one deals with FAR. And also as part of this, we are combining the lots.

Currently the Carriage House occupies a separate lot of record, and the public alley space that is owned by The Phillips and the Goh Annex are all part of Lot 74, and then the new lot of record for 1618.

The attempt here again is to combine these three lots into one lot of record for zoning purposes. If we do that the permitted -- just talking about the first variance for floor area ratio, the permitted FAR is 1.8 of that total lot, which would be a number of approximately 35,919 square feet.

The existing buildings as they occupy -- that is, the apartment house as it stands today, taken with The Phillips' properties, represent actually a 1.88 FAR. They occupy more than the 1.8 that is permitted.

And part of the reason for that is that you have properties, for instance, like the Carriage House that are

occupying a hundred percent of their property.

With our proposed improvements, that is, with the project as it is shown here, we are asking for relief from FAR, to create an FAR total of 42,705 square feet, which would be approximately 2.14 FAR.

The variance from lot occupancy, again the permitted lot occupancy in an R-5-B zone is 60 percent, and the number of square feet permitted would be 11,973.

The existing properties, as they occupy the lot right now, are 11,236, approximately 56 percent. What we are proposing is 13,566 or about 68 percent.

On the lot occupancy, what would be permitted would be a footprint of roughly about here, and part of our footprint, we have to occupy this in order to accomplish the mission, the programmatic mission on the Goh Annex.

So we would have a great practical difficulty achieving both the lot occupancy and FAR as they stand now. The width of this property is approximately 49 feet, and our attempt to tie it in at every floor to the Goh annex means that we have taken walls out that separate the two buildings, party walls.

We have placed the egress elements, including two stairs and an elevator, so that this building has the -- some are redundant capacity, to provide egress stairs. But we have placed them along this north side.

And part of the reason for that also has to do with

the lower level parking garage layout, which basically runs under the full length of 1618, and then turns to cover the space behind the Goh Annex.

Those core elements then run along this side, permitting as much free space for car circulation. What that does up at the top of the building is these two core elements, the elevator and stair emerge up at this point.

The 50 foot height limit to the underside of the finished ceiling occurs at the fourth floor here, and a one-to-one setback from that point strictly speaking would cause a triangular portion of this stair elevator core to emerge about 9 feet above that zone.

We have configured the top floor and the mechanic penthouse that the main bulk of this roof top additions to conform in every way.

MR. CAIN: Mr. Cox, we are running out of time. I need to take you to the ultimate issue. Do you have an opinion whether strict application of the regulations and the criteria that you have just discussed regarding floor area, lot occupancy, the establishment of the roof structure, would or could be approved without substantial detriment to the public good, and without substantially impairing the intent, purpose, and integrity of the zone plan?

MR. COX: In my opinion, the strict application of the zoning regulations governing maximum allowable floor area, and

lot occupancy, and alternations for the one-to-one setback above the roof plane would not result in any extraordinary condition.

We think we have designed this in such a way that it conforms to both the rule and the spirit of the zoning regulations here.

MR. CAIN: Can the location of the stair elevator enclosure be approved without adversely affecting light and air in adjacent buildings?

MR. COX: We don't feel that the stair elevator enclosure would adversely affect the light and air. We have actually made an attempt to pull this portion of the building back from the adjoining north property.

We have had as a condition of both our work with the ANC and HPRB set these rooftop additions back from the 21st Street frontage a great deal. They are set back 30 feet from the front property line. This puts the elevator and stair core element considerably back from the front of the property.

But at the same time, we have tried to be very sensitive to -- we did a light and shade analysis of the adjoining property at the same time to make sure that we were not causing any undo hardship there.

MR. CAIN: A final question, Mr. Cox. Is there any required parking or has there been a waiver granted for the parking?

MR. COX: We have a complete waiver on a parking

requirement granted by the Historic Preservation Review Board because of the historic status of the buildings.

MR. CAIN: Thank you, Mr. Cox. Unless the board members have any questions for Mr. Cox, I would like to get Mr. Slade up here before we are completely out of time.

CHAIRPERSON REID: Go ahead and continue with Mr. Slade's report and then we will have questions at the end.

MR. CAIN: Thank you. May I make the same request about Mr. Slade that I made about Mr. Cox and his expertise.

CHAIRPERSON REID: Yes. Mr. Slade has certainly appeared before us numerous times, and I have no problem with accepting him as an expert witness if there are no objections from any of my other board members or anyone else here in the hearing room.

MR. CAIN: Thank you, Madam Chair. We have submitted a copy of Mr. Slade's report. I can submit additional copies if you need them. Mr. Slade, could you give or identify your report, and give us an abbreviated version of your findings and conclusions.

