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

OCTOBER 31, 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 9:30 a.m., Robert N. Sockwell, Vice Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

ROBERT N. SOCKWELL	Vice Chairperson
RODNEY L. MOULDEN	Board Member
ANNE RENSHAW	Board Member

ZONING COMMISSION MEMBERS PRESENT:

KWASI HOLMAN	Commissioner
JOHN G. PARSONS	Commissioner

COMMISSION STAFF PRESENT:

Sheri Pruitt, Secretary, BZA
Vincent C. Erondu, Office of Zoning
Paul Hart, Office of Zoning
John Nyarku, Office of Zoning

OTHER AGENCY STAFF PRESENT:

Ellen McCarthy, Office of Planning
Maxine Brown Roberts, Office of Planning

D.C. OFFICE OF CORPORATION COUNSEL:

Marie Sansone, Esq.

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(9:54 a.m.)

VICE CHAIRPERSON SOCKWELL: The hearing will please come to order.

Good morning, ladies and gentlemen. This is the October 31, 2000 public hearing of the Board of Zoning Adjustment of the District of Columbia.

My name is Robert Sockwell, Vice Chairperson, substituting for Sheila Cross Reid, the Chairman. Joining me today is Anne Renshaw to my left, Rodney Moulden to my right, and representing the National Capital Planning Commission and representing the Zoning Commission is John Parsons.

Copies of today's hearing agenda are available to you. They are located to my left near the door. All persons planning to testify either in favor or in opposition are to fill out two witness cards. These cards are located on each end of the table in front of us. Upon coming forward to speak to the Board, please give both cards to the reporter who is sitting to my right.

The order of procedure for special exceptions and variances is: 1) statement and witnesses of the applicant, 2) government reports including Office of Planning, Department of Public

Works, etcetera, 3) report of the Advisory Neighborhood Commission, ANC, 4) parties or persons in support, 5) parties or persons in opposition, and 6) closing remarks by the applicant.

The order of procedure -- let's see. We don't have any appeals today in the morning session. Cross examination of witnesses is permitted by the applicant or parties. The ANC within which the property is located is automatically a party to the case.

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

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

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

The Board will now consider any preliminary matters. Preliminary matters are those

which relate to whether a case will or should be heard today such as requests 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 a case today or if you believe that the Board should not proceed, now is the time to raise such a matter. Does the staff have any preliminary matters?

MS. PRUITT: Yes, we do, Vice Chair. On Application 16592, application of Jemals/Cary Carbarn, LLC, in your file we have a letter dated October 20 requesting withdrawal of this application. And that would be the last case on the morning agenda.

VICE CHAIRPERSON SOCKWELL: Is there anyone here representing them or is the letter all that we need?

MS. PRUITT: The letter is sufficient in and of itself.

VICE CHAIRPERSON SOCKWELL: All right then. Do we--

MS. PRUITT: That's all the preliminary matters staff has.

VICE CHAIRPERSON SOCKWELL: All right. So then, unless we have to vote on that, it's

withdrawn.

If there are no other preliminary matters, let us proceed with the first case.

MS. PRUITT: Good morning. The first case is Application 16629, Application of Penn Capital, LLC, pursuant to 11 CDMR 3103.2 for a variance from the floor area ratio limitation under Section 771.2 for allowed commercial use for the conversion of an existing mixed use structure in the CAP/C-2-A District at 233 Pennsylvania Avenue, S.E. (Square 762, Lot 839).

All those planning to testify, could you please stand and raise your right hand.

(The witnesses were sworn.)

MS. PRUITT: Thank you. Please be seated and proceed. Oh, I'm sorry. Mr. Chairman, just in reference to this particular case, there is no request for party status. There is an OP report. There is no ANC report at this time, and the property was posted timely and filed timely.

VICE CHAIRPERSON SOCKWELL: Thank you.

Persons requesting party status.

MS. PRUITT: Mr. Chairman, I stated that there was none.

VICE CHAIRPERSON SOCKWELL: Oh, you said

none.

MS. PRUITT: None. Yes. Correct. I'm sorry.

VICE CHAIRPERSON SOCKWELL: I'm sorry. I thought you said there was one.

MS. PRUITT: No. There is none.

VICE CHAIRPERSON SOCKWELL: Oh, I'm sorry.

Mr. DePuy, good morning. You may proceed.

MR. DePUY: Thank you. Good morning, Mr. Chairman, Members of the Board.

For the record, I'm Jacques DePuy, attorney with Greenstein, DeLorme and Luchs, representing the applicant this morning. I have a very brief opening statement.

As has been indicated, this is an application for an area variance to allow office use of the third floor of 233 Pennsylvania Avenue, S.E. The subject property is located in a vibrant commercial corridor that extends from 2nd to 4th Street along Pennsylvania Avenue, S.E. It's located in the Capital Interest Overlay Zone and the Capital Hill Historic District.

The application or materials indicate,

the pre-hearing statement indicates satisfies the legal tests for a variance, and I'll very briefly summarize those for the Board. First, the extraordinary exceptional condition is the lot is irregularly shaped. The building is, in addition to being irregularly shaped, an unusually large property compared to properties in the immediate area. It's the only property, as the photographs indicate, that contains a fourth floor, and this bears directly on the FAR request since the building is larger than most similar buildings.

Second, there are practical difficulties to the owner that arise out of the shape and size of this building. In particular, because of the fact that it's narrow and the floors are fairly large. There is a large amount of interior space which is difficult for bringing in light and air and, secondly, the building is configured and partitioned in a way which makes it difficult to reconfigure for alternative uses. There are also egress limitations in dealing with a floor plate and size such as the subject property.

And then third, the application can be granted without adverse effects on the surrounding community because there is no light or glare, no

noise. There is adequate public transportation in the area. Metro service is ample in this neighborhood, and there are nearby commercial parking lots for visitors to the site.

Finally, I'd like to point out that this application has the support of the Capital Hill Restoration Society, ANC 6-B, and the Office of Planning, which is here to testify today, has recommended approval.

With that, I'd like to call Mr. John Sargent, our witness, and ask him to identify himself for the record. I will also point out to the Board that our architect is here with us and is available for questions if necessary. That's Mr. Louis Balodemas. Mr. Sargent.

MR. SARGENT: Good morning. My name is John Sargent. I live at 5021 McComb Street in the District. I run a real estate company, Retal Hagner, that's been in the District for 96 years.

On July 12 we, through a partnership, purchased 233 Pennsylvania Avenue, and just a quick brief overview of this property. Our first mission was to stabilize the building, and that's from the top floor down. Roof was basically Swiss cheese. A lot of -- tremendous amount of water penetration.

The top three floors, including the third floor under review today, top three floors had been vacant for at least five years. It is our understanding that the second and third floor had previously been used for office, although we were never -- never had a permit to do so.

And then the ground floor and basement had tremendous amount of rodent infestation and, as a matter of fact, we could not get a termite or pest inspection until we secured the building, so that was our first mission. Put a new roof on, secure the basement and ground floor area.

Our desire or our goal here is to restore the building to bring it back to the grandeur that we see in the building, and that's our priority. We have leased the ground floor to Ritz Camera. They have received approval, I believe, from the D.C. Historic Review Board and are quite sensitive to restoration of the property which is compatible with our desire, and that's one reason why we're pleased that they're on the ground floor.

The second floor, we have executed a lease with the Association of Former Members of Congress. They again are quite pleased with the building, and that will be their association

headquarters.

When it comes to the third floor and how we use the third and fourth floor, we gave serious consideration, really had a careful review of the entire building and its usage. We resolved that it was appropriate and consistent within the neighborhood that we designate the third floor for office use. How did we reach that conclusion? In the middle of August, actually August 15 to be exact, an associate and myself walked all the third floor buildings in that immediate block and also extended our search into the 300 block and just above our property.

In our immediate block there are six -- we inspected all the third floors that were occupied and, out of that inspection, every single one on our side of the street in the 200 block was occupied by a commercial use, and that is what the board on the left shows and it designates the different uses on the third floors of each of those buildings in our block. And our building is the one that sits up a bit and has the spire, the little spire because of the fourth floor.

Our search also went into the 300 block and, while there were some exceptions, the

predominant use on the floor were commercial, and I have additional data on that if that were important to bring up. So we personally went into 11 buildings, and that is our report. Since the building is a four story building and there are no other four story buildings in our block, it made sense that we retain the residential use on the top floor. Since it rises above the neighboring buildings, it has wonderful light coming in off Pennsylvania Avenue and it also has it on either side, which makes it very desirable for an apartment, which is what it used to be probably, five, six, seven years ago. And that is our desire. We're not asking for any consideration nor would we because we believe it's very fitting to have an apartment on the fourth floor.

So we feel it's appropriate and consistent with the immediate neighborhood and that's why we're here asking for permission for office use on the third floor.

In coming up to this meeting, we've met with the ANC and we had a very interesting meeting with the Capital Hill Restoration Society. They brought up a point that was very valid and asked us to consider providing parking in our rear yard. We

have a rear yard, and I must say we're doing everything we can to investigate parking. It's a very reasonable request, and we are exploring that. We're exploring the parking in a number of ways.

But first, with their comment about using the rear yard, our rear yard has -- in order to use the rear yard, we must first obtain an easement from a neighboring property owner because our rear yard only has a seven foot frontage on the alley and actually part of that frontage goes right into a basement stairwell in the rear of our property. So while there is -- and I believe the frontage, if I'm not mistaken, is you must have a nine foot opening and, while there is property next to us owned separately by someone else, we are in contact and we are trying to -- we will explore that fully to see if we can obtain some type of easement.

I'm an optimistic person, but I think practically that's going to be difficult because our grade also is about a foot higher than the alley, so there are some problems associated with that. Also, the alley is a tremendous bottleneck. Cars are double parked in the alley. It's got a circuitous route to it. Whenever I've been in the alley, I would never want to be the first one to be parked,

even in our rear yard, because I don't think you'd ever get out without some consternation.

As Mr. DePuy stated, we have met personally with the parking people at 3rd and Penn, 950 Penn and also at 6th and Penn. They are always available for daily parking. There is a list for monthly parking, but we're encouraged that we can certainly get on that list and actually my firm I'm associated with used to do the leasing for 650 Penn and we have a very good relationship with the owner there. So we're going to pull all stops out to help on the parking issue and meet the reasonable concern by the Restoration Society and obviously we're a proponent of Metro. There's a Metro bus on Pennsylvania and the Capital Hill Metro Station is within two and a half blocks.

Lastly, we are working with a neighbor who owns six garages that front on the alley but, again, several of them, we understand -- well, we know -- are used for storage purposes. So maybe there's some trading we can do with mini-storage warehouses further out and see what we can do there.

The purpose of belaboring this is that we are continuing to investigate and to research this and will do so to meet the reasonable request by the

Restoration Society but also for the benefit of the building and the neighborhood. So that's what I have to say this morning. Our request is to utilize the third floor for office use. We believe it's consistent. We believe it's a reasonable request and, again, maintaining the residential use on the fourth floor, and we thank you for your consideration and review.

VICE CHAIRPERSON SOCKWELL: Do you have any other witnesses to bring forward?

MR. DePUY: Mr. Chairman, we have the architect with us in case there are questions. I didn't know if there were any architectural questions the Board might have, given that the building is being proposed to be used in its current condition and its current internal configuration, but he is here in case there are questions.

VICE CHAIRPERSON SOCKWELL: All right. Then I would want to start. First, it's possible that you would require variance from parking under Section 210.1 of the ordinance as the building is in excess of 3,000 square feet.

MR. DePUY: Mr. Chairman, we have in the file and submitted with the application a certification from the Historic Preservation Division

that this is a contributing building for which parking has been waived.

VICE CHAIRPERSON SOCKWELL: You have not provided a parking waiver to this Board.

MR. SARGENT: It was with the original application, Mr. Chairman.

MS. PRUITT: Mr. Chairman, actually it's Exhibit 8. We found it.

VICE CHAIRPERSON SOCKWELL: Oh, you did?

MS. PRUITT: Yes.

VICE CHAIRPERSON SOCKWELL: I didn't see it in my package.

MS. PRUITT: It should be --

VICE CHAIRPERSON SOCKWELL: No. I saw the Historic Preservation designation. I did not see a parking waiver. Having filled out many of them myself, I was looking for a specific form that would have been signed by HP stating that the parking has been waived for this property. I did not see it. Is this it? Okay. Then we're covered on the parking.

Let me get to the next question. In regard to the fourth floor, I assume that this is the same Hagner Real Estate that's on Connecticut Avenue in the 1300 block.

MR. SARGENT: Yes, sir. It is.

VICE CHAIRPERSON SOCKWELL: Each side of the street.

MR. SARGENT: Yes, sir.

VICE CHAIRPERSON SOCKWELL: The fourth floor probably could not be used for commercial anyway because it's already a residential unit. It's too far above the level of egress to be converted into commercial as a single exit location. I would be sure the architect can answer that question.

MR. BALODEMAS: Good morning.

VICE CHAIRPERSON SOCKWELL: You did swear in?

MR. BALODEMAS: I did. Yes.

VICE CHAIRPERSON SOCKWELL: Would you identify yourself for the record, please.

MR. BALODEMAS: Sure. Lou Balodemas, architect. I live at 4870 Chevy Chase Boulevard, Chevy Chase, Maryland.

The fourth floor is connected by a fire escape to the new rear exit stair on the building and then there's an internal stairway as well.

VICE CHAIRPERSON SOCKWELL: Okay. So the fourth floor as shown in these drawings has -- well actually, you'd have to be able to egress. You can't egress through a stair to get to another stair, if

that's what you're showing.

MR. BALODEMAS: We have another board that has the floor plan on it from the --

VICE CHAIRPERSON SOCKWELL: I mean the floor plan that I'm looking at shows the fourth floor that exits directly into the stair tower which is surrounded by -- construction. Am I not correct?

MR. BALODEMAS: That's correct.

VICE CHAIRPERSON SOCKWELL: All right. And it also shows that in order to access the roof, you'd have to go through the stair to get to the roof.

MR. BALODEMAS: That's to the roof of the building, but through this side window through this room, we have an easement with the neighbor, and the fire escape connects to our fire stair. The easement allows for them to egress through our property and allows us to traverse their property to get back to our stair from the fourth floor without having to go up onto our roof.

VICE CHAIRPERSON SOCKWELL: That allows you to egress through their property through the window.

MR. BALODEMAS: Their building is only three stories.

VICE CHAIRPERSON SOCKWELL: I understand.

MR. BALODEMAS: When we come out this window we're on their roof. There's a fire escape on their roof that continues around and connects over to our fire stair back here. They have a window from a third floor level that comes out onto the stair and also comes onto our fire stair.

VICE CHAIRPERSON SOCKWELL: I can have some trouble with that, but I'm not the representative of the building code for this issue. But it's only good as long as this building is in existence, and I don't know how to respond to that one. But anyway, we'll leave that alone.

Now, you, Mr. Sargent, you spoke to the provision of parking. You spoke to having explored many avenues to achieve some parking, but you had not shown any finalized relationship with any organization to provide parking for your building.

MR. SARGENT: That's correct. But I might add, with the association tenant on the second floor, the lease that we have in place, they have three full-time employees and one part-time receptionist, I believe, a student from George Washington University. One of the conditions in our working together with them is to assist them with

parking, and we are in contact with them and it appears that there are several -- I believe at least one of them -- two from the District and one is from Virginia and I believe they have -- it looks like they have been able to secure parking in a lot within walking distance. Our building doesn't work unless we can work with them for this issue.

VICE CHAIRPERSON SOCKWELL: One of the issues in Capital Hill is that parking is not always the easiest thing to secure, especially during the business day.

I have a question about the plans. If you can look at your exhibits, there is a window that shows on the fourth floor, the third floor, and the second floor drawings that I have, and that window appears to be against a wall.

MR. SARGENT: Are you talking about this side window?

VICE CHAIRPERSON SOCKWELL: Yes, sir.

MR. SARGENT: You're right. There's a light well that's formed in a pocket of the neighboring building that allows some light but no egress from the third or second levels.

VICE CHAIRPERSON SOCKWELL: So with regard to that light well and the assertion that the

third floor would not be suitable for residential use, in reality the third floor was residential converted to commercial without a Certificate of Occupancy issued more than likely.

But since there was no C of O and you're only dealing with the information -- I'm only dealing with the information that's been provided to me, I would say that if one classifies English basement efficiencies as unlikely units for habitation and since the building code doesn't even require that you have natural light or natural ventilation in a residential unit, there's no way to really say that this floor could not become effectively very effectively residential.

MR. BALODEMAS: The building code does in fact require egress from sleeping areas.

VICE CHAIRPERSON SOCKWELL: I didn't say anything about egress. I said natural light and ventilation, didn't I?

MR. BALODEMAS: Yes, you did.

VICE CHAIRPERSON SOCKWELL: Thank you. Now, we can talk about egress. You may bring up the egress issue, but that wasn't what the assertion was. The assertion was natural light and ventilation, things like that. Okay?

MR. BALODEMAS: Apologies. The egress issue -- you're right. The second and third floors have the same layout. Exactly the same layout. Originally the front two rooms, they are two very formal rooms. They each have a fire place separated by nice French doors that pocket into the walls. Those would have been the main living areas. The kitchen was in this one rear room, and these other interior rooms were most likely the bedrooms. The current building code wouldn't allow you to use those as bedrooms because of the egress issue.

VICE CHAIRPERSON SOCKWELL: Unless they were grandfather'd as existing units.

MR. BALODEMAS: I wouldn't know for certain.

VICE CHAIRPERSON SOCKWELL: Well, anything that's existing is grandfather'd. They don't take it away from you once it's been offered and utilized that way. It's when you want to modify. Is your license in Washington?

MR. BALODEMAS: Yes, sir. It is.

VICE CHAIRPERSON SOCKWELL: Okay. So you are familiar with the building code.

MR. BALODEMAS: Yes, sir.

VICE CHAIRPERSON SOCKWELL: Okay. Just

wanted to make sure. Under the current building code, anything that is existing and that would be in use would be allowed to remain in use, even as a nonconforming use, under the zoning ordinance and under the building code would not have to be brought up to current building code requirements unless modified extensively. That's under the existing structures aspects of the code.

MR. BALODEMAS: Agreed.

VICE CHAIRPERSON SOCKWELL: Thank you. Okay. That's all the questions I have for you at the moment. Thank you very much.

Board members?

All right. I guess we don't have any cross examination at this point, so I would call for the government reports. We do have a report from the Office of Planning which will be given either by Ellen McCarthy or --

MS. ROBERTS: Maxine Brown Roberts.

VICE CHAIRPERSON SOCKWELL: Maxine Brown Roberts will give the report.

MS. ROBERTS: Thank you. Good morning, Mr. Chairman and members of the Board. The Office of Planning is recommending approval of this variance request. The request will be consistent with retail

and office use nature of this portion of Pennsylvania Avenue. Many buildings have been converted leading to the phasing out of residential uses along Pennsylvania Avenue. This is not a suitable location for residences due to the commercial nature.

The comprehensive plan also recommends an amendment to the Zoning Ordinance to increase commercial use up to .30 FAR along this commercial corridor. Although this portion of Pennsylvania Avenue was not specified, we think this was an oversight which, as it has similar characteristics to the other areas recommended for change. This change in the zoning regulation would recognize a transformation that has taken place.