MR. SLADE: Yes. Madam Chair and Members of the Board, I am Louis Slade, and I reside at 3500 Quesada Street, and I am a principal with Gross-Legg Associates.

Our report, which I mentioned earlier when you asked me about it, was submitted to DPW and with the application on November 20th, and I will be very brief. I apologize and will

be glad to answer all your questions.

What I am going to do is tell you about the patterns of people coming to the museum today and how that is going to change in the future, and what we concluded from what the new facilities will provide, in terms of parking, loading, and so forth.

The museum hosts about 170,000 visitors a year. These are people like you and me, and they are school children and then tour buses. That is about an average of about 400 a day on weekdays -- the museum is open Tuesday through Friday, and about 780 people a day on weekend days, Saturday and Sunday.

The hours are 10:00 a.m. to 5:00 p.m., except Thursday nights, to 8:30, and on Sundays it is noon to 5:00 p.m. The museum has 70 employees, who arrive about an hour before the museum opens and leave right after the museum closes.

The museum hosts the last couple of years 60 events that are by invitation, and these range from breakfast and tours during the daytime, during the morning hours, to dinners and receptions in the evenings.

There are 5 or 6 lectures a year, which have to be held off-site because there is not an auditorium facility for those lectures. So the categories again are employees coming in during the morning, and then museum visitors all day, and then on the 60 nights a year when there are events, people come to those events, some of which are during the day time, just a small

handful, most of which are in the evenings, mostly on weekday evenings.

The servicing for all those activities involve buses, and trucks, and valet service. Valet service for the evening events, that activity takes places on 21st Street.

Patrons arrive with their cars, and leave them with the valet, and then they walk into the Goh Annex. The cars are taken today to off-street parking, where they are parked. The museum only provides parking today for employees in a small number of spaces which Mr. Cox showed you in the back of the facilities.

The events are also serviced by catering trucks. They come before the event. They all try to operate in the alley at the present time and not load on the street.

There is difficulties because there simply is not enough space for them all to get off the alley, and so there is often blockage in the alley due to that activity.

There is regular daily truck deliveries and trash pickup. There is a dumpster also in the location of the alley at the present time. Finally, the delivery of art 3 or 4 times a year is a major event.

This is priceless art and it is brought to the curb at 21st Street, and brought into the museum, of course very carefully, and then of course loaded at the end of the major exhibits.

There are 3 or 4 major exhibits a year, in addition

to the permanent collection that is present.

So in general I think I have covered the flow of people, and trucks, and so forth.

MR. CAIN: Mr. Slade, let me ask you a couple of questions as you go. Do you have an opinion whether The Phillips plan can be approved without a substantial adverse impact on on-street parking in the neighborhood?

MR. SLADE: Yes, I do. It can. The addition of the parking garage will substantially help with the parking situation in the neighborhood. It will be for employees on a daily basis, and it will enable the valets to park cars immediately on site, as well as take them off-site when there is larger events.

MR. CAIN: Do you have an opinion whether the plan can be approved without a substantial adverse impact on the use of the alley system in Square 66?

MR. SLADE: The use of the alley will be just for employees to get to the garage, and by increasing the loading facilities for trucks, we will be able to handle the truck servicing better than we do today. So therefore my opinion is that we will improve conditions in the alley.

MR. CAIN: Do you have a professional opinion whether the project can and should be approved consistent with the zoning regulations, and/or the transportation elements of the comprehensive plan?

MR. SLADE: It is my opinion that it is consistent with regulations and the comprehensive plan.

MR. CAIN: Is there anything else that you would like the board to know about your findings and analysis?

MR. SLADE: One other thing I would add is that as part of the agreement that The Phillips Collection wishes to work with the community to develop would be better management of curb parking along 21st Street in front of the museum, and on Massachusetts Avenue between Q Street and 21st Street, which would allow the bus loading, the valet, and the 3 to 4 times a year loading of art work to be handled at the curb with assurance, rather than having these buses arrive and sometimes not being able to get to that curb lane.

So we are proposing some adjustment to curb parking. We have met with DPW and discussed this, and we think that it is a very good prospect that this can be achieved.

MR. CAIN: I have no further questions for Mr. Slade at this time. We have submitted his report, and we would ask that you give it the consideration that we know you will, and make all of our witnesses available to you for questioning.

CHAIRPERSON REID: Thank you very much, Mr. Slade. Let's see now. Board Members, do you have questions?

VICE CHAIRPERSON SOCKWELL: Yes.