Section 3103.2 outlines the standards to be met for approval for variance. One is the uniqueness due to shape. The lot is the largest on the block and the building is attached. Due to the shape of the building, light and air can not penetrate directly through the building. Therefore, it is not suitable for residential use.

The uniqueness of this building also causes a hardship because of the lack of light and air on the third floor which could render the space unusable. Residential use is further affected by

noise associated with traffic, pedestrian movements due to the proximity of Pennsylvania Avenue.

Expansion of commercial use and FAR will not be detrimental to the public good and will not impair the integrity of the zone plan or zoning regulation and map. The proposal furthers the aim of the comprehensive plan, the zoning regulation and map by providing additional commercial space along Pennsylvania Avenue and helping to preserve adjacent residential areas.

ANC-6B and the Capital Hill Restoration Society recommend approval of this variance and recommends that the proposed use is consistent with the character of the neighborhood and they have supported this type of conversion of upper floors to commercial use above the recognized FAR in order to encourage office uses in this location and minimize legal uses in adjacent residential areas.

The Office of Planning recommends that the variance be approved as the applicant met the standards for approval and has the support of the community. Thank you.

VICE CHAIRPERSON SOCKWELL: All right. I would first ask Board Members if they have any questions of the Office of Planning.

BOARD MEMBER RENSHAW: Mr. Vice Chair, I would like the Office of Planning to let us have a copy of whatever it has from ANC 6-B. It states in your report that ANC-6B voted to recommend approval of the requested variance, but we don't have a copy of that report.

MS. ROBERTS: We did not get an official report, but I did speak to the Chairman and he conveyed the vote at the hearing.

VICE CHAIRPERSON SOCKWELL: We would need to have ANC 6-B's report in hand in order for it to be given the great weight that the ANC is accorded in these hearings. I would request that staff -- should staff contact ANC 6-B or should the -- is their report forthcoming? Have they made a statement as to why it's not forthcoming?

MS. PRUITT: No. They have not made a statement and I guess traditionally staff has not contacted each ANC if there is no report coming in. We check our records daily to see if a report has come in late and a waiver is required.

VICE CHAIRPERSON SOCKWELL: So we don't have anything from ANC 6-B.

MS. PRUITT: I think it's generally assumed if you don't hear anything, there's no

opposition.

VICE CHAIRPERSON SOCKWELL: Yes, the assumption is but the assumption is also that they're not accorded their great weight if the report is not here.

BOARD MEMBER MOULDEN: Can the Board waive that based on the information that we have from the Office of Planning?

VICE CHAIRPERSON SOCKWELL: No. An official report is --

MS. PRUITT: You don't need an ANC report to make a decision.

VICE CHAIRPERSON SOCKWELL: A decision.

MS. PRUITT: It's just that if you have it and it's done correctly, it does get great weight and you have to address that in your decision but, in this case, you don't have it.

VICE CHAIRPERSON SOCKWELL: So it's not in the record.

Other Board Members, questions?

I have a question of the Office of Planning's report. Ms. Brown-Roberts, in the uniqueness description which is exceptional narrowness, shallowness, shaped topography or other extraordinary exceptional situation or condition, you

stated that because the building has common walls on two sides, light and air are filtered in only from the front and rear. Due to the turn in the middle of the building, light and air it not able to filter straight through from front to back and, therefore, make the second and third floor space not conducive to residential use.

My question to you is that in an apartment building, typical double loaded corridor, you have apartments on one side of the building and apartments on the other side of the building. There is no penetration of light and air from one side of the building to the other. What makes those apartments suitable and the building that just has one width between the walls as opposed to many apartments different?

MS. ROBERTS: I'm not sure if I have a direct answer for that, but I would say that if someone had the choice in a situation like that where they had more air coming in or light penetrating into the building, I think they would make the choice of going to --

VICE CHAIRPERSON SOCKWELL: Let me say that most apartment buildings, most apartments and most apartment buildings, don't have through

connections from one side of the building to the other in larger double loaded corridor situations. It's generally the corner units that might have windows on two sides, but very seldom are those apartments going completely through the building. And what I'm trying to state is that the contention that this condition reduces the conduciveness of a space to residential use is not one that can be supported by the predominance of buildings in residential use as apartments in this city. As well, it tends to make Capital Hill's English basement efficiencies look like very undesirable units when they are probably one of the most desired units in town.

MS. ROBERTS: Mr. Chairman, I don't think we're saying that it's impossible. I just think we're trying to state that it is not conducive or it's less desirable.

VICE CHAIRPERSON SOCKWELL: Yes, and what I'm saying is there's really no way to support that, and I'm saying that you, if you're going to use a justification, it should be one that can be supported and the way the justification is written, it can't be supported. There's just no reason to believe that this makes any sense to me. So I would request that

that particular statement be purged from your report because it does not -- it's not supportable.

MS. McCARTHY: Mr. Chair, I think -- I mean we're not arguing with that. I think that's why we said it wasn't conducive. We certainly didn't say it was impossible. To a certain extent there's a balancing test as to what constitutes undue hardship, and in those instances where something is otherwise a perfectly desirable land use where there would be some impact to the zone plan or the comprehensive plan, we would apply that test more stringently.

In this case, Capital Hill Restoration Society, which has certainly been one of the primary protectors of residential property against conversion into commercial use, makes the case which, as Ms. Brown-Roberts indicated, the Office of Planning has some agreement that for those commercial nodes along Pennsylvania Avenue there should be some leeway granted.

In fact, they argue -- they have asked that the Office of Planning look at doing an overlay which would change the balance between commercial and residential FAR in those B2A districts because they argue, #1, it's Pennsylvania Avenue. It's a very busy commercial area and not generally an attractive

one for residential use and, secondly, that the age of those buildings and the requirement among most of them for investment in order to protect their structural soundness and to have them continue functioning effectively as part of healthy commercial nodes along Pennsylvania Avenue require that the amount of office space be sufficient to be able to capitalize that investment in addition to the fact that by providing more commercial area in those nodes, it helps protect the rest of the neighborhoods from the pressure for home offices, illegal conversions and the kinds of pressures which are experienced broadly on Capital Hill.

I realize that that is a context for application of the zoning regulations and explains why we were -- I'm only trying to explain, I guess, why we were interpreting undue hardship liberally. I think certainly if the architect -- if we had had further conversation with the architect and had pushed more and learned more about the egress issue from the bedrooms, we would have mentioned that in the report as one of the undue hardships that we thought were applicable in this case.

VICE CHAIRPERSON SOCKWELL: Well, I just want to say, Ms. McCarthy, that the Capital Hill

Restoration Society's letter spoke not to the undesirability of the space for residential units. It spoke only to the protection of the surrounding residential community from illegal uses. Therefore, I'm sure the Capital Hill Restoration Society did not expect the Office of Planning to so liberally interpret what they said as to the point of putting in elements that it did not mention at all.

MS. McCARTHY: I'm relying --

VICE CHAIRPERSON SOCKWELL: You basically say in the context of the Capital Hill Restoration Society's support that they agreed with those contentions, but they only spoke to one thing which is over the years the Society supported variances to allow commercial use of upper floors of buildings in the C2A zones on Capital Hill. We have long recognized the hardship faced by owners who can not find residential tenants for walk-up apartments over the store.

But in this market place, we have a 95 or better percent rental rate on any apartment that's available. This is not a discretionary condition. This is if you can find it, get it. So I don't see that under today's circumstances there is much support for that situation. Of course, we can always

say that back when Reston was built and they did the residential over this retail in Lake Ann Center, it was considered to be unique but it was also a recharacterization of town planning and more in the neoclassical but modern style of town planning.

But anyway, I don't want to get too deeply into that, but I will say that beyond that everything else that seems to have been presented seems to be okay with me. Are there any questions of the Office of Planning or is there any statement that you'd like to make, Mr. DePuy?

MR. DePUY: No, Mr. Chairman.

VICE CHAIRPERSON SOCKWELL: I don't believe we have any reports from anyone else or any parties, no one else here in support or in opposition, so if Board Members have no other questions, I would suggest closing remarks by the applicant.

BOARD MEMBER RENSHAW: Mr. Vice Chair, yes, I do have a question. I'm referring to the large board on our left which is the third floor commercial tenants that block face, and I note that there are 10 addressees which you did not survey. About three or four of them seem to be two story buildings, but I'd like to know if you do know

whether or not the second and the third floors of the three story buildings are commercial or residential.

MR. SARGENT: It was August 15, it was a very hot day. I surveyed personally walking up to all the third floors. I did not focus on the second floor, but I certainly have a fairly good grasp, I believe, on the second floor usage, and my recollection is that -- I can not swear to it 100 percent but I would say without a doubt that pretty much all of the second floor uses are commercial. We really were focusing our attention on the third floor and they are all -- all the ones occupied are in commercial use in our block.

BOARD MEMBER RENSHAW: I take it that your building and the other buildings don't have elevators.

MR. SARGENT: I'm not aware of an elevator in any -- no. We do not and we're the one that should if we could.

BOARD MEMBER RENSHAW: Very aerobic style building.

VICE CHAIRPERSON SOCKWELL: New York style.

All right. Closing remarks.

MR. DePUY: Thank you, Mr. Chairman. Two

points. First, I'd like to, in recognition of the Chair's point, amend our justification with respect to practical difficulty to refer, as Mr. Balodemas testified, to the egress difficulty with respect to the interior of the third floor.

Secondly, I'd like to emphasize that the test is not undue hardship, which has been discussed here today, but is in fact practical difficulty. This is an area variance, and we do not need to prove to the Board that residential use is not feasible. We simply need to point out practical difficulty to the owner arising out of the exceptional condition of this particular structure.

Having said that, if the Board is so disposed, given the status of this application, we would request a bench decision and a summary order. Thank you.

VICE CHAIRPERSON SOCKWELL: Thank you very much.

Board Members.

MR. PARSONS: Move we approve the application.

BOARD MEMBER MOULDEN: I second.

VICE CHAIRPERSON SOCKWELL: Discussion. I personally believe that to the extent that an

exceptional or extraordinary condition exists with the building, it would be the fact that it is uniquely four stories and that in the context of other buildings which have top story residential intermediate and lower story commercial uses, this would be consistent with their condition.

While I disagree, and very much so, on the light and ventilation issues which were raised in various supporting documents, both by the applicant and the Office of Planning, because the fourth story and the third story all get the same amount of light front and rear, the fourth story probably gets more reflection off the roof than might be desirable but there again, based on the appearance of the few significant trees at the upper elevations, there would be significant light to all.

But I do believe that on the basis of the conditions prevailing within the contextual buildings surrounding it that it would not be improper to allow a commercial use on the third floor albeit the fact that the third floor had not been given a certificate of occupancy, at least not one that was found, for its previous commercial occupants.

As well, with regard to parking, the applicant has professed a desire to achieve some

level of parking relief for street parking by having at least approached parking operators within the general area. Now, I don't know that -- because you don't have to have any parking by virtue of your historic preservation waiver of parking and loading requirements, this Board can not condition you to provide parking, I do not believe, because you are exempt.

But it would be my hope that you would attempt to provide some level of off street parking through hopefully parking sources that have not been totally utilized, in other words, that there is some over capacity in some adjacent or nearby parking facilities that could be made available, at least to the employees of your property perhaps with some contractual relationship that could occur. But beyond that, I believe that your request is reasonable and has met the tests required.

Any other?

So I would call for the vote. All in favor say aye.

(Ayes)

VICE CHAIRPERSON SOCKWELL: Opposed.

MS. PRUITT: Staff would record the vote as four to zero to approve motion made by Mr. Parsons

and seconded by Mr. Moulden. Summary order.

VICE CHAIRPERSON SOCKWELL: Your order should be prepared within two weeks. Thank you for your time.

MR. DePUY: Thank you very much.

VICE CHAIRPERSON SOCKWELL: Next case.

MS. PRUITT: Next case on the morning agenda is 16614 Application of Monique Fontaine pursuant to 11 DCMR 3104.1 for a special exception for the establishment and enlargement of a child development center under Section 205 for 50 children ages six weeks to 12 years of age with eight staff persons and a before and after school program in an R-4 District at 4514 13th Street, N.W., Square 2817, Lot 48.

All those planning to testify, would you please stand and raise your right hand.

(The witnesses were sworn.)

MS. PRUITT: Mr. Chairman, in reference to this case, there is no request for party status. We did receive an ANC report a little late, and that should be in your supplemental information.

VICE CHAIRPERSON SOCKWELL: Yes, we have it. Thank you.

Since there appear to be no persons

present in either support or in opposition to your case, I would ask you to hit the most salient points, and you may be reasonably brief with your presentation. We have read the documentation.

MS. BENJAMIN: Thank you, Mr. Chair, Board Members.

My name is Bea Benjamin. I'm here representing Monique Fontaine and her day care center's expansion application. Ms. Fontaine, a 14 year resident of the community, is asking for a special exception for enlargement of her child development center from the presently authorized 15 children and two workers to a maximum of 50 children and eight workers.

The facility is located at 4515 13th Street, N.W., Square 2817, Lot 48. In accordance with Section 205 of the District of Columbia municipal regulations, the center has proven itself capable of meeting all applicable code and licensing requirements for it has met such requirements since 1996 on one level of the premises and is here seeking to expand its use to the other two levels.

Having been inspected and granted Certificate of Occupancy for 15 children on the ground level, we therefore estimate that on the

second level we would be able to get 20 children and on the other level 15 thus approximating the 50 requested in the application. According to 205.3, the question of traffic conditions, drop off and pick up points were exhaustively addressed in two ANC meetings held earlier this month on the 9th and 10th of October. Those meetings resulted in an almost unanimous citizen vote on the 9th and a unanimous ANC Commission vote on the 10th of October with exceptions which appear in the file to a few conditions that the parties have agreed to meet.

At those meetings, we agreed to drop off points primarily in the rear in the mornings and in the evenings to front or rear exits given that traffic and parking patterns permit easy parking in the front of the building in the evening.

Also aiding in limiting traffic impact is the fact that arrivals and departures are staggered. The center is open from 6 a.m. until 6 p.m. Additionally, a large number of the parents using the center are within walking distance or take public transportation. Further, the center operates and proposes to continue operating as a before and after school care facility in addition to its all day care center for the youngest children. So the actual

number of children that will be present throughout the day is also staggered.

Concerning the parking issue, there is in fact a two car garage in the rear of the building. Additional side street parking is available on Buchanon and Allison. However, presently neither of these options are necessary because the workers at the center are either already on site or within walking distance. Further, many of the parents and prospective teachers are also within walking distance of the center.

205.5. The center has a fully fenced yard. There's a privacy yard there which provides outdoor play area with slides, playhouse, etcetera, for the children and has operated with this without disruption to or concerns from its closest neighbors for years. There have been no complaints of noise or trash as a result of the operation of this center. Additionally, conveniently located approximately one block from the center is a public play area to which the children are taken with adequate supervision to ensure safety and facilitate outdoor play.

While there are several schools in close proximity to the address in question, we know of no other such child development centers within 1,000' of

this location. We'd also like to add that this center offers highly skilled workers in the area of education and child care development. The owner, Ms. Fontaine, has a bachelor's degree in science with a minor in nursing. She also has a master's in health care administration and is presently enrolled in a master's program in early childhood development. One of her present workers has a bachelor's of education as does another prospective employee.

Ms. Fontaine proposes not just child care but good skilled child care and development. It is appreciated and supported by the neighborhood parents. The center is presently full to capacity and has a 20 child waiting list. We therefore would seek your approval of the expansion request before you.

VICE CHAIRPERSON SOCKWELL: Thank you.

Board Members.

MR. PARSONS: Mr. Chairman, I'm a little troubled by this case because we have no Office of Planning report. We sought the advice of the Child Care Branch of the Department of Health. We have no report from them, and there are no plans for the building, that is floor plans, and I would, in that context, ask the applicant how it plans to

accommodate 50 children in this relatively small space.

MS. BENJAMIN: I do believe that there were floor plans submitted by Ms. Fontaine with the original application. Is that not correct, Ms Fontaine? I was not with her at the time, but I do believe those were submitted. Additionally -- you did not? Did you submit it? Okay. Ms. Fontaine has informed me that they were in fact submitted with the original plans. One moment. I do believe I may have a copy of such.

VICE CHAIRPERSON SOCKWELL: Apparently the plans did not reach the master file or the Board Members' review packages, so while those are being copied --

MR. PARSONS: Maybe it would be best if you describe how you came to the number 50.

MS. BENJAMIN: Okay. Basically at present there is a child care and development center being operated on the ground level of the building, and there is a Certificate of Occupancy approving 15 for that level. We are proposing the use of the first and the second floor for the same purpose. Based on the inspector's review and selection as 15 as the number that can be accommodated on the ground

level and the first level being larger than the ground, we approximate. Of course, this would be subject to the inspector's review and their election of number, but we approximate 20 for the first floor and with the second level being approximately the same size as the ground level, we are therefore assuming an additional 15. Therefore, we're coming up with the number of 50, the total of 50.

VICE CHAIRPERSON SOCKWELL: Yes. Mr. Parsons, if they haven't changed the name of it, the Service Facilities people that would regulate childcare and child development centers will make the determination of how many children can be accommodated, regardless of what the Board allows.

MR. PARSONS: Oh, yes. It won't be this Board that does it.

VICE CHAIRPERSON SOCKWELL: Even if we say 50, they could say 40 and that would be the binding number based upon their evaluation.

MR. PARSONS: You've not made an application because you haven't got any approvals from us.

MS. BENJAMIN: An application was in fact initially filed prior to coming here and then it was determined that we had to come and get approval from

your division.

VICE CHAIRPERSON SOCKWELL: Under the normal referral process.

MS. BENJAMIN: Exactly.

BOARD MEMBER MOULDEN: Is there any outdoor play area?

MS. BENJAMIN: Yes. There is a fenced outdoor play area fully privacy fenced and there are outdoor activities for the children, but there is also a close by play ground that the children are taken to.

BOARD MEMBER MOULDEN: Do you have it broken down into out of the total 50 spaces that you have allotted for the children, is there going to be certain age groups?

MS. BENJAMIN: There would at that point be, yes. The floors would be divided. The children would be separated by age group on each floor.

BOARD MEMBER MOULDEN: How many in each age group?

MS. BENJAMIN: Ms. Fontaine would better be able to give you specifics as to the number of children.

MS. FONTAINE: We have some infants. What we plan to do is really to get them in small

groups to play outside at a different time of the day and also we will have preschoolers mainly and that's when they will come and play, you know, outside, different level, and we will take them in the communities to play also. And when it comes to before and after school, that's the next level. Those children, we have computer classes for them and the focus is not going to be on play only. When they come from school, we expect them to really do their homework which we are doing with them and help them and really them to learn some other skill until their parents come and pick them up. They will have snack and play. It's not like play all the time.

BOARD MEMBER MOULDEN: Out of the total 50 spaces that you have allotted for children between the ages of eight -- the maximum of 12 years old. Right?

MS. BENJAMIN: The original application was for up to a maximum of 12. One of the --

BOARD MEMBER MOULDEN: The age groups. I'm talking about age groups.

MS. BENJAMIN: The age group. The age group we originally requested was up to age 12. However, one of the ANC suggestions was that it be limited to age eight and we have agreed to that.

However, just to point out the largest number of the children presently in the center are in fact infants and they would be the ones that would be accommodated on the ground floor.

BOARD MEMBER MOULDEN: Right. To answer my question, do you know specifically how many you will have out of the 50? Will it be 25 infants versus 25 age six or eight?

MS. BENJAMIN: At this point, she --

VICE CHAIRPERSON SOCKWELL: Mr. Moulden, one of the things that's required is that infants be housed on a ground floor, not on an upper floor. The number of infants, the number of toddlers, is going to be established on a square foot basis and based upon certain recreation area, and that's not really our call to get so deeply into that. As long as the city approves them for their operation, we are really here to approve the use of more than the accepted portion of the building which is allowed under the home care provisions of the code. The section that is actually in question is -- it's legal now as an accessory use in home with no outside staff allowed. Immediate family only and their C of O is for 15 children, two staff, and that's as an accessory use to the main use of the building. The people who

operate it have to live there. Now they want to create a complete change to day care where the operators don't have to live there and they have now a higher number of children to provide for, simply because that's a requirement of the R1 zone and carries forward into the R4 zone where they're located.

So I think that what we really need to focus on is whether or not the use is consistent with the zone plan and isn't an objectionable use within the area as opposed to more specifically things that would be regulated by other agencies.

BOARD MEMBER MOULDEN: Yes. I understand that, Mr. Sockwell, but sometimes in these cases when they apply, the applicant breaks it down and has detail so you can get a sense of the age group of children versus the space that they're going to be in. That's why I asked that.

VICE CHAIRPERSON SOCKWELL: I see. So we know all infants will be on the first floor.

MS. BENJAMIN: Correct.

VICE CHAIRPERSON SOCKWELL: And the second floor will have 15, as proposed, 15 non-infant children.

MS. BENJAMIN: Correct.

VICE CHAIRPERSON SOCKWELL: It's possible that you can have infants in the basement because that's what you have now, which is a ground floor because of the egress directly from the rear of the building.

MS. BENJAMIN: That is correct.

VICE CHAIRPERSON SOCKWELL: So I would say that then to answer Mr. Moulden's question, you will have infants on the basement level continuing and you will add infants to the first floor.

MS. BENJAMIN: That is correct.

VICE CHAIRPERSON SOCKWELL: And you will have something other than infants on the second floor.

MS. BENJAMIN: On the second floor. That is correct.

VICE CHAIRPERSON SOCKWELL: Okay. And the numbers will be set finally by the District of Columbia regulatory agency that deals with that and that the proposed second and third floor use is 35 additional children.

MS. BENJAMIN: That is correct.

VICE CHAIRPERSON SOCKWELL: First and second floors will be 35 additional children, 20 of whom will be infants, 15 of whom will not, so there

could be a total of 35 infants and 15 toddlers at a maximum age of eight years.

MS. BENJAMIN: Correct.

VICE CHAIRPERSON SOCKWELL: Okay.

MR. PARSONS: The photograph shows a third floor. Is that an attic or is it habitable or what is its situation?

MS. FONTAINE: It's an attic.

MR. PARSONS: Just an attic?

MS. FONTAINE: Yes.

MR. PARSONS: So you do not intend to live there?

MS. FONTAINE: No.

VICE CHAIRPERSON SOCKWELL: Where's the Office of Planning now? All right. So I think we have an understanding of what you're planning. There had been a question in my mind. I was looking at the photographs of the rear yard play area and, while it was probably taken right after the children had swarmed through there, it gave the appearance that things were all over the place, but I'm sure that those toys would normally be put away until they are pulled out, and I noticed that you have ground cover which looks like sort of wood chips.

MS. BENJAMIN: Correct.

VICE CHAIRPERSON SOCKWELL: Which is often used in play areas and the gated rear, it's constantly under supervision. The gated rear which we couldn't see the gate but we assume that there's a fenced gate back there because you said so.

MS. BENJAMIN: That's right.

VICE CHAIRPERSON SOCKWELL: And that is kept closed but not locked to the point that it couldn't be used as egress if there were a need to get the children out of there.

MS. BENJAMIN: Correct.

VICE CHAIRPERSON SOCKWELL: Yes. It's in some form that you can get out of it if you have to.

MS. BENJAMIN: Oh, yes. It's usable.

VICE CHAIRPERSON SOCKWELL: All right. I don't have any additional questions. We certainly would have appreciated a report from the Office of Planning on this, but the Advisory Neighborhood Commission, which certainly represents the most proximate neighbors and the community viewpoint on extending uses which are such that they must come before this board, the Advisory Neighborhood Commission has shown unanimous support for you. So unless there are further questions, I would ask for a closing statement by Ms. Benjamin and --

MS. PRUITT: Excuse me, Mr. Vice Chair. I believe we do have the ANC.

VICE CHAIRPERSON SOCKWELL: Oh. I have to read the ANC report. I'm sorry.

MS. PRUITT: Yes. Excuse me, sir. Are you representing the ANC? But you're not here to read the report. Okay. We do also need a waiver for this report.

VICE CHAIRPERSON SOCKWELL: All right. Then I move that we accept the ANC report having been delivered late. I move that we accept it.

MR. PARSONS: I second.

VICE CHAIRPERSON SOCKWELL: All in favor.

(Ayes)

VICE CHAIRPERSON SOCKWELL: Opposed.

MS. PRUITT: Thank you.

VICE CHAIRPERSON SOCKWELL: Then I will read the ANC report dated October 24, 2000 addressed to Jerilyn Kress, Board of Zoning Adjustment. Dear Ms. Kress, this letter is a formal response on behalf of ANC-4C to the request for enlargement filed before the Board of Zoning Adjustment by Fontaine Child Care Center.

On October 10, 2000 a quorum of ANC-4C Commissioners met in part to hear testimony and vote

on the request for enlargement filed before the Board of Zoning Adjustment by the Fontaine Child Care Center. Pursuant to the recommendation of the ANC-4C03 Commissioner Adrian Fenty, ANC-4C voted to approve the request for enlargement with the following conditions.

1) That the Fontaine Child Care Development Center not enroll children over the age of eight years old, and you have stated, Ms. Benjamin, that that is acceptable to Ms. Fontaine.

MS. BENJAMIN: That is correct.

VICE CHAIRPERSON SOCKWELL: 2) That the Fontaine Child Care Development Center encourage drop off in the alley behind the Center to ease traffic on 13th Street, and you have spoken to that issue.

MS. BENJAMIN: That is correct.

VICE CHAIRPERSON SOCKWELL: And 3) That the Fontaine Child Care Development Center work with the District of Columbia government to improve the condition of the alleyway behind the Center. In this case, I assume that means cleaning up the alley itself.

MS. BENJAMIN: Correct.

VICE CHAIRPERSON SOCKWELL: Okay. Now, you didn't speak directly to that, but what is the

condition -- well, let me finish.

The above conditions were agreed to by the owner and agent of the Fontaine Child Care Development Center and 11 out of 12 community members at a separate meeting of ANC-4C03 on October 9. The conditions were subsequently approved by way of resolution at the October 10, 2000 meeting of ANC-4C. See attached. And then they have the resolution, whereas, and I could read all the whereases but I think they pretty much cover everything that I stated.

And it says -- well, there actually are four conditions in the resolution. Oh. The resolution adds the condition that the CDC, which is the Child Care Development Center, agrees to keep all children within the premises of the building unless accompanied by an adult. Now, that means -- premises of the building means building and yard.

MS. BENJAMIN: Correct.

VICE CHAIRPERSON SOCKWELL: So that would be the only thing that was not in the three stated conditions here, and it says that Ms. Fontaine agreed to that condition, as well.

MS. BENJAMIN: Correct.

VICE CHAIRPERSON SOCKWELL: Okay. So --

BOARD MEMBER RENSHAW: Mr. Sockwell.

VICE CHAIRPERSON SOCKWELL: Yes.

BOARD MEMBER RENSHAW: A point about the ANC report. This letter is signed by Mr. Fenty, the Commissioner for ANC-4C03, and we should have in our file a letter signed by the Chairperson of 4C because it says On September 10 a quorum of ANC-4C Commissioners met in part to hear the testimony and vote. It goes on to talk about a special meeting with members of the community, but we should request of 4C that its minutes be attached to a letter showing that there was a quorum vote.

VICE CHAIRPERSON SOCKWELL: Yes. That was the only thing that I had some question of because this is not on ANC-4C stationary and if Commissioner Fenty is the Chair of ANC-4C, that's one thing. If he is signing for the ANC, then there should be a letterhead and it should probably state Commissioner ANC-4C034, ANC-43, something to that. Now, the gentleman in the back who has not been sworn in may wish to speak. We would have to swear him in and bring him forward as he represents the ANC.

(The witness was sworn.)

VICE CHAIRPERSON SOCKWELL: Identify yourself and your address.

MR. WASHINGTON: My name is Jason Washington. I live at 7546 Alaska Avenue, N.W., 20012.

I work for Mr. Fenty. I just started. Excuse me. I have a cold right now, so excuse me. We can get this rectified. I don't know exactly how. He signed it for C403. He is the Commissioner of 4C03. If it is needed that the Chairperson of 4C, the letterhead or her signature or anything that's needed, that can be rectified immediately.

VICE CHAIRPERSON SOCKWELL: Yes. Most often we -- well, invariably we seek to have any ANC communications on ANC letterhead stationary.

MR. WASHINGTON: Okay.

VICE CHAIRPERSON SOCKWELL: It would be appreciated if you can get a statement that the vote was either unanimous among the quorum present or was three out of four or whatever of the quorum and have that included in your letter to which you could attach a resolution and if the resolution has a signature line or four signature lines on it and they should have been filled out, then that would be appreciated as well. But it may not be necessary if you attach it to 4C letterhead with that information and that Mr. Fenty is signing for the Chair or that

the Chair would sign.

MR. WASHINGTON: Okay.

VICE CHAIRPERSON SOCKWELL: If that can be produced, then we could proceed to close this case and hold the record open for provision of that document.

MR. WASHINGTON: That's no problem.

VICE CHAIRPERSON SOCKWELL: All right. Thank you, Mr. Washington.

BOARD MEMBER RENSHAW: Just to state, Mr. Washington, you are not an ANC Commissioner.

MR. WASHINGTON: No, I am not. I am not an ANC Commissioner.

BOARD MEMBER RENSHAW: Thank you.

VICE CHAIRPERSON SOCKWELL: Yes. I realize that. You are a part of his campaign staff.

MR. WASHINGTON: Yes, I am.

VICE CHAIRPERSON SOCKWELL: Go ahead, Mr. Moulden.

BOARD MEMBER MOULDEN: At the basement level there's an entrance according to the plan.

MS. BENJAMIN: Correct. There is a rear entrance.

BOARD MEMBER MOULDEN: There's also an exit at that level.

MS. BENJAMIN: There is one level --

MS. FONTAINE: It is an English basement. It has two exits.

BOARD MEMBER MOULDEN: You have to turn your mic on, please. It went off.

MS. FONTAINE: I'm sorry.

BOARD MEMBER MOULDEN: That's okay. That's an English basement. You have two exits, back and front.

BOARD MEMBER MOULDEN: Okay. I was just asking that question for the safety reasons for immediate ingress and egress.

MS. BENJAMIN: The front of the building and the rear of the building. Correct.

BOARD MEMBER MOULDEN: Okay.

VICE CHAIRPERSON SOCKWELL: Any more questions? Then I would recommend approval of the special exception that the -- it appears to me that this will not be an objectionable use nor have any negative effects upon its immediate surroundings. In fact, the clean up of the rear alley as a participatory endeavor by both the Child Development Center and others would be a good thing and, as well, the intent to provide an off street loading condition for the children using the alley will hopefully not

present any problems to neighbors for their access, and I would suggest that any access and egress be considered when parents are dropping off their children by car and others need to exit their garages and driveways in the alley.

The four conditions contained in the resolution by ANC-4C would be bound into this order and have been agreed to by the applicant and I would move that we approve this application on those bases with the record remaining open for one week to allow the ANC report to come in in the proper form.

BOARD MEMBER MOULDEN: One other question. Office of Planning report. That wasn't required.

VICE CHAIRPERSON SOCKWELL: No. We request Office of Planning reports and other reports, but they don't always come in. And I make this motion. Do I get a second on that?

BOARD MEMBER RENSHAW: Second.

VICE CHAIRPERSON SOCKWELL: Is there any further discussion on the motion? Mr. Parsons.

MR. PARSONS: I'm sorry.

VICE CHAIRPERSON SOCKWELL: Staff.

MS. PRUITT: Yes, Mr. Vice Chair. Traditionally there are also other sort of conditions

such as the exact hour of operation, the exact hour of drop off and pick up, trash removal.

BOARD MEMBER RENSHAW: The length of the approval.

MS. PRUITT: That was going to be my other question. Sometimes you can approve these in perpetuity or you can approve them for a certain amount of time and then the applicant would have to come back and reapply again at the end of that. So those are traditional sort of conditions.

VICE CHAIRPERSON SOCKWELL: Let's take those one by one. With regard to trash removal, how is trash picked up?

MS. FONTAINE: We have a trash can where we keep all the trash and city pick up every Thursday.

VICE CHAIRPERSON SOCKWELL: Trash is contained in an area outside of the play area or an area that is separated off from the child's play area?

MS. BENJAMIN: Separated.

VICE CHAIRPERSON SOCKWELL: And how is it housed?

MS. FONTAINE: They are in trash can, big one, and I have a two car garage to accommodate that.

MS. PRUITT: Excuse me. Will you be serving food for your kids?

VICE CHAIRPERSON SOCKWELL: Let's hope so.

MS. PRUITT: I mean throughout the day because the question -- I guess my question is, you're increasing your children by almost 30, 35. That's going to generate at least almost three times the amount of trash. Do you think that the public pick up once a week is going to be sufficient, understanding that your garage needs to be available for parking based on regulations and not for storage.

VICE CHAIRPERSON SOCKWELL: Not only for storage.

MS. PRUITT: Yes. Not only for storage. It can if it can accommodate both.

MS. FONTAINE: I can use private pick up if that becomes necessary.

VICE CHAIRPERSON SOCKWELL: All right. We'll state that trash will be picked up as needed so as not to create a nuisance or objectionable odors and will not be stored in close proximity to the children.

BOARD MEMBER RENSHAW: Also, talking about trash, your --

VICE CHAIRPERSON SOCKWELL: It will be stored in containers.

BOARD MEMBER RENSHAW: -- the parents who are dropping their children off in the alley should know what day of the week your trash pick up comes along so that the trash truck and the cars don't meet face to face, so to speak.

VICE CHAIRPERSON SOCKWELL: Is the trash picked up from the alley or from the front?

MS. FONTAINE: From the alley.

VICE CHAIRPERSON SOCKWELL: From the alley.

MS. FONTAINE: But I don't see any problem with that, especially with the type of parents that I serve these days. Most of them use public transportation.

MS. PRUITT: Excuse me, Mr. Chair. Just for clarification on the record, you indicated that it not be stored near -- I didn't get the rest of that.

VICE CHAIRPERSON SOCKWELL: It will not be stored in the vicinity of the children's play area basically.

MS. PRUITT: Thank you.

VICE CHAIRPERSON SOCKWELL: And that it

be stored in proper containers. Covered containers.

Now let's talk about hours of operation. We know that you have before school and after school as well as the full day so, as Ms. Benjamin stated, there is a staggered in/out flow of vehicles and children. What are the hours that you plan to use as your operating hours?

MS. FONTAINE: From 6 a.m. to 6 p.m.

VICE CHAIRPERSON SOCKWELL: All right. And that includes no children to be dropped off before 6 a.m., none to be dropped off after 6 p.m. and only those whose parents don't get there in time would be picked up after 6 p.m. That's why I didn't say the other thing that Ms. Renshaw was getting read.

MR. PARSONS: I think that's six days a week. Is that correct? Monday through Friday.

MS. FONTAINE: Friday.

MS. PRUITT: Five days a week.

MR. PARSONS: I'm sure there was something about Saturday operation here.

MS. BENJAMIN: No. She does not operate on the week ends.

MR. PARSONS: All right. My mistake.

VICE CHAIRPERSON SOCKWELL: So operation

will be Monday through Friday, 6 a.m. to 6 p.m.

BOARD MEMBER MOULDEN: I think you ought to put the age group in there because it's different than what's listed in the --

VICE CHAIRPERSON SOCKWELL: Yes. The age group is part of the conditions as bound into the ANC's conditions. It is condition #2, I believe. And those are bound into any order.

BOARD MEMBER RENSHAW: Mr. Sockwell, could we go back to the point that Ms. Pruitt had raised about food and with perhaps twice as many children or three times as many children. Are you going to have food deliveries, milk? What do you have delivered in the way of food?

MS. BENJAMIN: Presently, because most of the children are infants, their parents are bringing the food for the children, the formula, etcetera, for the children. At the time of expansion, when we get additional children in, there will be outside catering services used to provide that which is necessary.

BOARD MEMBER RENSHAW: All right. It is always very sensitive having commercial trucks using residential alleys, and the need to make sure that these commercial trucks don't have their engines

idling to disturb the neighbors. You need to be very attentive to that.

MS. PRUITT: Mrs. Renshaw, would you like a condition that all deliveries be between a certain time frame?

BOARD MEMBER RENSHAW: That certainly would be a regulation that would be beneficial to the neighborhood, I would say.

VICE CHAIRPERSON SOCKWELL: I would think that deliveries should not be -- well, the trash trucks are going to come down the alley once a week probably in the morning, but food deliveries probably should be restricted to the hours of I'd say 8 a.m. to 6 p.m. basically, not before 8 a.m.

BOARD MEMBER RENSHAW: And you may have to be very firm about this because we have commercial deliveries in a residential area where I live and the trucks like to hover before 6:00 just waiting because they come early to get out of traffic and it has caused a lot of distress.

MS. FONTAINE: Thank you for your advice.

VICE CHAIRPERSON SOCKWELL: And rather than food deliveries, we'll just say commercial deliveries shall be between 8 a.m. and 6 p.m.

Let's see. There were a couple of other

things.

MS. PRUITT: For the drop off and pick up.

VICE CHAIRPERSON SOCKWELL: Well, I think we stated that --

MS. PRUITT: Usually it's like between 6 a.m. and a certain time.

VICE CHAIRPERSON SOCKWELL: No drop offs before 6 a.m. because that's when they start.

MS. PRUITT: Well, I guess my question is sometimes we have drop off between 6 a.m. and 10 a.m., pick ups starting no sooner than 3:00 to 6:00 or something like that.

VICE CHAIRPERSON SOCKWELL: Your preschools or pre-care, before care starts at 6 a.m. so people would start dropping off at 6:00. What is typically the last drop off for your all day? I assume that you get drop offs in the morning and you get pick ups in the afternoon but nothing in the middle of the day.

MS. FONTAINE: No. I don't have half day.