CHAIRPERSON REID: Okay. Mr. Sockwell.

VICE CHAIRPERSON SOCKWELL: My first question is

fairly general, but is there any programmatic orientation of The Phillips Collection's activities toward the immediate community, or is most of the orientation of its program to the larger community, and in that vain, the new construction is geared towards bringing people from outside of the immediate neighborhood in larger numbers on the patron side, and in very small numbers for the teaching portion?

MR. GATES: The museums' community is a complex cut through the audience. The primary incentive to attendance at The Phillips Collection and art museums in general is driven by special exhibitions. The attendance patterns of The Phillips Collection are completely determined by special exhibitions.

So that during a period of 3 to 4 months when a particular exhibition is on, attendance will increase and programmatic programs will be focused around those kinds of events.

In terms of the audience that is served, one way of measuring that is the membership of the museum. The museum's membership is roughly between 10,000 and 10,500. Of that membership, 2,000 is in the immediate four zip codes.

So, 20 percent of the museum's members are in the immediate area, and as a result the museum is actively engaged with the local residents. The museum is having a program this week, in which the art dealers from the Dupont Circle area, since that is a concentration of art dealers, are providing seminars to

the community with regard to collecting works of art.

And as a result, we are actively connected with that part of the community. We have people who have served on the board of the DCZA, and we have many members of the museum staff who live in the neighborhood.

We are very much of the neighborhood and the programming of the museum is devoted to a broad section, including schools, including people in the neighborhood. But it is also an attraction to people who come to the museum from outside the D.C. area.

VICE CHAIRPERSON SOCKWELL: When you stated that the locals of the immediate zip codes, which zip codes did you mean? What was that perimeter?

MR. GATES: I don't know right offhand.

VICE CHAIRPERSON SOCKWELL: And I don't mean to say that they are all in 2009. When you said local or immediate zip codes, did you mean the Washington District of Columbia zip codes or the Washington Metropolitan Area?

MR. GATES: Mr. Sockwell, I was referring to the zip codes that are 09, 10, 07, just literally adjacent to our neighborhood.

VICE CHAIRPERSON SOCKWELL: So you mean specifically within that locus?

MR. GATES: That's right.

CHAIRPERSON REID: In order to try and move things

along, Mr. Sockwell, why not ask two questions and then we can then let other members ask questions and come back to you.

VICE CHAIRPERSON SOCKWELL: Okay. I didn't have but two questions, if that will satisfy you.

CHAIRPERSON REID: Okay. Thank you. Ms. Renshaw.

VICE CHAIRPERSON SOCKWELL: I am not finished. I haven't asked but one.

CHAIRPERSON REID: No, you asked two.

VICE CHAIRPERSON SOCKWELL: No, I asked one.

CHAIRPERSON REID: You asked two.

VICE CHAIRPERSON SOCKWELL: What was the second question?

CHAIRPERSON REID: About the zip codes.

VICE CHAIRPERSON SOCKWELL: No, that was a clarification of something that he said because I asked about the programmatic requirements addressing the neighborhood, and the zip codes were part of his response. This was merely a clarification, Madam Chair.

CHAIRPERSON REID: Thank you, Mr. Sockwell.

VICE CHAIRPERSON SOCKWELL: So let me finish my second question, which is what -- this is to Mr. Slade regarding the 255 seat auditorium.

CHAIRPERSON REID: Is that all you have, just that second question?

VICE CHAIRPERSON SOCKWELL: Just that second

question. Now, the second question is in eight parts.

(Laughter.)

VICE CHAIRPERSON SOCKWELL: Just kidding. The 255 seat auditorium that is proposed for the lower level would present apparently the opportunity for very large numbers of people to come to the facility at one time.

And does that create in the eyes of management a much larger potential impact at the times that events are scheduled, both for egress and ingress, than is currently the case with the type of programs that can be provided to the public now?

MR. CAIN: Mr. Sockwell, are you directing that question to a specific question, because that has kind of --

VICE CHAIRPERSON SOCKWELL: Well, Mr. Slade could respond to the extent that he studied it that way, and I think it really speaks to peak traffic demand, and the timing of events.

MR. SLADE: I will start, but I am sure that Mr. Gates can help me here. As he stated in his testimony, the primary use of the auditorium is daytime or visitors, primarily school children, who are already coming to the museum on a daily basis.

They simply don't have an opportunity to sit down and see a film, or receive instruction about what they have just seen in the gallery. So that is a number one use.

The other thing that I mentioned was that 5 or 6 times a year -- and Mr. Gates can correct me on this -- there are

lectures for donors; the Duncan Phillips' lectures and an award ceremony, where people are again sitting in an audience configuration. Those are happening now. They are happening now across the street at the Cosmos Club.

E-V-E-N-I-N-G S-E-S-SI-O-N

(6:00 p.m.)

VICE CHAIRPERSON SOCKWELL: Well, let me just narrow it down to the point that you are talking about, 255 people, which could be six bus-loads of kids, as opposed to the number of bus-loads of kids that would normally be coming in at any given time.

MR. SLADE: We have extensively asked these same questions of the administration at The Phillips Collection, and maybe this is a better question for Mr. Gates to answer.

But basically there is not an intent to expand the education programs in that way. They are simply to continue the education programs as they are, but use this facility to expand the experience of the collection.

VICE CHAIRPERSON SOCKWELL: But the effect of using the other auditorium would be based on the number of people that you can accommodate at any given time based on the number of times that you want to repeat your program. So I am just asking.

MR. CAIN: And to that end, Mr. Sockwell, the museum has said that it is prepared to limit the use of the auditorium so that there is not a conflict in the neighborhood. We have said that in public session and we have put it in writing.

We are prepared to limit the use of the other auditorium, which the understanding that when it can be used by the museum in an effective way, it needs to be used, and we need

to be able to design programming that makes it look that way, while at the same time wanting to prevent it from being a destination that will create problems.

VICE CHAIRPERSON SOCKWELL: Because the same auditorium will accommodate school kids and people who would not be school children, which would mean if they were all adults, there would be a problem of the same size, but it would mean that these people might all come by car.

MR. CAIN: The studies of traffic at that museum suggest and in fact prove that the vast majority come by public transportation, and the uses of the auditorium can, because of the nature of the educational day of the museum, accommodate groups of school children at one time, and visitors to an exhibition.

For instance, the Duncan Phillips' show would want to see an audio tour or by video tour, and another it is a matter of scheduling and use of the facility in ways that allows us to serve our visitors better.

VICE CHAIRPERSON SOCKWELL: Okay. Thank you. I will revisit the question later. Thank you.

BOARD MEMBER RENSHAW: Madam Chair, I have to leave at six o'clock, and if you stay beyond six, I will certainly read the record so that I can catch up and be ready for the next session.

But if I may just ask one question for Mr. Slade. You referred this curb parking business, and I take it that you --

you said that you want more curb parking.

MR. SLADE: I'll explain.

BOARD MEMBER RENSHAW: Yes, please do, because I am wanting to know if what you have -- whatever you were working out with DPW has also been worked out with the neighbors, the immediate neighbors to the project?

MR. SLADE: Ms. Renshaw, this is that plan that shows the entire neighborhood, and there are two areas that we are talking about. Before we joined this team, there were discussions within the neighborhood, and of course involving The Phillips Collection, about this block of Mass Avenue.

And where I am pointing is a section of Mass Avenue that is adjacent to the park where the relatively new statute of Gandhi is located. There are six metered parking places long here.

The idea is -- and we talked to DPW and parking about this -- that perhaps some of those metered parking spaces are expendable and could be a bus passenger loading area.

Not that buses would park here for long periods of time, but that buses would not come to The Phillips Collection down 21st Street any more at all, except those buses that are carrying people who are not ambulatory, such as elderly people who might find this block-and-a-half walk or half-a-block walk too long.

So the idea is that all of the buses would be

directed, school buses and tour buses would be directed to this location. They would unload here, and would walk to the entrance of the Goh Annex, and then return to that location when they are read to go a couple of hours later.

BOARD MEMBER RENSHAW: Is there a signal at that location?

MR. SLADE: There is a signal at 21st and Mass. It is off this diagram.

BOARD MEMBER RENSHAW: But not here?

MR. SLADE: But not here. This is stop sign controlled. Q Street is one way eastbound, and I am sure that you are very familiar with it.

BOARD MEMBER RENSHAW: Oh, yes. I cruise the block looking for a place to park.

(Laughter.)

MR. SLADE: The other area where we would like to explore the idea of adjusting curb parking, just adjusting curb parking, is in the frontage along the property. There are seven metered parking places there.

And at the present time as you know, and everyone knows, that I believe that virtually all of the curb parking places in this neighborhood are almost always all filled. I mean, it is always quite occupied.

And in addition to that, there is often someone parking here illegally between the meters because they are running

in and out of someplace. There are embassies nearby and so forth, as well as The Phillips Collection.

So when a bus arrives today, he can't get to the curb sometimes, and he stops in the street. Now he will be sent to this location, but when anyone else arrives -- short term delivery, or Fedex package, or something like that -- there is difficulty of finding a curb space.