VICE CHAIRPERSON SOCKWELL: Okay. So let's assume --

MS. FONTAINE: And most of the parents

are working parents really. They just come to bring their children so they can get to work and pick them up after work and go home.

VICE CHAIRPERSON SOCKWELL: All right. So if you have -- to the extent that you will have drop offs in the morning, we'd like to restrict the drop offs to the hours of 6 a.m. to 10 a.m. which should meet your requirements and pick ups from say 4 p.m. or would you want them to be 3 p.m. to 6 p.m. as a typical pick up period.

MS. FONTAINE: I would say 4:00.

VICE CHAIRPERSON SOCKWELL: Okay. 4:00 to 6:00 p.m. And we certainly understand that if a parent can't reach their child in time, that you can't tell them hey, you've got to keep him there until tomorrow.

BOARD MEMBER RENSHAW: Is there a phone number that you allow the abutters to have in case of disturbances or in case they need to reach you about whatever? Do you advertise a phone number to the community? And how is that advertized? Just through the phone book?

MS. BENJAMIN: Yes. She's in the book. She's in the phone book and, of course, all the--

VICE CHAIRPERSON SOCKWELL: You turned

your mic off.

MS. BENJAMIN: Excuse me. And there is also the phone number on the outside of the sign that's outside the building.

BOARD MEMBER RENSHAW: All right. Thank you.

VICE CHAIRPERSON SOCKWELL: Ms. Pruitt, additional --

MS. PRUITT: The last question is whether or not you want to put a time frame.

VICE CHAIRPERSON SOCKWELL: Well, let's think about that one. This is not a new child care center. It is one that has existed in the community for some time, since '96, your Certificate of Occupancy was issued, and I think that the community is knowledgeable of your operation and, had there been any negative responses or opposition to your application, perhaps a three year order would have been appropriate. I would think that we should allow this operation a five year time period and, at the end of five years, you would have to return for recertification of your exception and then we would look to see how the community enjoys the improved and extended services that you're providing and we would have you here for another half hour.

MS. BENJAMIN: Thank you.

VICE CHAIRPERSON SOCKWELL: Does anyone have any objection to a five year period? Then lacking any further questions and having covered all of the items that I believe would be important to the approval of your application, I would call for the vote.

MS. PRUITT: I don't believe we have a second.

VICE CHAIRPERSON SOCKWELL: Did we get a second? We didn't get a second.

MS. PRUITT: No, we did not.

BOARD MEMBER RENSHAW: Second.

VICE CHAIRPERSON SOCKWELL: We have a second. Ms. Renshaw. Then barring any further questions and with all of the agreed upon conditions by the ANC and the additional conditions as requested by the Board, agreed to by the applicant, I would call for the vote. All in favor.

(Ayes)

VICE CHAIRPERSON SOCKWELL: Opposed.

MS. PRUITT: Staff would record the vote as four to zero to approve motion made by Mr. Sockwell, seconded by Ms. Renshaw.

I'd just like to read over the

conditions. Do you expect this to be a summary order?

VICE CHAIRPERSON SOCKWELL: Yes.

MS. PRUITT: Because we sometimes do not get transcripts. We're getting them like a month late. In order to sort of get them out earlier, if we have the conditions straight, we can get this to you.

VICE CHAIRPERSON SOCKWELL: All we need is to make sure that Commissioner Fenty's representative, Mr. Washington -- is that right? Jason Washington gets this information back to the ANC quickly and that they can act quickly.

MS. PRUITT: And once the letter comes in, the order can be issued. But just to review the conditions, we're going to include all the conditions in the ANC report which includes changing the age range to eight weeks to eight years of age, drop off being in the alley, and the working with the District to clean that up. Hours of operation --

VICE CHAIRPERSON SOCKWELL: The fourth condition which was in the resolution.

MS. PRUITT: Fourth condition in the resolution.

VICE CHAIRPERSON SOCKWELL: Right. The

ANC--

BOARD MEMBER RENSHAW: Better read it into the record.

VICE CHAIRPERSON SOCKWELL: Yes. The children would always be within the premises boundaries except when accompanied by adults.

MS. PRUITT: Okay. Thank you. Hours of operation, 6 a.m. to 6 p.m. Monday through Friday. All deliveries between 8 a.m. and 6 p.m. Drop off hours between 6 a.m. and 10 p.m. Pick up between 4:00 and 6:00 p.m. Trash removal as needed so not to create an objectionable or nuisance to the community and not stored near the children's play area and also stored in proper containers.

BOARD MEMBER RENSHAW: Covered.

MS. PRUITT: Covered or proper?

BOARD MEMBER RENSHAW: Covered containers.

VICE CHAIRPERSON SOCKWELL: Ms. Renshaw suggested the term covered.

MS. PRUITT: Okay. And this is approval for the period of five years.

BOARD MEMBER RENSHAW: Just to clarify. Drop off is from 6:00 to 10:00 a.m.

MS. PRUITT: I'm sorry. That's what I

thought I said.

VICE CHAIRPERSON SOCKWELL: That's what she said.

BOARD MEMBER RENSHAW: She said p.m.

VICE CHAIRPERSON SOCKWELL: Oh, you said p.m.?

MS. PRUITT: So I believe those are the conditions that I have.

VICE CHAIRPERSON SOCKWELL: I believe you're correct.

MS. PRUITT: Thank you.

VICE CHAIRPERSON SOCKWELL: All right. We thank you very much for your time. Your order will be issued within two weeks of the time that the record closes.

MS. BENJAMIN: Thank you very much.

VICE CHAIRPERSON SOCKWELL: Thank you.

This concludes our morning's hearings. Board is adjourned.

(Whereupon, off the record at 11:26 a.m. to reconvene at 1:37 p.m.)

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

(1:37 p.m.)

VICE CHAIRPERSON SOCKWELL: Good afternoon, ladies and gentlemen. This is the October 31, 2000 public hearing of the Board of Zoning Adjustment of the District of Columbia. My name is Robert Sockwell, Vice Chairperson, sitting in for Sheila Reid, the Chair.

Joining me today is Anne Renshaw to my left and representing the National Capital Planning Commission, Rodney Moulden, and representing the Zoning Commission is Kwasi Holman.

Copies of today's hearing agenda are available to you. They are located to my left near the door. All persons planning to testify, either in favor or in opposition, are to fill out two witness cards. These cards are located on each end of the table in front of us. Upon coming forward to speak to the Board, please give both cards to the reporter who is sitting to my right.

The order of procedure, this is an appeal application, the order of procedure for appeal applications will be as follows. Statement and witnesses of the Appellant, Zoning Administrator or other government officials, owner, lessee or operator

of the property involved if not the Appellant, the ANC within which the property is located, the Intervenor's case, rebuttal and closing statement by the Appellant.

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

The record will be closed at the conclusion of each case except for any material specifically requested by the Board, and staff will specify at the end of the hearing exactly what is expected. The decision of the Board in these contested cases must be based exclusively on the public record. To avoid any appearance to the contrary, the Board requests that persons present not engage the members of the Board in conversation.

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

The Board will make every effort to conclude the public hearing as near as possible to 6 p.m. If the afternoon case is not completed at 6 p.m., the Board will assess whether it can complete the pending case or case 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 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 a case today or if you believe that the Board should not proceed, now is the time to raise such a matter.

Does the staff have any preliminary matters?

MS. PRUITT: No, Mr. Vice Chair. We have some particular to this case but none for continuance.

VICE CHAIRPERSON SOCKWELL: Okay.

MS. PRUITT: I'll do it when you call it.

VICE CHAIRPERSON SOCKWELL: All right. Then let's proceed with the first case, with the only case of the afternoon.

MS. PRUITT: The case for this afternoon is 16588, appeal of Edward M. Potter pursuant to 11 DCMR 3100 and 3101 from the administrative decision of Armando Lourenco, Acting Zoning Administration, Building and Land Regulations Administration, Department of Consumer and Regulatory Affairs, made

approximately on December 7, 1999 to the effect that the construction of a garage complies with the zoning regulations. Appellant alleges that the construction of the garage does not conform to zoning regulations and has caused severe damage to their property destroying portions of their shared driveway and limited access to their driveway in an R-1-A district at 4900 Indian Lane, N.W., Square 1512, Lot 33.

All those planning to testify, would you please stand and raise your right hand.

(The witnesses were sworn.)

MS. PRUITT: MR. Vice Chair, in reference to this, this is a continued hearing from July 11. At the July 11 hearing, party status or Intervenor status was granted to Mr. Ghafoorian. The sort of players in this are the Appellant, Mr. Potter, Intervenor for Mr. Ghafoorian and court counsel.

There are two motions on the floor that the Board has decided to sort of defer until after hearing the case. That was a motion concerning jurisdiction and the second one was a Motion to Dismiss as a result of timeliness. And the Board had determined that they would decide that after hearing the merits of the case.

The Board also requested that a

chronology be -- requested chronologies from the Appellant, the Intervenor, Mr. Ghafoorian, and the ANC, and we have received those three things.

VICE CHAIRPERSON SOCKWELL: Thank you.

I guess if we have all the documentation in hand, we should proceed.

MR. O'BRIEN: My name is Patrick O'Brien. I'm the attorney representing Edward Potter, who is present. Mr. Potter owns a residence at 4852 Indian Lane, N.W. Last April, April of 1999, he returned from a vacation in South Carolina where he also has a vacation home, and discovered that the slope that used to be next to his property had been excavated along virtually the entire side and rear yard of the property at 4900 Indian Lane and his driveway, which he shares with the adjoining land owner, had been undermined and torn up. Footings had been laid at that point, and it appeared that some sort of construction was going to occur.

Mr. Potter brought this matter to the attention of the neighboring landowner, Mohammad Ghafoorian, who is present today. Mr. Ghafoorian allowed as how he had permits and that he was going to proceed with the construction of a garage.

Mr. Potter investigated the matter and

discovered that there were no permits and, upon further investigation, he discovered that what appeared to be going on was in violation of the applicable zoning laws and regulations.

He therefore filed a Motion for Temporary Restraining Order in the D.C. Superior Court after having made a number of phone calls to the DCRA which were unanswered. They did send out some inspectors who placed stop work orders on the project but only because the building permits were not being displayed. As soon as Mr. Ghafoorian went out and got a building permit which was on April 6, 1999 for the construction of simply a garage, he posted the permits and the stop work orders were lifted.

A Temporary Restraining Order was issued by Judge Werthhiem of the D.C. Superior Court in April of 1999 applying only to that portion of the apparent project for which there was no building permit. Ten days later, a motion was set to convert that Temporary Restraining Order into a preliminary injunction, as is the normal court procedure, and Mr. Ghafoorian represented before Judge Dixon that all he was building was a rear yard garage.

Subsequent permits were issued and additional construction was made, and it became

apparent that what Mr. Ghafoorian was building was actually a parking platform, an elevated structure extending throughout the entirety of the side yard and to within 10 to 12 feet of the rear yard and within four feet of the side yard. No permits were ever issued nor was any application ever made for a parking platform. The regulations under which we're operating define a structure specifically to include a platform. You have a copy of that definitional regulation in the materials that we provided.

Mr. Potter will testify that he made literally dozens of telephone calls, emails. He attempted to visit the responsible DCRA officials in their offices. He estimates the number of contacts made by he and his wife to be something in the order of 50.

Finally, in December of 1999 and I believe it was Pearl Harbor Day 1999, a stop work order was issued by building inspectors based upon apparent zoning violations with respect to the parking platform and the fact that it was not in the plans, no permits had been issued for a parking platform. Mysteriously, the order was lifted without explanation. Upon information and belief, we understand that that was done by Mr. Lourenco.

We immediately filed an appeal, specifically on December 10, 1999, as required by the procedures, to Mr. Lourenco. Mr. Lourenco never answered it, and it wasn't until after the first meeting that we had here that Mr. Potter received a letter saying that upon advice of counsel, he was never going to answer it.

What has been built, despite all the representations that have been made, is a structure which extends and it's conceded it extends within four feet of the side yard of the property line between the Potters and the Ghafoorians. It is approximately in total surface 2,000 square feet. It has four auger walls, according to Mr. Ghafoorian, and three internal support walls. If you look at the plans, the most recent plans, the total surface square footage is about 2,000 square feet, and it comes to within 10 or 12 feet of the rear lot line.

In that respect, it violates both the side and the rear yard setback requirements and, unless you can come to the conclusion that this is not a structure and it is in fact an unsupported patio, despite the fact that there's a 10 feet stairwell leading up to it, or that it is somehow slab on grade, even though it has internal support

walls, then this structure clearly violates both the side and the rear yard setbacks.

Now, on top of the platform Mr. Ghafoorian has placed a wood frame garage. This garage is approximately 900 square feet. There is a regulation that is specific to R-1 districts, and I've supplied it in the brief, which limits the square footage of a garage to 450 square feet and makes no mention of whether it's an accessory use or a principal use. It simply says garages. Two car, 450 maximum in an R-1 district. The statute under which these zoning regulations have been promulgated and the zoning regulations themselves clearly state that the most restrictive interpretation always applies.

Nevertheless, the DCRA has taken the position that because 900 square foot garages are available in certain parts of the district, not R-1 districts, but because they're allowed elsewhere, that therefore they should be allowed here and by administrative interpretation, what they are attempting to do is simply overrule the language of the statute and the regulations. So the garage itself violates the square footage requirements.

If you look at the photographs and if you

look at the plans and if you look at the permits, this becomes a fairly black and white matter. He never applied for a permit to build a platform. He deceived the D.C. government as to the nature of the product, as to the nature of the project. On the second set of permits, he seems to have represented to the District of Columbia government that he had the consent of the adjoining land owner, which would be Mr. Potter. Of course, that never occurred.

He has taken the position that this is slab on grade, even though it's elevated six feet in the air and it requires a staircase to get to the top of it, and he's denied that it is connected to the house, even though it is manifestly clearly connected to the house, as the photographs we've submitted demonstrate. That being the case, I don't think there's any possible argument that he's been proceeding in good faith. I don't think there's any possible argument that this structure, the parking platform, does not violate the setback requirements, and I don't think there's any credible argument that the garage on top of the parking platform does not violate the 450 square foot requirement of the regulation.

Chairman Sockwell, I can call the first

witness or would you rather hear opening statement from opposing counsel?

VICE CHAIRPERSON SOCKWELL: Why don't you-- how many witnesses do you have?

MR. O'BRIEN: I have a total of three, Mr. Potter, Lindsley Williams, the former Chairman of the Zoning Commission, and then about two minutes from Mr. Webster of the Wesley Heights Historical District.

VICE CHAIRPERSON SOCKWELL: Why don't you continue.

MR. O'BRIEN: In that case --

MR. PARKER: Excuse me. Could I raise a preliminary matter?

VICE CHAIRPERSON SOCKWELL: You may.

MR. PARKER: My name is Arthur Parker. I'm Assistant Corporation Counsel here on behalf of the PLRA and the Zoning Administrator in this matter. As part of our presentation, we had planned to present Mr. Armando Lourenco as a witness in this matter. We also have Mr. Johnson from the BLRA here this afternoon also.

The procedural issue I was going to bring up is that -- and it's a little premature because Mr. Lourenco has not arrived. What we wanted to bring to

the Board's attention was that Mr. Lourenco was an employee of the BLRA. He is no longer an employee, but he has testified in that capacity before, and that Mr. Johnson is the official representative right now and my official client, but he, Mr. Lourenco and I have met to discuss this matter and he is confident that the positions as Mr. Lourenco has already testified to and what he expects him to testify to would be what my current client would adopt as the official position.

I guess what we're moving toward here, although I'm not going to let Mr. Johnson go until Mr. Lourenco gets here, is that at some point I would like to excuse Mr. Johnson and just proceed with Mr. Lourenco when it becomes my turn unless the Board determines that it thinks it needs to address Mr. Johnson in his official capacity.

VICE CHAIRPERSON SOCKWELL: So what you're saying is that Mr. Johnson is a substitute in the event that Mr. Lourenco does not arrive.

MR. PARKER: That's correct.

VICE CHAIRPERSON SOCKWELL: And yet we understand that Mr. Lourenco's testimony is in the file and that he was the one who was responsible at that time for representing the position of BLRA in

the matter.

MR. PARKER: I believe that's correct. Well, the one thing that's not -- his complete testimony is not in the file. And there's portions also from testimony in another court matter.

VICE CHAIRPERSON SOCKWELL: All right. The testimony that he provided to us is in the file.

MR. PARKER: Correct. But it was not comprehensive because at that point we were only dealing with timeliness issues, as I understand it. WE never got to the full presentation on the merits.

VICE CHAIRPERSON SOCKWELL: So you're saying that Mr. Lourenco has further testimony--

MR. PARKER: Correct.

VICE CHAIRPERSON SOCKWELL: -- that has not yet been provided to this Board.

MR. PARKER: That's correct.

MR. JOHNSON: If I may interject.

VICE CHAIRPERSON SOCKWELL: Identify yourself.

MR. JOHNSON: I'm Michael Johnson, Zoning Administrator, and also Acting BLRA Administrator.

I think Mr. Lourenco would be willing to provide testimony. However, we strongly believe that there's a preliminary matter about the timeliness as

to, 1) the timeliness and, secondly, whether or not this is the proper venue that needs to hear this case. I think, if my memory serves me correctly, I think that was an issue that the Board had taken under advisement earlier but had not fully ruled upon. I think that issue really needs to be decided, even before any additional testimony is taken any further because I strongly feel that, based upon those two issues, that until they're resolved, that we should not move any point further than where we are.

MR. O'BRIEN: Mr. Chairman, may I be heard briefly? We would object strenuously to Mr. Lourenco's testimony because he is a former employee of the District of Columbia. He's no longer employed by the District. His testimony would obviously be for the benefit of the one of the parties to this dispute, specifically Mr. Ghafoorian, and I believe there are statutory prohibitions on him doing that. I think there's an Ethics in Government Act, a local D.C. Ethics in Government Act that would preclude his testimony.

VICE CHAIRPERSON SOCKWELL: I'm not sure what the corporation counsel's position on that would be, but I know that he is probably restricted from

receiving remuneration for any testimony that he might give and, therefore, representing a client.

MR. PARKER: i could represent he's not being compensated for his testimony. He's not appearing -- there is no subpoena power. He's not appearing under obligation either. He's coming forward to complete what he considers his responsibilities in this matter --

MS. PRUITT: Mr. Sockwell, this has occurred before.

VICE CHAIRPERSON SOCKWELL: However, on the other hand, Mr. Lourenco is not any longer responsible and, therefore, testimony given at this time doesn't carry the weight of testimony that he might have given in the past when he was the official overseeing the operations of the Building and Land Regulation Administration. At this point, his testimony does not carry as much weight of credibility as it would have were he still that official. However, I don't know that we can state that he is not able to testify on events that took place during his tenure.

MS. SANSONE: Mr. Chairman, I believe Mr. Lourenco can testify fully as to what happened during this permitting process, the decisions he made, the

reasons why DCRA's position at that time, and I think you would give that full credibility, full weight as to what was before DCRA at the time of his decision making. If there's been any change in position, that would be for Mr. Johnson to address here today.

MR. O'BRIEN: If I may be clear on Ms. Sansone's position. He would be permitted to testify as a fact witness only. Is that correct? Or would he be permitted to voice an opinion as to the proper interpretation of the regulations?