So one aspect of this would be to get a little bit better management of those curb spaces so that there is a little more assurance that they won't stop in the street.

Then on evenings when there is an event, to take exception and put bags over those meters for temporary no parking control. As I said, there is 60 total events a year, and a large fraction of them are in the evenings.

So we are probably talking about 45 or 50 nights a year where if all the valet activity was on 21st Street -- and I didn't have time to get into it -- we would have more flexibility for valet activity now.

But some number of nights a year, a few meters, 2 or maybe 3, would be bagged so that we would have a continuous curb so that people coming for valet service won't block 21st Street.

Then 3 or 4 times a year, just to make sure that we can get the large trucks with the priceless collections for the exhibits to the curb, those meter spaces would also be bagged.

If I may just talk about the flexibility for valet service now. Right now --

BOARD MEMBER RENSHAW: Well, I would just like you to reference whether or not what you are presenting to the board has been worked out with the community, or is this just your plan with DPW?

MR. SLADE: It is my understanding that it has been discussed with the community. Some say not accepted and some say no, and some say yes. I know that there were discussions with the community.

MR. CAIN: Ms. Renshaw, I don't want to represent that we have any agreement with the community on these issues.

BOARD MEMBER RENSHAW: Thank you. That's what I needed to know.

MS. MITTEN: Madam Chair, if Ms. Renshaw is finished, maybe I could ask a question.

BOARD MEMBER RENSHAW: Yes, go ahead.

CHAIRPERSON REID: All right.

MS. MITTEN: There were a couple of mentions made of high ground water or rock below the surface that were problematic to the construction, lower level construction. Can you provide some documentation for the record that establishes those conditions?

MR. COX: Yes, we can. We have a geotechnical report that indicates both of these findings.

MS. MITTEN: And that has not been submitted yet; is that correct?

MR. COX: No, it has not.

MS. MITTEN: All right. I would appreciate seeing that. You also mentioned a light and shade analysis that had been performed relative to the new construction. Is that something that could be submitted for the record?

MR. COX: That was done primarily through the use of the models that we built and drawings. There is no actual report that I could submit to you on that.

MS. MITTEN: Okay. Given that that may be an issue for some of the parties in this case, that may be something that you want to give some consideration to, to providing some analysis of light and shade, and its effect on adjacent property.

But at this moment maybe we will just defer that, and if there is something that you would like to submit that deals with that, it might be helpful.

MR. COX: Because I could certainly go into it a little bit more in a detailed fashion now if it pleases the board.

MS. MITTEN: Well, maybe it would be better if you -- well, is it something that you can provide so that we can get a sense of it, and then just follow up with questions maybe at our next go around?

MR. COX: We can prepare something and submit it.

MS. MITTEN: Okay. I think that would be very

helpful. The waiver on the parking requirements for historic structures, I just want to verify, because it seems the reason that you were sent to the Mayor's agent was because when you -- at least the way that the woman from the Historic Preservation Division represented it, it wasn't clear that it was going to be a partial raise.

Can you tell me whether or not the exemption for parking for the expansion property applies in the situation of a partial raise?

MR. CAIN: Ms. Mitten, that is part architectural, and part legal. The waiver applies to the project as you have seen it discussed today. It was approved, I believe, after the Mayor's agent hearing, but before the Mayor's agent order issued.

So that the sequence is correct. The Mayor's agent's hearing involved the presentation that you have seen here today.

MS. MITTEN: Okay. Can you tell me approximately when that was, the Mayor's agent's hearing?

MR. CAIN: That was on August 18th, and the order was October 11th, and the waiver has been submitted for the file, but I have extra copies if you care to have one.

MS. MITTEN: No, we have that. We have the waiver. We have a copy of the waiver.

MR. CAIN: I'm sorry, August 16th is the date for

the hearing before the Mayor's agent. So I stand corrected.

MS. MITTEN: Okay. And then it is signed August 31st.

MR. CAIN: That's correct, the findings of fact and conclusions of law in an order signed October 11th.

MS. MITTEN: Could somebody explain the nature of the alley easement that has been mentioned?

CHAIRPERSON REID: Is that your second question?

MS. MITTEN: Oh, are we only allowed two at a time?

CHAIRPERSON REID: Yes.

MS. MITTEN: Oh, I'm sorry. I thought that was only for Mr. Sockwell.

(Laughter.)

VICE CHAIRPERSON SOCKWELL: You see, you have to get your facets of questions together, multifaceted only.

CHAIRPERSON REID: Do you have another one?

(Discussion off the record.)