MS. SANSONE: Mr. Chairman, I believe he could give an opinion as to the proper interpretation from the standpoint of his position as the Acting Zoning Administrator at the time or, if he is otherwise qualified as an expert, he could give opinion testimony.

VICE CHAIRPERSON SOCKWELL: I think that we can accept testimony from Armando Lourenco should he arrive.

Mr. Johnson, yes.

MR. JOHNSON: Mr. Chair, hearing that statement, please correct me but I'm presuming then that the Board has decided on the two questions that I rose initially which were, 1) --

VICE CHAIRPERSON SOCKWELL: The Board has

not responded to those questions.

MR. JOHNSON: Okay.

MS. PRUITT: The Board determined at the July meeting that they were going to defer decision on that until after they heard the merits of the case.

VICE CHAIRPERSON SOCKWELL: I think the Board is going to stand by that decision.

MR. PARKER: I would like to preserve at the end, with all due respect to the Board's pressing on with the merits, at the conclusion of the merits-- I'm new counsel to this case, and I would like to make a couple of arguments at the end that are of a policy nature with regard to this timeliness issue, but I want to be respectful of the position that the Board staked out and let us proceed with the merits at this point.

VICE CHAIRPERSON SOCKWELL: I think that could be included in his closing.

MS. SANSONE: Mr. Chairman, I think we have an order of procedure in our rules. The Appellant would go first, presenting his full case and he will address timeliness and jurisdiction in his case, and then the Zoning Administrator's case would come next and Mr. Parker could address his

position as to the motions at that time, and then we go to the Intervenor and the ANC is also a party in the appeal cases. But we do have the order of procedure in the rules and we should adhere to that.

VICE CHAIRPERSON SOCKWELL: And we will.

MS. PRUITT: Mr. Chair, I think a lot of this is confusing because the preliminary issues were very -- we spent a great deal of time on preliminary issues on July 11 which actually kind of slipped into the merits of the case, so it was kind of back and forth. But we've not really started the case.

VICE CHAIRPERSON SOCKWELL: Right. We talked in depth about things that would have been part of the presentation of one or the other or both the Appellant and the Intervenor. So let's proceed as per the rules, which would be the continuation of the Appellant.

MR. O'BRIEN: Mr. Chairman, I'd like to call Mr. Potter if I may.

VICE CHAIRPERSON SOCKWELL: You may.

MR. O'BRIEN: Would you like us any particular place?

VICE CHAIRPERSON SOCKWELL: Not necessarily. Just as long as you're close to a microphone so that the recorder has access to all of

your words.

MR. O'BRIEN: Mr. Potter, can you state your, full name, address and occupation for the record.

MR. POTTER: My name is Edward Potter. I live at 4852 Indian Lane, N.W., Washington, D.C. I am a teacher, high school science teacher.

MR. O'BRIEN: Can you describe the events that occurred in the spring of 1999 beginning with your return from your spring vacation.

MR. POTTER: We returned from spring vacation in April 1999 and, upon my return, we found that there was a large excavation project going on on Mr. Ghafoorian's property. We share a common driveway between the two houses with the property line going down the middle of a driveway. We have a dedicated right of way that includes the entire driveway.

The driveway, as you move up the driveway down towards Mr. Ghafoorian's old garage was completely excavated and back towards the back portion of the property approximately 30 to 40 feet of the right of way 4' into the right of way, 4' deep, had been excavated. There were barricades and concrete footings with metal bars protruding out of

the footers of the garage that he said he was building on that site had been poured. We came back on Easter Sunday which I believe is April 4 of 1999.

I talked to Mr. Ghafoorian at that time on that day when we returned. He said he was building a garage. He said he was permitted to do what he was doing. Later afterwards I checked. The first permits were applied for the next day and permits were granted on a walk through basis on April 6. Evidence --

MR. O'BRIEN: Let me ask you to -- let me direct your attention to the photographs that appear behind what has been marked Tab 7 and ask you to describe what these photographs show. That would be Tab 7 of the brief of the Appellant.

First of all, let me ask you if you took those photographs.

MR. POTTER: Yes. I took this one.

MR. O'BRIEN: Do you recall when you took that photograph approximately?

THE WITNESS: April when I came home.

MR. O'BRIEN: For the record, which photograph are you referring to?

MR. POTTER: I'm referring to the one that's taken out of the window from the second floor.

This is the first one.

MR. O'BRIEN: That's the first photograph behind Tab 7.

MR. POTTER: This is a photograph taken from the window of my house taken in early April approximately the time when I came home from spring vacation and represents the excavation with the small bulldozer. In the corner you can see towards the pool wall, you can see a styrofoam, white styrofoam rectangular block that is in place that represents the pouring of the concrete footers. The excavation extends all the way down from the shared driveway to the old garage of the house at 4900 Indian Lane. It extends all the way back to almost the edge of the property where the bulldozer is located and extends forward, which can not be seen in the picture, extends forward approximately 10 to 15 feet.

MR. O'BRIEN: What does the next photograph show?

MR. POTTER: The next photograph shows a picture that I took standing within the right of way within the extension. The driveway did not extend back that far, but I am standing within the right of way looking back down my driveway. On the right hand side is my pool wall. It's a wood wall which

surrounds my pool.

MR. O'BRIEN: Is that your property line where the fence sits on the right hand side of the photograph?

MR. POTTER: The property line is a little bit on the left or the west side of the fence.

BOARD MEMBER RENSHAW: Mr. Vice Chair, could we have Mr. Potter just hold up each picture that he's referring to and just point to where his property line is, please.

MR. POTTER: This structure right here is my pool wall, my fence that goes right down here. The property line is a few inches on the other side of the pool wall.

VICE CHAIRPERSON SOCKWELL: Your property line occupies --

MR. POTTER: The property line runs right down the middle of the driveway and extends when the driveway ends all the way to the end of the property which is behind where I'm standing where I take the picture. There's a dedicated right of way that runs the entire length of the property, even though the driveway does not.

MR. O'BRIEN: What is that in the middle of the photograph?

MR. POTTER: This represents, when I returned in early April, this represents the concrete footers and metal posts that were in place at that time for the construction of the platform and a garage.

MR. O'BRIEN: And to the best of your knowledge, was there a permit that had been issued at that point in time?

MR. POTTER: No, there was not a permit issued at that point in time.

MR. O'BRIEN: Turning to the next photograph in sequence. Could you hold it up for the panel.

MR. POTTER: This third photograph is taken from the opposite direction the last one was taken. It's looking back towards the back portion of the property line. The pool fence is on the left. The property line is a little bit to the right of that, so the excavation shows the concrete footings. It also shows in the front portion of the picture that part of the driveway has been excavated. Approximately 10 feet of the shared driveway extending outwards from the pool wall towards the center of the driveway has been excavated.

MR. O'BRIEN: What about the sub-surface

of the driveway?

MR. POTTER: The sub-surface of the driveway at this point has been partially damaged by the construction that took place.

MR. O'BRIEN: Directing your attention to the first photograph appearing behind Tab 8. Can you describe that and tell the panel what it represents.

MR. POTTER: This picture is several months later in time. It's taken in the summer of 1999. What it shows, it is taken from Mr. Ghafoorian's property. It is directed towards the driveway. There is a concrete structure on the right. It represents the top portion of his parking structure. What has happened is for several months this particular structure was in place in this form and, because of the slope of the platform that he has built slopes towards the driveway towards my property away from his house, water accumulated in the crack between the concrete and the asphalt of the driveway and extensive erosion has been in evidence underneath my driveway and the hole in the center represents a portion of the erosion that has taken place.

MR. O'BRIEN: Directing your attention to the next photograph in sequence, I hope. Can you show me what that photograph represents.

MR. POTTER: This photograph is taken from my property towards the parking platform and garage. What it shows is that the water from rain flows from his platform towards the driveway itself. It slopes down towards that front right corner of the platform and pools there. At this particular time and for approximately five months or so, there was absolutely no drain at that corner of the driveway and the water was eventually either evaporated or went down through the driveway. I have taken pictures of the water seeping underneath the driveway through the crack in the driveway down his property. On the far right hand side, you can see the extent of the soil erosion that has taken place.

MR. O'BRIEN: Directing your attention to the lower right hand quadrant of the photograph, what is the shaded area?

MR. POTTER: The shaded area represents the front concrete wall of the elevated parking platform which extends down approximately four feet.

MR. O'BRIEN: Is that where the staircase later was placed?

MR. POTTER: The staircase is placed a little bit farther to the right closer to the front end of the structure on the right.

MR. O'BRIEN: What is the object or the structure in the upper right hand corner of the photograph?

MR. POTTER: It represents the front face of the old garage which has been converted into what I believe is a laundry room. It represents a built out portion of the roof of that old garage. It represents part of the house that is on top of the wall that is part of this parking structure.

MR. O'BRIEN: And what's the object in the upper left hand quadrant of the same photograph?

MR. POTTER: The upper left hand quadrant represents the garage, the three car garage that he is building.

MR. O'BRIEN: Directing your attention to the next photograph in sequence. Can you tell me -- first of all, did you take this photograph?

MR. POTTER: I took this picture also. This is a picture taken from my house which shows the extent of the parking platform before the building of the garage itself. What you can see on the right hand side is the right hand wall of the elevated parking structure as it extends from my property from almost the edge of the driveway all the way down towards his house. The concrete stairs which access

the top of this parking structure are at the very right hand side towards the house.

The old garage door with those windows are represented there, but they are gone and the slats that are on the house have been built out in the picture that we previously saw.

MR. O'BRIEN: Is this area where the front end of the parking platform appears, is that the side yard between your residence and the house on the Ghafoorian property?

MR. POTTER: That is the side yard of his property and the height is approximately the height of the old garage minus the roof.

VICE CHAIRPERSON SOCKWELL: Let me ask you. You're saying, Mr. Potter, that the -- would you restate -- just state again the issues related to the old garage as --

MR. POTTER: The old garage has been converted to another room in the house. The front of the old garage is gone and the wall of the house now is the wall of this parking structure. So the wall you see in front of the windows is the inside wall of the house. It is physically permanently attached to the house and the top portion of the garage sits on top of it.

VICE CHAIRPERSON SOCKWELL: So you're talking that those are high windows that rest on top of that wall.

MR. O'BRIEN: Mr. Chairman, I'm attempting to do this kind of in sequence so you can get a feel for how the construction progressed because --

VICE CHAIRPERSON SOCKWELL: Okay. I'll let you continue.

MR. O'BRIEN: There are pictures towards the end which better show the way it stands at the moment.

VICE CHAIRPERSON SOCKWELL: All right. Continue.

BOARD MEMBER RENSHAW: Mr. Vice Chair, just clarification. In this picture that we've been discussing, are the stairs to the house on the lefthand side of the picture or on the right?

MR. POTTER: They're on the wall on the righthand side.

BOARD MEMBER RENSHAW: Would you hold up the picture and just point.

MR. POTTER: The stairs are right here.

BOARD MEMBER RENSHAW: Oh. All right.

MR. POTTER: So the righthand side of the

wall closest to the house are where the stairs are located.

BOARD MEMBER RENSHAW: Thank you.

MR. O'BRIEN: The stairs were added fairly late in the project, and you will see photographs that will show where they're placed more or less from the same angle.

Directing your attention to the next picture in sequence, Mr. Potter, can you show where that is.

MR. POTTER: This is again taken from basically my garage looking towards Mr. Ghafoorian's property. It shows the extent of the water build up which at times is up to six inches in depth at that point.

MR. O'BRIEN: Okay. Did there come a time when a drain was placed in that corner?

MR. POTTER: A drain has been inserted. Approximately a foot by a foot drain has been inserted at that point sort of at the junction between.

MR. O'BRIEN: And the water which used to pool to a depth of about six inches now pools to a depth of how much?

MR. POTTER: Two. It's not as extensive,

but it certainly pools there.

MR. O'BRIEN: Directing your attention to the next picture in sequence.

MR. POTTER: This is a picture taken from Mr. Ghafoorian's property that shows not only the water pooling above the construction which has taken place at that time, it shows the structure and the water which is slowly but surely seeping out and eroding underneath the structure that he has built.

MR. O'BRIEN: Directing your attention to the next picture in sequence. Can you tell the panel when that was taken.

MR. POTTER: This picture is taken approximately December of 1999. This picture is taken from halfway up the driveway looking towards the back of the property. The pool wall is on the left, and the garage is on the right.

MR. O'BRIEN: And what's the approximate distance between the pool wall and the garage?

MR. POTTER: Pool wall and the garage itself is approximately four feet.

MR. O'BRIEN: Now, Mr. Potter, in the course of the construction which you discussed in the period, say, from May 1999 through December 1999, did you attempt to contact the District of Columbia to

express your concerns and, if so, could you describe for the panel what you've done -- what you did.

MR. POTTER: I have contacted several times members from the District of Columbia in an attempt to clarify what was occurring at that time. The original case which we were involved in represented a single garage was being built which was approximately five to six feet lower than this structure. Mr. Ghafoorian was building this elevated structure at the time of the trial and testified that he was building something that he wasn't doing.

MR. PARKER: Objection. Hearsay statements.

MS. PRUITT: Mic, please, just so we can get you on the record.

MR. PARKER: Objection to hearsay statements unless they're going to prove it up with transcripts or something like that.

MR. O'BRIEN: Your Honor --

MS. PRUITT: Mr. O'Brien, you need to either get closer to the mic or sit down because our reporter is not catching your voice. Okay?

MR. O'BRIEN: I apologize, but this would not be hearsay because the declarant is actually in front of you. That would be Mr. Ghafoorian.

MR. NIEDERMAYER: My name is Roy Niedermayer and I represent Mr. Ghafoorian in this matter. I would join in that objection. The exception for hearsay doesn't apply just because the person is present.

VICE CHAIRPERSON SOCKWELL: We can sustain the objection.

MR. O'BRIEN: Returning to the question, Mr. Potter. Prior to December of 1997, what measures did you take to alert the District of Columbia government to your -- the DCRA officials to your concerns regarding this project?

MR. POTTER: I was concerned about the fact of the water build up. I was concerned about the fact that the driveway was not filled or completed or repaired. The construction that originated back in March on the portion of the driveway that was excavated was still there. A four foot rebar rod which dates back to the original construction was protruding from the driveway. It endangered not only the workers who were building the garage -- and I have pictures of workers standing on top of the garage over the structure -- it also endangered my kids.

MR. O'BRIEN: Perhaps I'm not making

myself clear. How many times did you contact the District of Columbia to express your concerns?

MR. POTTER: The entire --

MR. O'BRIEN: During that period between May and December. How many times would you estimate you tried to -- you contacted them?

MR. POTTER: Twenty.

MR. O'BRIEN: Did you email them?

MR. POTTER: I have emailed them.

MR. O'BRIEN: Approximately how many times?

MR. POTTER: Five. I have contacted through a formal protest with Mr. Lourenco.

MR. O'BRIEN: How many times did your wife call or email?

MR. POTTER: My wife didn't email. She contacted about 10 times over the phone. She attempted to call the members of the government.

MR. O'BRIEN: Did there come a time when you actually went to Mr. Lourenco's office?

MR. POTTER: I've been down to Mr. Lourenco's office five, six, seven, eight times.

MR. O'BRIEN: And what happened in each of those occasions?

MR. POTTER: I have talked to a series of

inspectors down there. I have talked to Inspector James Shelton. I've talked to a Mr. Nunley down there. I've talked to other officials in the office, but I never contacted Mr. Lourenco.

MR. O'BRIEN: Did Mr. Lourenco ever refuse to see you?

MR. POTTER: Yes.

MR. O'BRIEN: Could you explain the circumstances of that refusal.

MR. POTTER: I had -- Mr. -- we had contacted the office. Mr. Shelton and Mr. Nunley came out to our house to inspect what was going on in December of 1999. We looked at the structure. Mr. Shelton and Mr. Nunley declared that the structure was a side yard structure, that Mr. Ghafoorian was not building to plans. We did that in front of an ANC member, one of the commissioners of our local ANC. Mr. Nunley and Mr. Shelton went back and issued a stop work order at that time in December. One day later the stop work order was vacated without a statement whatsoever.

Approximately a day or two after that, I wrote a letter which is included in the papers in front of you where I formally protested to Mr. Lourenco and the grounds of my protest are stated in

that letter.

MR. O'BRIEN: What response, if any, did you get to your appeal?

MR. POTTER: I received on January -- July 28 of this year, approximately eight months later, a approximately one paragraph response saying that he could not comment on this situation. He refused to meet with me down in his office when I went down there.

MR. O'BRIEN: Directing your attention to the next photograph in sequence. Can you tell the panel what that represents.

MR. POTTER: This is a picture taken from my property towards the -- it's of the top of the parking platform towards the old garage. The door that you see in the middle of the picture represents the old door to the old garage and the structure on top of the door represents the extension outward from the old garage and the extension of where it meets the top of the platform.

MR. O'BRIEN: Directing your attention to the next photograph in sequence which is really dark, and I apologize for that.

MR. POTTER: What you're looking at is the remains of my driveway. This picture is taken in

the fall of approximately October/November of 1999, seven, eight months, whatever, after the initial excavation began. It represents not only the hole in the driveway that still exists, it also represents the four foot rebar structure that's extending out of that hole.

MR. O'BRIEN: Given the problem with the reproduction, and I apologize although I believe the original color is in the record, there is a tubular sort of object coming from the lower left hand corner of the photograph extending about two-thirds of the way across it. Can you describe what that is.

MR. POTTER: That is the four foot rebar that's extending out of the excavation site that's been there from March when the excavation began and was finally removed in the middle of December.

MR. O'BRIEN: Why was it removed?

MR. POTTER: Because I finally went down there after repeated phone calls and visits, I finally went down there and made them remove it because of the safety issue with my children.

BOARD MEMBER RENSHAW: Made who remove it?

MR. POTTER: I went down to the city and talked to Inspectors Nunley and Shelton and said

there certainly is a safety issue here. I wrote in my letter to Mr. Lourenco about the safety issue was there and, as a response from that, it was red tagged and was removed by Mr. Ghafoorian.

MR. O'BRIEN: Let's skip the next. Directing your attention two photographs in. There appears to -- this appears to be a photograph of the parking platform and a garage from a different angle. Can you describe for the panel what this photograph represents.

MR. POTTER: Yes. This photograph was taken from Mr. Ghafoorian's property looking back towards my property through the garage and parking structure that's being built. My house is represented in the background with the basketball hoop over my garage. Mr. Ghafoorian's garage is the middle portion of the picture. On the left hand side is Mr. Ghafoorian's house with his garage.

MR. O'BRIEN: Directing your attention to the first photograph that appeared behind Tab 9. This appears to be a different stage in the construction process. Can you describe what is in that photograph?

MR. POTTER: This is a picture taken from my driveway towards the house. What you see, the

main structure on the right is his house. The structure in the middle represents his old garage with the new extension that extends over the parking platform which is on the left. What you see is the initial stage of connection between the platform and the house. So the lower lefthand portion represents the parking platform. That's approximately the point where the stairs go up to the house. There is a -- there are some metal bars, one of them is evidenced in the foreground, that represented the footings of the stairs that were being built.