CHAIRPERSON REID: Oh, I'm sorry. In regards to the assessment, obviously we are not going to get into the opposition today. But what we want to do is conclude the applicant's case. Did you have a lot of cross-examination questions?

MR. GELL: I do have some, unless they want to commit that the witnesses will come back.

MR. CAIN: I'll commit that we will all come back.

MS. MITTEN: And, Madam Chair, I need to leave at 6:15.

CHAIRPERSON REID: Right. And then we don't have a quorum. So what we are going to do is that we are going to adjourn today at 6:15, because Ms. Mitten has to leave, and we won't have a quorum. However, we can conclude this portion and pick up on the 9th with the cross-examination by Mr. Gell.

MR. MICONE: I have a question, please. On the schedule for January 9th, I understand that is the date when this hearing will be continued. Will that be during the morning session?

MS. MITTEN: I believe Ms. Pruitt said before she left that it is the afternoon session.

CHAIRPERSON REID: Do you know, Mr. Hart?

MR. HART: Yes, Ms. Pruitt has it marked as the afternoon session.

MR. MICONE: Madam Chair, I have a concluding event at work that begins at 1:00. So if when that meeting is held, after cross-examination, I would request if I am not here right when the ANC is supposed to present, if the Board would allow me to speak later.

CHAIRPERSON REID: That's fine.

MR. MICONE: Thank you. I will reconfirm that in writing with your staff.

CHAIRPERSON REID: I have just one quick question for right now, and that is in regards to the valet parking. I think it was Mr. Slade who testified about that. Where is the valet parking going to be?

MR. SLADE: The valet parking is currently going on and The Phillips Collection recently signed an agreement with Atlantic to handle all of their parking. Atlantic is looking for off-site, off-street locations in the neighborhood, and we will have a number of them listed by January 9th I would expect.

MR. CAIN: Madam Chair, we have submitted a copy of an agreement wherein Atlantic commits to place these cars off-street, which we tendered this morning.

CHAIRPERSON REID: I have that.

MR. SLADE: And there are off-street garages and surface lots in the neighborhood. At the present time, for example, when The Phillips Collection has an event, and there is available space at the Cosmos Club, the valet parkers take the cars back to the Cosmos Club surface parking.

MR. GATES: We have an ongoing relationship whereby we use each other's parking whenever the other party is available.

CHAIRPERSON REID: Okay. So basically as part of that agreement, I would like to have you designate where those cars are going to be parked and the arrangement that you have, reciprocal or whatever.

MR. GATES: Yes, Ma'am.

CHAIRPERSON REID: Because I know that there are a couple of other institutional type facilities right around and about there. But the most important thing I think for the community from what I garner from the letters is that it does not take up the very precious parking spaces that are on the streets. And is that what the plan is when you say off-street? They don't park on the street at all.

MR. GATES: They do not park on the street at all. That is what that agreement stipulates. I think the other thing that I should remind you is that we will have a garage if this application is approved, and about -- out of a hundred guests for an event, there would be about 40 cars parked. We could handle all those cars on this site.

CHAIRPERSON REID: On-site?

MR. GATES: Yes. And about a third or more -- I can give you the statistics in January.

CHAIRPERSON REID: You said you can handle 40 cars?

MR. GATES: I am saying that about 80 percent of the people to events come by car, and on an average of two by car. So out of a hundred people, there is 40 cars, and the rest are coming by cab or walking.

VICE CHAIRPERSON SOCKWELL: Madam Chair --

CHAIRPERSON REID: Excuse me, Mr. Sockwell. The rest are coming by cab or walking?

MR. GATES: Yes.

MR. CAIN: Or public transportation.

CHAIRPERSON REID: I don't know if that is -- well, that appears to me to be rather questionable.

MR. SLADE: Madam Chair, we did a survey of this.

CHAIRPERSON REID: Well, like people in the neighborhood?

MR. SLADE: From the neighborhood, and from the nearby metro station, which is just a block away.

CHAIRPERSON REID: Is that the Dupont Circle metro station?

MR. SLADE: Yes.

CHAIRPERSON REID: Dupont Circle in proximity to --

VICE CHAIRPERSON SOCKWELL: It is on 19th Street, on the opposite side.

MR. SLADE: Right.

CHAIRPERSON REID: So 19th and Mass --

MR. SLADE: This is 21st and Q.

CHAIRPERSON REID: So how many blocks is it?

MR. SLADE: It is two blocks. 20th and Q is the entrance. That is the famous entrance with the big circular hole in the ground, with the escalators going down.

CHAIRPERSON REID: Okay. So the metro station, as well as -- and when you say by foot, you mean from the metro station?