MR. O'BRIEN: Can you describe the next photograph. Actually, the next --

VICE CHAIRPERSON SOCKWELL: Let me ask you to skip the photographs that just show damage and leakage and things like that because where we are really going is an appeal of the Administrator's decision on something.

MR. O'BRIEN: This is the next one we'll be looking at which is, I think, the third one, fourth one in sequence. Behind Tab 9.

VICE CHAIRPERSON SOCKWELL: Yet. Got it.

MR. POTTER: This is a picture taken from my pool looking towards Mr. Ghafoorian's house which is on the right and the garage which fills the middle

portion of the picture. So it's a picture looking towards his garage. The pool wall or fence, lattice fence, is in the front and you can see the garage through the fence and over the fence.

MR. O'BRIEN: Could you describe next picture in sequence.

MR. POTTER: This is a picture not only of the house taken from my driveway but it's a picture of the stairway that goes up from the walkway up to the top of the parking structure. The people are workers on the property, so you can see the height of the stairs. It's approximately 11 -- it is 11 step stairway going up, brick, concrete on both the sides of the stairs. The date is stamped on the picture which is 9-11.

MR. O'BRIEN: Of this year.

MR. POTTER: Of this year.

MR. O'BRIEN: Can you describe what the next picture in sequence shows.

MR. POTTER: It shows a picture of the staircase on the right. It was taken on 9-11 of this year. It also shows a picture of the driveway and --

MR. O'BRIEN: The driveway appears in the lower left hand corner.

MR. POTTER: Yes.

MR. O'BRIEN: That's the shared driveway we were talking about before.

MR. POTTER: That's the shared driveway.

MR. O'BRIEN: And what is the object -- the structure with the window on the righthand side of the photograph?

MR. POTTER: That's the old parking garage.

MR. O'BRIEN: This is the residence.

MR. POTTER: That's the residence.

MR. O'BRIEN: And that's the staircase next to it.

MR. POTTER: Yes.

MR. O'BRIEN: This is essentially viewed from Indian Lane looking towards the house.

MR. POTTER: Yes.

MR. O'BRIEN: Directing your attention to the next photograph in sequence, particularly with reference to the area more or less directly in the center between the window and the staircase. Can you show what that shows.

MR. POTTER: That shows the attachment of the parking structure to the house. They are joined. They are one. The roof of the house sits on top.

MR. O'BRIEN: And they are now physically

attached.

MR. POTTER: They are physically -- there's no question. They are physically attached.

MR. O'BRIEN: Directing your attention to the next photograph in sequence.

MR. POTTER: Taken from my property and shows the wall which is part of the parking structure and it shows the stairway going up from the ground all the way up to the top of the parking structure.

MR. O'BRIEN: Now, Mr. Petter, did there come a time when you were able to review the permits that were issued for this project?

MR. POTTER: Yes.

MR. O'BRIEN: And what I'd like to ask you is if the documents appearing behind Tab 4 -- I'd like you to take a minute to review the documents behind Tab 4 actually.

(The witness examines the documents.)

MR. O'BRIEN: To the best of your knowledge, are those true and accurate reproductions of the permits and applications applicable to the garage and parking platform?

MR. NIEDERMAYER: Objection. I object. I don't know how this witness can know that. He can't testify to the fact whether they're accurate

reproductions from the records of the agency.

VICE CHAIRPERSON SOCKWELL: Well, they certainly look like accurate reproductions from my point of view, having seen more of them than most people. I would not state that they look like they've been doctored unless you can, Mr. Niedermayer, show that you believe that information pertaining to them is incorrect, and that would be because your client produced those documents and submitted them to the District. So I'm sure that if you feel that they are incorrect, then you would want to tell us immediately that these have been doctored.

MR. NIEDERMAYER: Mr. Chairman --

VICE CHAIRPERSON SOCKWELL: Please step forward.

MS. PRUITT: I'm sorry. You have to come to the mic.

MR. NIEDERMAYER: The characterization of doctored would be your word. I didn't say they were doctored. I said --

VICE CHAIRPERSON SOCKWELL: No. You said accurate. Accurate means that there's something wrong with them. Either they didn't come out of the Xerox machine properly or there's something that's been modified. Would you not say?

MR. NIEDERMAYER: Yes. I would say that the accuracy relates to whether the copies that were made are the copies of the documents that are in fact here. I don't know whether they are or not.

VICE CHAIRPERSON SOCKWELL: You should know.

Continue.

MR. POTTER: This represents a certified copy -- a copy of a --

MR. O'BRIEN: The question before you was to the best of your knowledge, are these true and accurate reproductions of the permits and applications applicable to the platform and garage at 4900 Indian Lane?

MR. POTTER: This represents an accurate copy of the first permit that was issued.

MR. O'BRIEN: That would be the April --

VICE CHAIRPERSON SOCKWELL: Mr. Potter, would you state for the record where these copies were obtained and whether or not you made the copies or whether or not BLRA staff made the copies for you.

MR. POTTER: I went down to 941 -- was it East Capital Drive?

VICE CHAIRPERSON SOCKWELL: North Capital Street.

MR. POTTER: North Capital Street to the Permit Office on the second floor and obtained certified copies of the permits for this construction at 4900 Indian Lane.

VICE CHAIRPERSON SOCKWELL: For which you paid a fee.

MR. POTTER: Yes.

VICE CHAIRPERSON SOCKWELL: So you have receipts.

MR. POTTER: Yes.

VICE CHAIRPERSON SOCKWELL: Thank you. You may want to submit those to the record to satisfy Mr. Niedermayer.

MR. O'BRIEN: Mr. Chairman, just for clarification. The ones that are -- these particular copies are -- these permits and applications were received by me from Mr. Lourenco pursuant to a subpoena.

VICE CHAIRPERSON SOCKWELL: Okay. So then we can assume that they are accurate copies.

MR. O'BRIEN: If they're inaccurate --

VICE CHAIRPERSON SOCKWELL: They would not be your responsibility.

MR. O'BRIEN: Yes, Your Honor -- Mr. Chairman.

VICE CHAIRPERSON SOCKWELL: Thank you.

MR. O'BRIEN: Sorry.

VICE CHAIRPERSON SOCKWELL: Mr. Niedermayer, is that enough to satisfy you?

MR. NIEDERMAYER: That's fine. Yes.

VICE CHAIRPERSON SOCKWELL: Thank you.

Please continue, Mr. Potter.

MR. O'BRIEN: Directing your attention to the April 4 permit -- or the April 6 permit and the application behind it. Does the April 6 permit say anything at all about a parking platform?

MR. POTTER: No.

MR. PARKER: Objection at this point. It seems to me we've got -- the presentation is getting far afield here in terms of what was appealed. What was appealed was the stop work order. In other words, framed at that period of time in December 9, there was a structure that was in existence and my client or representatives of the client were called out to make a determination as to whether the building at that point should continue on or whether there was some sort of basis to take any kind of administrative action against it.

VICE CHAIRPERSON SOCKWELL: I think that in --

MR. PARKER: If I could just finish my thought.

VICE CHAIRPERSON SOCKWELL: Please, go right ahead.

MR. PARKER: It seems to me that to go back into the permit question and to whether the permit was properly filed or whether the permit properly states what took place is reopening that issue, an appeal that should have taken place on the permit itself as opposed to an appeal on the stop work order. That's the point I'm trying to make.

VICE CHAIRPERSON SOCKWELL: Well, I think that you have chickens and eggs here and you don't get many chickens without some eggs. So in order to establish whether or not the chicken was plucked, you have to find out where the chicken came from and, in my belief, we need to continue somewhat on this line because it is illuminating to us as to what should have been permitted and how it was permitted in order to determine whether or not a stop work order was necessary or even desirable in this case.

MR. PARKER: Well, that's presuming that at the final analysis when the building is completed or at the point the stop work order is issued, the building itself could not have been in compliance

with the zoning regulations at that point.

VICE CHAIRPERSON SOCKWELL: When a stop work order is issued, it may be issued for various reasons and the determination of the validity of a stop work order may be made here on whether or not it was issued correctly or not but, at the same time, we have to determine, I think, that we are approaching a stop work order for a valid permit or a stop work order with regard to an invalid permit.

I mean there are issues here that I think we just need to follow a little bit further and I know that you may not appreciate this but you have a great appreciation for the process of issuing building permits and that building permits do have to state what is to be constructed. A stop work for noncompliance with certain regulations is one thing. A stop work order for not having a permit issued for the construction being undertaken is another thing. But let's just continue on this basis and, if we find another reason to object, then I may entertain it but, at this point, I'd like to continue with what is being expressed.

MR. PARKER: Very well.

MR. O'BRIEN: And directing your attention, Mr. Potter, to the April permit. Is there

any reference to a parking platform or a structure like a parking platform in the permit or in the application?

MR. POTTER: No.

MR. O'BRIEN: Directing your attention to the second permit which appears behind Tab 5 which is dated May 24, 1999. Would you please take a minute to look at that and tell me if it or the application addressees a parking platform.

MR. POTTER: No.

MR. O'BRIEN: I'd like to direct your attention to the space on the bottom of -- this would be the fourth page in but at the top of the page it says page two and it's box 89 and 91 of the application for the May permit. Can you tell me what is supposed to go in box 89?

MR. POTTER: Signature of adjoining owner.

MR. O'BRIEN: And who would be the adjoining owner of the 4900 Indian Lane?

MR. POTTER: Me.

MR. O'BRIEN: Is that your signature?

MR. POTTER: No.

MR. O'BRIEN: Underneath that there's the address of the adjoining owner. Is that your

address?

MR. POTTER: No.

MR. O'BRIEN: Do you recognize the signature?

MR. POTTER: Yes.

MR. O'BRIEN: Do you recognize the address?

MR. POTTER: Yes.

MR. O'BRIEN: Whose is it?

MR. POTTER: Mr. Ghafoorian's.

MR. O'BRIEN: But it's not yours.

MR. POTTER: No.

MR. O'BRIEN: And you never consented to this project.

MR. POTTER: No.

MR. O'BRIEN: Directing your attention to the materials appearing behind --

MR. PARKER: I'm sorry. Could you recite the last exhibit for me, please, that you were just referring to.

MR. O'BRIEN: That would be Tab 5.

MR. PARKER: And which sheet of Tab 5, please?

MR. O'BRIEN: If you look at the top of it, page two and it's box 89 and 91 at the bottom in

the lower righthand corner.

VICE CHAIRPERSON SOCKWELL: Go ahead. Continue.

MR. O'BRIEN: Directing your attention, Mr. Potter, to the material appearing behind Tab 6. Did Mr. Ghafoorian ever represent himself to you or to the District of Columbia as a licensed architect?

MR. POTTER: Both to me and the District of Columbia as a licensed architect in the city.

MR. O'BRIEN: And did he declare himself in a sworn affidavit to be --

MR. HOLMAN: Mr. Chairman, why are we pursuing this particular line of questioning? I'm trying to understand.

VICE CHAIRPERSON SOCKWELL: Actually, the issue of whether or not Mr. Ghafoorian would actually have to be licensed in order to either produce drawings or undertake the work is generally not -- it's generally not a requirement for single family residential construction and, therefore, any assertions he may have made would not have had an effect on the issuance of this particular type of permit.

MR. O'BRIEN: With all due respect, Mr. Chairman, both these permits were issued on a walk-

through basis.

VICE CHAIRPERSON SOCKWELL: And that is possible without a licensed architect's stamp on the drawings.

MR. O'BRIEN: This may explain why he was able to get these permits because he did represent himself as an architect on the drawings and, secondly, Mr. Chairman --

VICE CHAIRPERSON SOCKWELL: You could have done the same thing, sir.

MR. O'BRIEN: I wouldn't have.

VICE CHAIRPERSON SOCKWELL: But you could have because it's legal.

MR. O'BRIEN: It does go to whether or not he's proceeding in good faith, I think.

VICE CHAIRPERSON SOCKWELL: Well, as long as it doesn't affect the issuance process materially, I believe that it's not relevant.

MR. O'BRIEN: Then in that case, we'll move on.

Returning, Mr. Potter, to the essential chronology. You said that you filed your appeal on December 10.

MR. POTTER: Yes, with Mr. Lourenco.

MR. O'BRIEN: With Mr. Lourenco. And you

did not receive a response to that appeal until July 12 or thereabouts of the year 2000.

MR. POTTER: I think it's July 28.

MR. O'BRIEN: In the intervening period, did you or your wife do anything to encourage the District of Columbia to respond to your appeal and, if so, could you describe for the Board what you did.

MR. POTTER: I don't understand the question.

MR. O'BRIEN: After December, after you filed your appeal, did you ever wonder what had become of it, whether or not it was going to be answered? Did you ever contact the District to see what they were doing with your appeal?

MR. POTTER: Well, I contacted the mayor. I wrote the mayor. I wrote a letter to Mr. Vincent Ford stating the same issues and wanting a response. I went down to Mr. Lourenco's office trying to seek an answer to this problem.

MR. O'BRIEN: Did you email him?

MR. POTTER: I emailed Mr. Lourenco.

MR. O'BRIEN: Did you phone his office?

MR. POTTER: I phoned his office, and I went down there.

MR. O'BRIEN: Could you tell the Board

approximately how many times you contacted Mr. Lourenco's office in one form or another regarding this appeal?

MR. POTTER: Oh, I was down there just on this particular issue at that time at least 10 times trying to find permits and all kinds of diagrams and I tried to contact his office and get in touch with him.

MS. PRUITT: Excuse me, Mr. O'Brien. Are you trying to -- I'm trying to understand this line of questioning. Are you going towards timeliness?

MR. O'BRIEN: Apparently we're covering both timeliness and the merits.

MS. PRUITT: The timeliness goes to Mr. Potter and not to DCRA as to when Mr. Potter knew that the building permit was constructed, not when DCRA responded to him but when he understood --

MR. O'BRIEN: Well actually, with all due respect, Ms. Pruitt, you can not appeal here unless it's right.

MS. PRUITT: Excuse me?

MR. O'BRIEN: You can not appeal to the BZA unless it's right.

MS. PRUITT: But you still have a motion on timeliness which deals with Mr. Potter's

understanding and not DCRA's understanding.

MR. O'BRIEN: All right. Mr. Potter, at what point did you come to the conclusion that Mr. Lourenco was never going to answer your appeal?

MR. POTTER: Within several months after that time. I mean no response ever came from him. I went down to his office. He wouldn't meet with me. I couldn't get in touch with him.

VICE CHAIRPERSON SOCKWELL: Let me interrupt for a moment. With regard to permits, and this speaks back to your discussions here and the Intervenor's. With single family construction generally, a licensed architect or engineer would not be required. However, if a structure that is considered to be an elevated structure or a significant structural design might be attempted, there is often a requirement that the structural drawings be stamped by a structural engineer and/or, in the more extreme cases, that a structural certification form be submitted to the District of Columbia in the name of that structural engineer.

It is only apparent to us at this Board what was constructed based on the drawings that we have seen and they are piecemeal at best, and there is a possibility that those drawings might not have

shown sufficiently certain parts of the work, but we have no way of knowing that. So I want to temper my statement on whether or not the permits could be issued without a valid architect or engineer stamping them on the basis of not knowing what was submitted specifically in terms of drawings relevant to the construction and particularly the elevated platform.

MR. O'BRIEN: Very good.

VICE CHAIRPERSON SOCKWELL: Which is a concrete reinforced structure.

MR. O'BRIEN: I understand. Thank you.

Going back then to Ms. Pruitt's point, at which point -- you filed your appeal in December.

MR. POTTER: Yes.

MR. O'BRIEN: How many months there -- you said some months thereafter you became convinced that it was not going to be answered, and could you state to the best of your recollection when that occurred. When did you become convinced that Mr. Lourenco was not going to address the appeal, if you know.

MR. POTTER: I can't put a date on that. I mean --

MR. O'BRIEN: Very good.

I have nothing further with this witness,

Mr. Sockwell.

VICE CHAIRPERSON SOCKWELL: All right. Thank you.

MS. PRUITT: Excuse me, Vice Chair. Are you going to have the Appellant put on this whole case and then cross examine or are you going to do witness by witness?

VICE CHAIRPERSON SOCKWELL: In this case, it actually might be more appropriate to deal with this witness by witness because it's very detailed. So --

MR. O'BRIEN: That would actually be our preference, if possible.

VICE CHAIRPERSON SOCKWELL: So then I would ask for the Board to make any comments and then we would get cross examination. Does the Board have any questions of this witness?

Mr. Potter, at the present time, how much of your access has been permanently removed in your easement area?

MR. POTTER: As of this date today?

VICE CHAIRPERSON SOCKWELL: As of this date.

MR. POTTER: As of this date today, the hole that was excavated has been pretty much filled

with rocks. The hole still exists there, but it's been filled with rocks. There's a several inch piece of that rebar still exists in that hole and it's basically an inch below the surface.

VICE CHAIRPERSON SOCKWELL: But the area has not been restored?

MR. POTTER: The area is not -- if I drive on the area, the tires will crumble the portion of the driveway that has been excavated.

VICE CHAIRPERSON SOCKWELL: Okay. So it was never restored to its existing condition -- pre-existing condition.

MR. POTTER: To this day, it has not been restored to its existing condition.

VICE CHAIRPERSON SOCKWELL: Thank you. That's all.

BOARD MEMBER RENSHAW: Mr. Vice Chair, just a question for Mr. Potter. Were you the first resident and Mr. Ghafoorian followed you in ownership of his house or --

MR. POTTER: I purchased my house in 1992. He purchased his house in 1997, so I was the first person there.

BOARD MEMBER RENSHAW: All right. Now, did you explain to Mr. Ghafoorian or did you feel

that he understood that the driveway was a shared driveway and that you each had rights on the other person's side of the driveway?

MR. POTTER: We have talked about that, and he knows and I know about the shared driveway.

BOARD MEMBER RENSHAW: All right. He understood that he had half of the driveway and you have the other half and you had an easement on his half and he had an easement on your half.

MR. POTTER: We both have access to the driveway.

BOARD MEMBER RENSHAW: Access.

MR. POTTER: Yes.

BOARD MEMBER RENSHAW: And did Mr. Ghafoorian at any time leading up to the point where you went on vacation in March/April of 1999, did you mention to you at all, did he ask your permission to utilize your side of the driveway? In other words, that he was going to have some work done and he would need to have access to the driveway for this purpose of construction?

MR. POTTER: No. He never talked to me at all about the construction prior to the construction beginning.

BOARD MEMBER RENSHAW: So you left on

vacation not understanding, not knowing, not having been approached by Mr. Ghafoorian that anything was going to happen on his property?

MR. POTTER: Yes. I left on vacation without any notification from him.

VICE CHAIRPERSON SOCKWELL: Cross examination.

MR. PARKER: Thank you.

Mr. Potter, with regard to the stop work order in December of 1999. There came a time when -- was it Mr. Nunley and Mr. Shelton came back out?

MR. POTTER: We called them up and they came out to our property.

MR. PARKER: All right. I'm talking about when the stop work order was set aside. Did you receive a copy of the stop work order with some signatures on the back?

MR. POTTER: Not that I'm aware of. No.

MR. PARKER: Okay. At some point in time, you became aware that the stop work order had been set aside. Correct?

MR. POTTER: Basically 24 hours later when they continued work on it, I bumped into Mr. Ghafoorian and he said it had been lifted.

MR. PARKER: And at that point, that's

when you attempted to write to Mr. Lourenco.

MR. POTTER: Yes.

MR. PARKER: All right. At any time thereafter did anyone from DCRA, including Mr. Lourenco, say to you that the matter was under review and was pending?

MR. POTTER: No.

MR. PARKER: So as far as you knew, nobody in DCRA was taking any action on your request for an appeal. Correct?

MR. POTTER: As far as I know, I really wasn't contacted by anybody. I contacted the mayor. The mayor emailed me back and said thanks for the heads up was his email. So I knew that he received it.

MR. PARKER: But the critical point here is no one led you to believe that your appeal or what you call your appeal, your letter, was under active review.

MR. POTTER: I went down to --

MR. O'BRIEN: Your Honor, I'm sorry but I really have to object to this. The letter, if counsel will review it, says it's a formal appeal. There is an administrative procedure which gives him the right to appeal that was on the bottom of the

stop work order. The responsible officials within the DCRA have an obligation to hear the appeal. It's not like -- I mean the real problem we have here is that the DCRA has been acting like they're doing Mr. Potter a favor.

MS. PRUITT: Mr. O'Brien, do you have a copy of that letter?

MR. O'BRIEN: Yes, I do. It's attached actually at the back of --

MS. PRUITT: If you just tell us, we can turn directly to it.

MR. O'BRIEN: I believe it is behind Tab 1 but I'll check that.

MR. PARKER: I'd like to respond to counsel's statements, please.

VICE CHAIRPERSON SOCKWELL: The favor part should be stricken from the record, and you can respond now.

MR. PARKER: The point of the questions are that there is a procedure for appeals from stop work order decisions and one of the provisions of the appeal is, the appeal procedure is, once you file an appeal, if the agency takes no action for three days, you then are on notice to take further administrative actions, and that is what the point of my questioning

is and you have the testimony now that no one from DCRA led or lulled Mr. Potter into believing that his appeal was under review. That's the point I'm trying to make.

MR. O'BRIEN: If I may, the appeal letter appears immediately behind Tab 10.

VICE CHAIRPERSON SOCKWELL: When you say lulled, would you explain lulled to the Board.

MR. PARKER: Well, in other words, I would think Mr. Potter would have some sort of an argument here. If he had filed this letter, somebody had called him back and said, we've got your letter, we're considering it, we're thinking about it, we'll get back to you.

VICE CHAIRPERSON SOCKWELL: Have you had much experience with DCRA?

MR. PARKER: I have had some experience with them. Yes.

VICE CHAIRPERSON SOCKWELL: Then you shouldn't be in the position to make the statement that you just made with any belief in it because there have been many instances where DCRA has not responded in a three day period to certain requests.

MR. PARKER: The point is --

VICE CHAIRPERSON SOCKWELL: So what I'm

saying is that --

MR. PARKER: I'm sorry.

VICE CHAIRPERSON SOCKWELL: You say that there was no reason to believe they lulled Mr. Potter into the belief of such and such, and I'm saying there's no reason to be certain that DCRA would have been able to respond within the three day period.

MR. PARKER: Right, but that doesn't change--

VICE CHAIRPERSON SOCKWELL: There's no certainty.

MR. PARKER: That doesn't change what his rights are based on that eventuality.

VICE CHAIRPERSON SOCKWELL: Okay. And as well, it might be somewhat proper to expect that Mr. Potter, who may not retain counsel or may not have been working with counsel at the time, would not have been 100 percent sure of his rights and responsibilities under that stop work order situation.

MS. SANSONE: Mr. Chairman, if I might just interject for a minute. We're in the middle of cross examination now and, to the extent the Zoning Administrator wishes to present testimony about appeal procedures, it would be appropriate to his

case, and we should just stick with the questioning.

VICE CHAIRPERSON SOCKWELL: All right. I apologize. Please go forward.

MR. O'BRIEN: If I may, getting back to the question. The letter that Mr. Potter filed behind Tab 10 is dated December 10, 1999 and the first sentence of which says that it's a formal appeal. The response of Mr. Lourenco is the last document behind Tab 10 and it is --

MS. PRUITT: Mr. O'Brien, we just asked for the letter, not an explanation, just so that the Board could read it. We're still in cross examination of DCRA.

MR. O'BRIEN: Excuse me.

MR. PARKER: Mr. Potter, referring to the permits that were issued and are part of your various tabs, starting with Tab 4, the first sheet in Tab 4 is one of the permits issued in this case. Correct?

MR. POTTER: Yes.

MR. PARKER: For the record, it's permit B-422926.

MR. O'BRIEN: Excuse me. Is that the one dated April '99?

MR. POTTER: April 6, '99.

MR. PARKER: This permit indicates that a

retaining wall under separate permit was going to be part of this structure. Correct?

MR. POTTER: Three foot -- yes.

MR. PARKER: All right. On Tab 5 the permit B-423964, that's a permit -- I'm looking for the date on that -- 5-24-99. It says, "A revision to the prior permit" and then it says "Finish slab elevation of the new garage to be 107.50. Correct all plans section. Elevation based on slab elevation." And then, "Fence at the east side of the retaining wall." So this permit -- my question to you is this permit references a slab, an elevated slab and a fence and a retaining wall. Correct?

MR. O'BRIEN: I don't know where we're going with this but I believe the permits and the applications speak for themselves. He's just simply asking what they say.

VICE CHAIRPERSON SOCKWELL: Where are you going with this?

MR. PARKER: The question -- he was questioned on direct about whether the permit application contained references to a platform, a parking platform, and I'm pointing out the things that are contained in the permits that he had notice of. I have two more questions.

VICE CHAIRPERSON SOCKWELL: Please go ahead.

MR. PARKER: Two more questions. In any event, based on that permit, there is references to new slab elevations, retaining walls and finished slab elevations on that permit. Correct?

MR. POTTER: Yes.

MR. PARKER: And indeed, at the top of it, it says type fence retaining wall. Correct?

MR. O'BRIEN: Objection. It says what it says. If counsel has a question --

MR. PARKER: Well then I'll ask him. You had no -- you were aware of this permit. You obtained this permit at some point. Correct?

MR. POTTER: Yes.

MR. PARKER: I guess this would be further down in Section 5 there's a permit fee 422926. I'm sorry. That looks to be a repeat of the original April 6, '99.

MR. O'BRIEN: For point of clarification. That's the permit that was being modified which is, again, the April permit. It's the same thing.

MR. PARKER: Okay. My last question to you is did you ever file any kind of an administrative action to challenge these permits

other than your court cases?

MR. POTTER: I obtained a TRO.

MR. PARKER: No.

MR. POTTER: That's not an administrative action?

MR. PARKER: No. Let me restate the question and be more clear. Did you ever file any objections to the permits other than through your TRO, your court case?

MR. O'BRIEN: I'm going to object. Mr. Potter has already testified that he and his wife contacted and made complaints dozens of times.

MR. PARKER: Let me be more clear. Did you file -- as you did with the stop work order, you asked for a hearing or an appeal after that stop work order was rescinded. Correct? You recall that procedure you used.

MR. POTTER: I have obtained, I think, three stop work orders.

MR. PARKER: All right. And did you -- and you were aware at some point that there were appeal rights after those stop work orders. Correct?

MR. POTTER: I don't know. I'm very -- at the time that this was initiated, I'm very unsure exactly what the procedures. I would think that the

people, the neighbors would deal in good faith. Coming down and --

MR. PARKER: Objection. That's unresponsive.

VICE CHAIRPERSON SOCKWELL: Sustain that. I think that the issue here is whether or not Mr. Potter knew exactly what the procedures were and it's obvious that Mr. Potter was working with the situation as best he could. He may not have understood fully some of the details of the procedures.

MR. PARKER: Well, let me ask you, were you represented by counsel during all this time?

MR. O'BRIEN: Specifically with reference to what?

MR. PARKER: Can I have an answer to my question from the witness.

MR. O'BRIEN: I'm going to object to it because it's vague because, frankly, Mr. Potter is represented by a major law firm with regard to estate matters.

VICE CHAIRPERSON SOCKWELL: Well, whether Mr. Potter was represented by counsel or not may be relevant to his knowledge of certain things at the time that this was going on, so you may answer the

question.

MR. PARKER: I'll be more specific. From April of '99, I believe, through December of '99, were you represented by counsel in this matter?

MR. O'BRIEN: I'm going to object to the term "this matter." Is counsel referring to the administrative procedures that he referred to earlier?

MR. PARKER: I'm referring to any matter that involves his challenge to the construction of Mr. Ghafoorian's --

VICE CHAIRPERSON SOCKWELL: Let me just request that maybe the way to ask the question is did Mr. Potter seek the advice of counsel before filing X or filing Y. Then you can get a direct answer yes or no.

MR. PARKER: All right. With regard to your pursuing temporary restraining orders in relation to this case, did you seek the advice of counsel in those matters?

MR. POTTER: Yes.

MR. PARKER: Did you also at any time discuss with counsel the ability to file administrative appeals in this matter?

MR. O'BRIEN: I'm going to object.

Attorney/client.

VICE CHAIRPERSON SOCKWELL: Well, since that was --

MR. O'BRIEN: May I have an opportunity--

VICE CHAIRPERSON SOCKWELL: That was an advisory issue.

MR. O'BRIEN: Could I have an opportunity just to confer because he may want to answer this.

VICE CHAIRPERSON SOCKWELL: Sure.

(Off the record briefly.)

MR. O'BRIEN: One of the reasons why I'm being cautious about this is because I was not representing Mr. Potter at the time. Mr. Potter--

VICE CHAIRPERSON SOCKWELL: Excuse me. I didn't hear you.

MR. O'BRIEN: I'm sorry. Mr. Chairman, I was not representing Mr. Potter at the time. He had other counsel with respect to the litigation. I just wanted to make sure he was comfortable going into this.

VICE CHAIRPERSON SOCKWELL: All right.

MR. O'BRIEN: Mr. Potter, go ahead.

MR. POTTER: Could you repeat the question, please.

VICE CHAIRPERSON SOCKWELL: So he was not

represented by the counsel that's in the room.

MR. PARKER: During the time you were represented by counsel in this matter, did you ever have any discussions with counsel about filing administrative appeals to challenge these building permits?

MR. POTTER: No.

VICE CHAIRPERSON SOCKWELL: Gentlemen, I'm going to ask for a five minute break. We have an issue with our recorder that we have to take care of, if you don't mind. Thank you.

(Off the record for a seven minute recess at 3:06 p.m.)

VICE CHAIRPERSON SOCKWELL: We'll continue. Mr. Moulden will be right back in the room. I believe you, Mr. Potter, were mulling over an answer.

MS. PRUITT: Whether or not he was being represented by counsel.

MR. POTTER: I'm sorry. I've already answered that question.

MR. O'BRIEN: I thought he did. Do you need to have it re-read?

VICE CHAIRPERSON SOCKWELL: No.

MR. PARKER: I would ask, along the same

lines, at the time the stop work order in December of '99 was issued, were you represented by counsel?

MS. PRUITT: Mr. Parker, you need to put your mic on.

MR. PARKER: Every time I ask the question clearly, I don't have the mic on.

At the time of the stop work order in December of 1999, were you represented by counsel at that time?

MR. POTTER: Yes.

MR. PARKER: Did you consult with counsel regarding your rights when the stop work order was terminated?

MR. POTTER: Basically yes.

MR. PARKER: I don't have any further questions.

VICE CHAIRPERSON SOCKWELL: Thank you. Mr. Niedermayer.

MR. NIEDERMAYER: Thank you. I do have a couple of questions. Mr. Potter, I understand you returned from a vacation in South Carolina in the beginning of April to discover the construction that was going on at the site, and then you went down to check on whether there were any building permits. Is that correct?

MR. POTTER: At some time after that. Yes.

MR. NIEDERMAYER: When you went down to look at the building permits, did you take the opportunity to look at any plans that were on file?

MR. POTTER: No.

MR. NIEDERMAYER: Did you know whether there were any plans on file?

MR. POTTER: I did not know and I did not know exactly where to look. No.

MR. NIEDERMAYER: And your immediate response was to communicate with the District of Columbia to see if you could get an inspector out there to look at what was going on. Is that right?

MR. POTTER: My first response was to talk to your client and ask him what he was doing. That was the response when I came back from vacation.

MR. NIEDERMAYER: Okay. And then after that, you were not happy with what the response you got perhaps and you called the District of Columbia to have them come down and inspect it.

MR. POTTER: After he threatened to build a fence to restrict all my passage up my driveway, I became somewhat concerned.

MR. NIEDERMAYER: Mr. Potter, could I ask

you if we could just stick to the question so we can do it. That really wasn't what my question was about. I just wanted to know whether after you spoke with Mr. Ghafoorian, then you then contacted the District of Columbia to have an inspector come out and look at what the construction was.

MR. POTTER: Yes.

MR. NIEDERMAYER: And is the next thing you did after the District of Columbia inspectors came out was to file a lawsuit and seek a TRO?

MR. POTTER: A stop work order was issued. That was the first response. We wrote a letter to your client asking him to get together to talk about it, which he ignored. So we made a friendly gesture to see if we could reconcile a situation which was never responded to.

MR. NIEDERMAYER: After the inspectors came out and they had the stop work order, I take it the stop work order was lifted. Is that right?

MR. POTTER: Stop work order was lifted.

MR. NIEDERMAYER: And then the next thing you did was to file a lawsuit and seek a TRO.

MR. POTTER: I think a second stop work order was issued.

MR. NIEDERMAYER: Okay. And then after

that stop work order, the next thing you did was to file a suit and seek a TRO.

MR. POTTER: Basically, yes.

MR. NIEDERMAYER: Okay. So you didn't appeal either of the stop work orders that had been issued or vacated before you filed your lawsuit. Isn't that right?

MR. POTTER: I basically was unaware you could appeal the stop work order.

MR. NIEDERMAYER: Okay. So I guess the answer to my question is --

MR. O'BRIEN: I'm going to --

MR. NIEDERMAYER: -- yes, you didn't do that.

MR. O'BRIEN: I'm going to object because it assumes matters that are not in evidence. In fact, the two stop work orders that Mr. Potter refers to were issued because Mr. Ghafoorian failed to display his building permit.

MR. NIEDERMAYER: Mr. Chairman, this is a speech, not an objection. I think if we could stick to the point. It is in evidence because Mr. Potter himself has testified that these two stop work orders were issued. So that puts it in evidence.

MR. O'BRIEN: If I could -- the fact is,

Mr. Ghafoorian simply posted his permits.

MR. POTTER: He did not post his permit.

MR. NIEDERMAYER: I would object. There's no question pending.

VICE CHAIRPERSON SOCKWELL: I think the issue is there are certain things that are hearsay as we don't have so much evidence to support them, and there are other things that we know are factual based on the events that have been taken place and the individuals and agencies that have participated. So if we can try to keep the hearsay and he was a bad guy/good guy thing away from this and just speak to what did happen and what did not happen and, if the questions could be confined to listing that information, it would certainly be helpful.

MR. NIEDERMAYER: I have a simple question. Mr. Potter, did you file any administrative appeal after either of the stop work orders that were issued in April of 1999 were vacated by DCRA?

MR. POTTER: No.

MR. NIEDERMAYER: Mr. Potter, I'd like to show you a photograph that's contained among the materials that Mr. Ghafoorian submitted. It's a photograph which was, I'll represent to you, which

was taken in April of 1999. It has that date on the front of it as part of our submission and looks like this. There should be a color copy of this in the materials I submitted. Unfortunately, I didn't have more than one at the time, so the other copies are more -- yes. It gets that funny computer look to it when it's xeroxed, but that's the photograph.

MR. O'BRIEN: Excuse me. Could I ask counsel what he's looking at. Is this the one you're referring to?

MR. NIEDERMAYER: That's it.

Mr. Potter, as best as you can recall, did the site where the wall was look like this in April of 1999?

MR. POTTER: No. Absolutely not.

MR. NIEDERMAYER: Didn't look like that at all?

MR. POTTER: No.

MR. NIEDERMAYER: Okay.

MR. POTTER: This picture was not taken April of '99.

MR. NIEDERMAYER: Let me show you another photograph.

MR. POTTER: I'm sorry. This is dated incorrectly.

MR. NIEDERMAYER: Okay. I understand that's your testimony. Let me show you another photograph which has got a date on it of May of 1999 and that should be the second one in the group of photographs for Mr. Ghafoorian. Looks like this.

MR. POTTER: I see it.

MR. NIEDERMAYER: Mr. Potter, let me show you this photograph and ask you whether the site of Mr. Ghafoorian's property looked like that in May of 1999.

MR. POTTER: No.

MR. NIEDERMAYER: Okay. Let me show you a third photograph that has a date of January of 2000 on it. It looks like this. It's got the pipes in it. Let me ask you whether in January of 2000 you observed these pipes being installed at all.

MR. POTTER: No.

MR. NIEDERMAYER: By the way, Mr. Potter, are you still living at 4852 Indian Lane right now?

MR. POTTER: I own the house.

MR. NIEDERMAYER: Okay. But you don't live there now, do you?

MR. POTTER: I'm not at the house right now. No.

MR. NIEDERMAYER: Okay. You moved out

several months ago indeed, didn't you?

MR. O'BRIEN: Objection.

VICE CHAIRPERSON SOCKWELL: Is the issue of his residency, immediate residency, predicated on him being able to identify the pictures or is this for another purpose?

MR. NIEDERMAYER: It's for another purpose. It's for the purpose that he's been testifying about what it looks like out there and driving over the rocks and such, and I think this goes to the issue whether he's there to do that, not to any other issue.

VICE CHAIRPERSON SOCKWELL: Well, whether he's there to do it or not, the question would more likely be whether the conditions exist.

MR. NIEDERMAYER: That is true, Mr. Sockwell, but the record only reflects that the witness just testified he drove over these rocks. We don't know when, where --

VICE CHAIRPERSON SOCKWELL: Well, he owns the property. He could visit the property, even if he doesn't live there.

MR. NIEDERMAYER: That's true but, as I said, since you've already advised us it'll be made on the record and there's no evidence in the record.

VICE CHAIRPERSON SOCKWELL: Well, you're asking the questions. Let's see what we get out of your answers.

MR. NIEDERMAYER: Mr. Potter, do you have any written documents that you sent to the District of Columbia between April 1999 and your letter of December 10, 1999?

MR. POTTER: Any written documents outside of filing for the TRO and --

MR. NIEDERMAYER: Yes. No. I mean sent -- let me clarify my question. You're quite right. Do you have any documents, letters or anything else, that you sent to anyone at DCRA between April of 1999 and your December 10, 1999 letter?

MR. POTTER: No.

MR. NIEDERMAYER: Mr. Potter, may I ask you to look at the materials behind your Tab 4 of your submissions. April 6, 1999 Building Permit B422926 materials.

MR. POTTER: Yes.

MR. NIEDERMAYER: When you looked at this building permit, did you understand that it was to build a three car garage of 900 square feet?

MR. POTTER: It's approximately what it says.