MR. SLADE: Yes. I have come to one or two events

here, and my offices are at Connecticut Avenue, and I just walk up here.

CHAIRPERSON REID: But most people I would think if they don't have to, they wouldn't drive there.

MR. SLADE: Right.

VICE CHAIRPERSON SOCKWELL: Mr. Slade, the question that I raise is do your numbers take into consideration the new 255 seat auditorium and the existing facility's capabilities together?

MR. SLADE: We assume that that auditorium would primarily be serving only events which are currently taking place, and that there would not be a significant change in activities because of the auditorium.

VICE CHAIRPERSON SOCKWELL: Well, the question is that if you have a 255 seat auditorium, and where you had none before, and you increase the size and capacity of your facility by square footage, then how can you assume that the number of people to be accommodated will stay the same when that auditorium is there for a reason?

MR. SLADE: The size of the increase of the facilities is, we think, marginal and won't affect visitation. The galleries are only being increased by 1,600 square feet. Just a little bit bigger than this room. So, from 15,000 square feet to another 1,600.

The shop and the cafe, which are tiny if you have

seen them, will be increase by 400 square feet and 950 square feet, respectively. So those changes, we don't think, are going to change visitation at all.

VICE CHAIRPERSON SOCKWELL: But is there a way to be guaranteed that the auditorium would not be used as an independently filled facility during the time that the other facilities are also in use?

And the other thing is that I park on the Cosmos lot at night, and it is not easy to find a place on that Cosmos Club parking lot.

MR. GATES: Mr. Sockwell, in answer to your first question, yes, it is possible to guarantee that.

CHAIRPERSON REID: Well, now -- and this is something that would be good for you to bring back in regard to that seating in the auditorium, if in fact you have some type of an affair -- if you have like a documentary, or if you have a lecture and the like, and it is filled, I would like to see how you are going to address the parking in those instances.

Because I think that would be a problem, and I think that would go a long way if you could come up with some creative --

MR. GATES: If I could answer that question in two parts. The museum has signed the contract with Atlantic, and we are seeking specific locations where that parking can be done.

CHAIRPERSON REID: And that goes back to my first

question as to identifying ample off-street parking.

MR. GATES: I read you loud and clear, and we are going to answer that question. Secondly, when the museum, if allowed, creates lower grade parking, then all museum events at night with attendance of less than 80 to 100 people, will be accommodated by our own parking off-street underground.

That is one of the reasons that we designed the parking garage in the first place, so as to provide relief in the neighborhood, so that when the museum has events below a certain level that we can accommodate all of the parking in the museums in the new underground parking garage.

CHAIRPERSON REID: What are your hours of operation?

MR. GATES: The museum is open basically 10:00 to 5:00 Tuesday through Friday, and we are open late Thursday night, and we are open on Saturdays, and we are open on Sundays. On Sundays, we are open from noon to 7:00, because there is a free music concert in the music room, which has been free to the public and much loved by the neighborhood for decades.

CHAIRPERSON REID: Okay.

MS. MITTEN: Can I just ask a question kind of on this point, which is do people when they come to an event, and there is 80 to 100 people, and they have valet, do they have to pay for that, the valet?

MR. GATES: It depends on the event itself. If it

is a museum event where we are providing the valet, then we have to pay for that. If there is a corporation that is sponsoring a major exhibition and is investing in the range of six figures for that exhibition, and they have an opening event at the museum, then they pay for the valet parking.

MS. MITTEN: No, I mean the individuals who are coming to the event by car.

MR. GATES: No, Ma'am.

MS. MITTEN: They don't pay?

MR. GATES: No, Ma'am.

MS. MITTEN: Okay. Great. Thanks.

VICE CHAIRPERSON SOCKWELL: One last quick question for Mr. Slade. What is in your estimation the maximum distance that a valet parker, runner that is, the person picking up and dropping off cars, will travel effectively to keep the flow of vehicles within reason during the egress portion of your events?

MR. SLADE: Mr. Sockwell, I think we should get an answer for you from Atlantic, who is going to be the operator and bring that on the 9th if that is acceptable.

VICE CHAIRPERSON SOCKWELL: Well, now that Atlantic is owned by a national system, it is a little bit different company, but the point is that I know the buildings within the general vicinity of that facility now, and there is nothing within two blocks that would have a garage that can accommodate that type of car.

In fact, there is probably nothing within 3-1/2 blocks that would accommodate cars like that, because most of the buildings are older, pre-garage buildings.

CHAIRPERSON REID: Excuse me. Mr. Sockwell, let them bring the information back, because there may be some facility or some type of lot that you may not know about.

VICE CHAIRPERSON SOCKWELL: It is going to be interesting.

CHAIRPERSON REID: All right. Thank you very much. This concludes the hearing for today. Just to reiterate, we will reconvene on January 9th at one o'clock, at which time we will commence with cross-examination by the opposition, the ANC report, the Office of Planning report, and opposition, and closing remarks.

MR. GELL: Madam Chair, Mr. Ristin cannot come back on the 9th. Everybody else can.

CHAIRPERSON REID: Who is Mr. Ristin?

MR. GELL: This gentleman here. He has a three minute statement, and would it be possible for him to make his statement and show you the picture.

CHAIRPERSON REID: Ms. Mitten is the one who has the time constraint.

VICE CHAIRPERSON SOCKWELL: We can do it if you don't mind.

MS. MITTEN: All right. That's fine.

MR. RISTIN: My name is Norman Ristin, and I reside at 2027 Hillyer Place, and although your map doesn't show it, my property runs the entire length, from Hillyer Place all the way back to the public alley here.

I have two parking spaces as part of my house, and I am lucky if I can use them because people will say that we are only going to be at The Phillips for a little while, and these are my parking spaces.

I stand there with my arms out, and that's a problem. When I came to look for a home in Washington, I looked on O Street and found a lovely home, and was told not to buy it because a lady brings buses on the street.

I moved to Hillyer Place and Steve Calcutt said you are moving into the most wonderful residential area. It is historically significant, and it is residential. My question to this board is how committed are you to maintain this little residential neighborhood?

We are all members of The Phillips. We love the Phillips, but this institution is marching and taking away the residential quality of this neighborhood. We have been awakened by chairs being thrown on to trucks at twelve o'clock at night.

We have been awakened by buses, and I have pictures of the school buses parked in front of my house a couple of weeks ago right after we had the discussions with The Phillips.

This was on the street cleaning day, and the street

was bare and so the buses could park there. So we didn't get our streets cleaned, and the buses put fumes in the house, and we could not even talk on the phone.

Mr. Gates was on the phone with me and I said we can't even talk to one another because of the noise of the buses. They are talking of moving the buses on to Massachusetts. Fine if that can work out, but it is a very serious problem, and we are losing parking spaces.

Those parking spaces are critical. I often have to use those spaces because I have complete blocked access to my home. I can't get in this way, and this is a one-way street.

The buses or trucks coming down come into my back alley and make a turn, and come across here, and come out. What is not shown here is the access from the Dunns' home very clearly. You can't make these turns.

I have had my car hit. I was coming out of my alley and a car could not come down here because it was blocked. This lady in a Isuzi backed up at 50 miles an hour. I am looking up here to see if traffic is coming down, and she came right into me. This is a terrible parking thing.

I don't accept this parking analysis here. And with 250 people coming to an auditorium or to a restaurant, and we have all these restaurants here, what are you depriving these people of? You are depriving the restaurants on Connecticut Avenue of the traffic which they would love to have.

So I don't buy the need for a restaurant, and I don't buy the need for a 250 seat auditorium. I do ask that you remember that this is a lovely residential area.

It is a very fragile little area here, and by having this museum come up here, and create more traffic, and create more noise every time they have an event in the evening, it is awful. Even if there are only 40 cars, it is terrible. And you can't safely come out of these alleys. You get hit.

VICE CHAIRPERSON SOCKWELL: Mr. Ristin, one quick question. When did you buy your property, sir?

MR. RISTIN: The closing was January of 1998.

VICE CHAIRPERSON SOCKWELL: So this neighborhood was tremendously impacted before you moved into it, and it would not have been something that evolved after you got there.

So one of the things that you had to have made a decision about was the fact that you were moving into a neighborhood impacted by a particularly important museum facility, and therefore some of the things that are your problem are not things that came after you, but things that came before you, and you bought into the situation when you moved in there.

MR. RISTIN: If you look at the schedule of exhibits, their big exhibits have actually come during this period or after.

CHAIRPERSON REID: Go ahead and finish, Mr. Ristin, please.

MR. RISTIN: Well, that is really it. How committed is the board to maintaining the very fragile quality of this residential area. We love The Phillips, but we never knew that The Phillips was going to be expanding, and as Mr. Wetzel has said, their mission is to keep expanding, and I am quoting him on that.

CHAIRPERSON REID: Thank you very much for your testimony here today. That's it, Mr. Gell. Thank you very much. We will see you on January 9th.

(Whereupon, the hearing was concluded at 6:30 p.m.)