MR. NIEDERMAYER: Okay. Now, you testified a little earlier that Mr. Ghafoorian, when he submitted his building permits, wrote on them that you had consented or that someone who is the adjoining land owner had consented to the construction that was being asked -- for which a permit was being asked. Do you remember that?

MR. POTTER: Yes.

MR. NIEDERMAYER: Okay. Let me ask you to look at the materials that are behind that Building Permit B422926. Do you see those materials?

MR. O'BRIEN: Again, this is the April permit?

MR. NIEDERMAYER: This is the April permit.

MR. O'BRIEN: Okay. Now, Mr. Potter never testified that anybody had written in consent with regard to the April permit.

MR. NIEDERMAYER: I understand that.

MR. O'BRIEN: Okay.

MR. NIEDERMAYER: And I think you told us that you went down and actually got copies of these documents yourself from the agency.

MR. POTTER: Yes.

MR. NIEDERMAYER: Okay. The application

has a place also, it's the same application, on the fourth page, third page behind Tab 4 but it's marked page two at the top, whereas the same box is 89 and 91, 90, etcetera, where it says "Signature of adjoining owner." There's no signatures in any of those boxes, are there?

MR. POTTER: No.

MR. NIEDERMAYER: Okay. In fact, the whole section is crossed out, isn't it?

MR. POTTER: Yes.

MR. NIEDERMAYER: Did you happen to see the originals when you got these copies?

MR. POTTER: Yes.

MR. NIEDERMAYER: Did it have the cross out on that original, too?

MR. POTTER: Can't remember.

MR. NIEDERMAYER: Okay. Now let me ask you to turn to Tab 5 which is the next permit of May 24, 1999. Now, this is the one where you, I believe, testified that Mr. Ghafoorian was indicating that an adjoining land owner had given his consent to the construction that was being sought to be done for which a permit was being sought down there at the bottom of page two.

MR. POTTER: Yes.

MR. NIEDERMAYER: Now, was the cross out that you see on this copy on the copy that was given to you by the person who made the copy at the agency?

MR. POTTER: I don't know. I can maybe look, but I don't know.

MR. NIEDERMAYER: Well, you didn't put that on there, did you?

MR. POTTER: No.

MR. NIEDERMAYER: Okay.

MR. POTTER: I didn't cross it out or write the signature.

MR. NIEDERMAYER: You don't remember whether it had that cross out when you got your copy from the agency.

MR. POTTER: I don't know.

MR. NIEDERMAYER: All right. I'd like to just draw the Board's attention to the printed part of the statement just above Box 88 which says, "If party wall, owner of the adjoining property must agree to the erection of the retaining wall and this application." And have you looked at the permits to see whether there is an adjoining -- a retaining wall that in fact adjoins the property against it?

MR. O'BRIEN: If --

MR. NIEDERMAYER: Excuse me. I'm doing

my cross examination, Mr. O'Brien. There's no pending question.

MR. O'BRIEN: I thought there was a pending question, Mr. Niedermayer.

MR. NIEDERMAYER: No. I --

MR. O'BRIEN: You were asking him to -- you were directing his attention to some printed words on the application and then asked him if the permit referred -- was covered by that statement, did you not?

MR. NIEDERMAYER: And he gave his answer, I thought. Was I mistaken?

VICE CHAIRPERSON SOCKWELL: I thought you asked the question, Mr. Niedermayer, regarding the plans, if he saw -- I thought -- okay. But I thought you said something about plans. Maybe I misunderstood you.

MR. NIEDERMAYER: No. What I did was I just drew the Board's attention to the printed part of the form. There was no question. I was just directing your attention to it.

MR. O'BRIEN: In which case I'm going to ask that further argumentation of this nature be limited.

MR. NIEDERMAYER: I have no further

questions.

MR. O'BRIEN: Mr. Chairman, may I do redirect?

VICE CHAIRPERSON SOCKWELL: Yes. Go ahead.

MR. O'BRIEN: Mr. Potter, did you understand what the basis for the stop work orders in April of 1999 were? Why those stop work orders were issued.

MR. POTTER: For failure to display permits.

MR. O'BRIEN: And did Mr. Ghafoorian correct that failure to display the permits at some point?

MR. POTTER: At some point, yes.

MR. O'BRIEN: Okay. You were asked to identify certain photographs that have been labeled respectively April and May of 1999.

MR. POTTER: Yes.

MR. O'BRIEN: The first one that you were asked to identify has been marked April of 1999 and you said that that is not what the property looked like in April of 1999.

MR. POTTER: Yes.

MR. O'BRIEN: Can you tell the Board why?

MR. POTTER: Because in April of '99, that's when the construction began. This is a year later approximately. So I mean the date on it is fraudulent. We got the construction of the entire elevated platform at that time. It couldn't have taken place within a couple of days.

VICE CHAIRPERSON SOCKWELL: So what you're saying, Mr. Potter, is that to the best of your knowledge, the construction that is shown could not have been there at that time.

MR. POTTER: The first permit that was obtained was April 6, 1999.

VICE CHAIRPERSON SOCKWELL: True.

MR. POTTER: All right. Construction began at the end of March of 1999.

VICE CHAIRPERSON SOCKWELL: Construction began while you were out of town.

MR. POTTER: While I was out of town.

VICE CHAIRPERSON SOCKWELL: How long were you out of town, sir?

MR. POTTER: I was out of town for two weeks.

VICE CHAIRPERSON SOCKWELL: Okay. So it's obvious that the construction began during the time that you were away.

MR. POTTER: I have seen pictures presented by them and dated by them that said March of '99 is when the construction began because I've seen the vehicles and the excavation --

VICE CHAIRPERSON SOCKWELL: Well, let's put it this way. In two weeks, they couldn't have done that much construction. I think we can all agree to that.

MR. NIEDERMAYER: Mr. Sockwell, I would object to that because I can't agree to that because construction proceeds quite quickly when you have -- put up the concrete forms. Mr. Potter, I understand, disputes what's done --

VICE CHAIRPERSON SOCKWELL: Let's say this. As a licensed architect, I have certain feelings about it, but I'll accept -- I'll sustain your objection to how much construction could be done.

BOARD MEMBER RENSHAW: Mr. Sockwell --

MR. POTTER: I could present pictures, dated pictures as to what was done.

BOARD MEMBER RENSHAW: Could I ask a question, please. I just want to clarify that these photographs dated 4-99 going 5-99, 100, 300, 400, these photographs were submitted by Mr. Niedermayer.

Is that correct?

MR. POTTER: Yes.

BOARD MEMBER RENSHAW: And these were dated by who? Who dated these photographs?

MR. POTTER: Mr. Niedermayer or Mr. Ghafoorian. I don't know.

BOARD MEMBER RENSHAW: I just wanted to clarify that.

MS. PRUITT: Let Mr. Niedermayer answer that.

VICE CHAIRPERSON SOCKWELL: Let Mr. Niedermayer answer the question.

MR. NIEDERMAYER: The writing on the photographs is my writing as to the dates based on the information supplied to me as to when they were taken.

VICE CHAIRPERSON SOCKWELL: Mr. Niedermayer, let me ask you one quick question. When were you retained as counsel?

MR. NIEDERMAYER: I was retained in these matters in April or May of 1999.

VICE CHAIRPERSON SOCKWELL: All right. So you've been Mr. Ghafoorian's counsel for that period of time, yet are you attesting to the fact that from your observations these photographs are

correct to what was existing because you put your --

MR. NIEDERMAYER: What I'm telling you is that I put the dates on them based on the information supplied to me. I wasn't out at the site.

VICE CHAIRPERSON SOCKWELL: Okay. That's what I wanted to know.

MR. NIEDERMAYER: I was not at the site in April and May of 1999. I don't have my own observations as to what --

VICE CHAIRPERSON SOCKWELL: So you dated them. That's all.

MR. NIEDERMAYER: I just dated them. That's all. I didn't take them. They were just supplied to me and we used the dates that are in the photographs from the information that we had as to when they were taken.

VICE CHAIRPERSON SOCKWELL: Okay. So there's no way for counsel to substantiate the accuracy of the photographs, just the assignment of dates, beyond what was presented to you. So to the best of your knowledge, these photographs were taken on the dates that were supplied to you, and I understand that.

MR. NIEDERMAYER: I personally can't do it but there is a witness who I wasn't intending to

call who obviously can do that, and he's present here and, should it become important, then I guess we could do that, but I wasn't intending to call him because substantively the issues which we're here today about, the merits of it were not something he was going to testify on. The timeliness was something which had been deferred.

VICE CHAIRPERSON SOCKWELL: Okay. So I assume that you're just trying to indicate to this Board that there was substantial completion of portions of the construction long before the building permit was issued because you said that this was -- all of this existed at that time and the building permit, original building permit, was not issued until some time in April.

MR. NIEDERMAYER: No, I didn't. Mr. Sockwell, what I said was that these are photographs of the condition of the site in April of 1999 and May of 1999. The building permit, we know, was issued on April 6, 1999. April has, as we all know, 30 days and there's lots of time to do construction during April.

VICE CHAIRPERSON SOCKWELL: Right, but the permit was issued -- it's been established that the permit was issued on April 6. The application

was initiated on April 5 and that it was a walk through permit and your statement is that the photograph is accurate for April of '99.

MR. NIEDERMAYER: Yes.

VICE CHAIRPERSON SOCKWELL: And there are other photographs that have been submitted which show other conditions and you are in effect stating that those conditions also existed some time around the same time because you said construction takes place very quickly and, if that is the case, then there was substantial construction perhaps prior to -- well, there had to have been some construction in order for Mr. Potter to have had an objection. There had to have been some construction. Otherwise, Mr. Potter would have come home and he would not have had a problem.

MR. NIEDERMAYER: Mr. Sockwell, the evidence in the case is this. There is a photograph by Mr. Potter that he says he took from his house that shows a tractor and some excavation and he says it already shows --

VICE CHAIRPERSON SOCKWELL: We saw that.

MR. NIEDERMAYER: He says it already shows footings. We know the building permit was issued on April 6, 1999.

VICE CHAIRPERSON SOCKWELL: Yes, we do.

MR. NIEDERMAYER: And construction obviously continued during April of 1999. There's nothing inconsistent in what all the evidence is as to what the construction was in April 1999 by the photographs I've submitted. The construction process obviously went forward, as you know, and it reached different stages at different times. In the beginning of April, it was at the stage that Mr. Potter said he observed it at, if we accept that at face value. It just means that some time later in the month it achieved the state that it was showing in the photograph. Then there's another photograph in May that shows a further state.

Now, the angles and the photographs only show this area of the retaining walls. They were poured concrete. They were poured, as you know, with the forms set up and poured, it can be poured very quickly and put up and that's when, in fact --

VICE CHAIRPERSON SOCKWELL: Do you know anything about concrete construction?

MR. NIEDERMAYER: I know a little bit about concrete construction.

VICE CHAIRPERSON SOCKWELL: Not much. Not much. But let's continue.

MR. O'BRIEN: Mr. Potter, did you sleep at your house on Indian Lane last night?

MR. POTTER: Yes.

MR. O'BRIEN: Did you walk the premises today?

MR. POTTER: Yes.

MR. O'BRIEN: And yesterday?

MR. POTTER: Yes.

MR. O'BRIEN: One final question. You said you and your wife had done some emails to DCRA.

MR. POTTER: Yes.

MR. O'BRIEN: Do you know whether or not any copies of those still exist or do you have any reason to know one way or the other?

MR. POTTER: They might exist. Copies of them might exist.

MR. O'BRIEN: I have nothing further.

VICE CHAIRPERSON SOCKWELL: It would be helpful also if necessary that DCRA has a main server system that normally maintains a record of emails for a period of time. How long? It might be six months, it might be six weeks. It depends on how the administrator of the network handles it and how the software is designed. But there may be a way to substantiate additional information on correspondence

if it still exists as records, but it might be difficult to get it.

MR. POTTER: I saved everything. I don't have it all with me today, but I've saved basically everything and copied everything that I've done, so I may have records of email that I sent.

MR. O'BRIEN: I have nothing further, Mr. Chairman.

MR. PARKER: Nothing further.

VICE CHAIRPERSON SOCKWELL: Call your next.

MR. O'BRIEN: At this time, I'd like to call Ms. Lindsley Williams, if I may.

Mr. Williams, would you state your name, address, profession, and professional background, particularly as it relates to zoning matters.

MR. WILLIAMS: Good afternoon, Members of the Board and Mr. Sockwell, Mr. Holman, Ms. Renshaw. My name is Lindsley Williams. I live at 3307 Highland Place, N.W. where I've lived for more than the past 10 years and I've been a resident of the District of Columbia since 1970 when I moved here following the completion of graduate studies in urban and regional planning at the Master's level at the University of North Carolina.

I've been associated with community organizations ever since I've been in this town and became active in citizen organizations concerning--

MR. PARKER: Excuse me. I would accept Mr. Williams as an expert in zoning matters, and so if we can --

VICE CHAIRPERSON SOCKWELL: Mr. Williams has appeared before this Board in the past and is well known to the Board.

MR. PARKER: I'm just saying we could save ourselves the repetition of his qualifications. They're probably known to you and I accept him.

VICE CHAIRPERSON SOCKWELL: Is there anyone on the Board who would not accept Mr. Williams as an expert?

MR. O'BRIEN: I've never been in this situation, but I would proffer Mr. Williams as an expert on zoning matters.

VICE CHAIRPERSON SOCKWELL: Thank you. Continue, please.

MR. O'BRIEN: Mr. Williams, have you had occasion to visit the project at 4900 Indian Lane and to review the plans and the applications and the permits with respect thereto?

MR. WILLIAMS: Yes. I began to be -- I

was retained by the Potters to help them in their study of this matter at the very early part of this year and, in the course of that, reviewed the stamped plans and the underlying permits, the written out narratives that were associated with those applications, and I have formed some conclusions and I've shared them with you in the form of a report. Those conclusions are --

MR. O'BRIEN: How many times have you been out to visit and inspect the site since the beginning of this year?

MR. WILLIAMS: Half dozen times. Most recently this morning.

MR. O'BRIEN: And have you seen it in various stages of construction?

MR. WILLIAMS: I have seen it in the stages of construction that were in evidence from a point in last winter when I first was retained when it was covered with ice and snow including a layer of ice in the area where Mr. Potter said it often went to a depth of six inches or more when it was warmer weather.

MR. O'BRIEN: Have you formed an opinion regarding this project with respect to its legality or permissibility under the zoning regulations?

MR. WILLIAMS: I have formed an opinion.

MR. O'BRIEN: And is your opinion embodied in a letter to me which was attached behind Tab 1 of the brief that the Potters submitted?

MR. WILLIAMS: I believe the answer to that is yes. Technically, that is a letter that I provided you, but it's addressed to the Board of Zoning Adjustment, etcetera, etcetera.

MR. O'BRIEN: And could you state orally for the panel your opinion and the basis thereof.

MR. WILLIAMS: Well, in my opinion, Members of the Board, this permit should not have been granted in the first place because I construe and find that there are a number of departures from the applicable zoning regulations. In my opinion, the project results in an addition that violates the side yard requirements of the zoning regulations. It violates the rear yard requirements of the zoning regulations. The garage itself, even in the later plans, exceeds two standards of area. It exceeded in plan the 900 square foot rule that's been referred to at times, and it absolutely exceeds, more than doubly exceeded, the 450 square foot rule that has been brought to your attention.

In addition, that latter 450 foot square

rule also is accompanied by another limit, and that limit is that the garage be limited to two vehicles, and this particular garage has a double door along with a single door suggesting that it's designed to house three vehicles, and it certainly could. But I believe that that's in violation of the applicable zoning standards.

And so I find at least four bases on which this particular permit should not have been granted. It is significant that the whole structure on which this thing sits includes sidewalls that extend by more than four feet above the ground and that, to me, is what makes it part of a structure that must be governed by the side yard requirements as distinct from a structure which is exempt from the side yard rules, and it's a key understanding to have and a key area of difference between the April and May plans, if you examine them.

MR. O'BRIEN: Let me stop you right here. Just for clarification, you're talking about two separate structures, the parking platform being one structure and the garage being a second structure. Is that correct? The garage on top of the platform.

MR. WILLIAMS: Yes.

MR. O'BRIEN: Okay. Why don't we start,

just so we can keep this clear. You've been through the square footage requirements and limits, and those are applicable to the garage on top of the platform.

MR. WILLIAMS: Yes.

VICE CHAIRPERSON SOCKWELL: Mr. O'Brien, would you turn your mic a little bit toward you. I know that the reporter is getting it, but it would make a little bit easier.

MR. O'BRIEN: I apologize.

VICE CHAIRPERSON SOCKWELL: That's okay.

MR. O'BRIEN: Let's talk about the parking platform itself. What design characteristics does it have? Is it attached to the residence?

MR. WILLIAMS: It is attached to the residence as it was built. It is a structure which in plan shows a set of exterior foundation walls to be constructed of concrete, and it is capped by concrete which is integrally attached to those foundation walls. It is not a free-standing area in the manner of a strip of asphalt laid across a yard serving as a driveway. It is an integral part, complete with reinforcing rods and mesh. These were in evidence from what I saw and, to me, it all constitutes a single structure, portions of which -- it only takes one extending above that four foot mark

so that the entire structure, the platform on which the garage now sits, must be one that is regulated by the requirements for side yards and rear yards, and that it is not.

Then in addition, the way it was actually built. And here I'm making a distinction between because the plans to me are ambiguous about the connectivity as what you would see in reviewing the plans down at DCRA. But the connectivity, while vague in plan, if you go out and look right now, they are stitched together so that that whole parking platform, deck, whatever you wish to call it, is absolutely bonded to the house, both at the front, along the portion where the roof now comes from out from the area above the former garage and is now joined in, and there is just no question in my mind at all but that this is now a single structure starting from the rear most portion of this platform or deck, extending across the open area of the deck and then through the rest of the house. Makes it for purposes of zoning a single structure, and that single structure extends too close by four feet to the side yard and violates the expectation the Potters could have had of a reasonable side yard. It also violates by more than 50 percent the rear yard

requirements or at least awfully close to 50 percent because the measurements in back are a little bit unclear. But the requirement is a 25 foot one and this is a tapered rear yard line and the distances there extend between 12 and 15 feet.

So it's in violation there, too.

MR. O'BRIEN: Let me ask you one other question. Are you aware of any internal walls in this platform that support the weight of the top surface?

MR. WILLIAMS: I have seen photographs of them. By the time I was asked to be a part of this, I could not say that I had been to the job site and seen those with my own eyes. But I have seen photographs.

MR. O'BRIEN: Did you review Mr. Ghafoorian's deposition where he talks about internal support walls inside the platform?

MR. WILLIAMS: Yes, I did.

MR. NIEDERMAYER: I'm going to object to that. Let me object to that. I'd like to have that point pointed out in the thing so we've got the exact words that were used rather than Mr. Williams' characterization of what the witness said or may have said.

MR. O'BRIEN: Mr. Ghafoorian's deposition is attached as an exhibit behind Tab 11 and directing your attention to pages 26 through, say, 28. Will you review this for me. Referring specifically again to page 26 through 28, it makes reference to Exhibit 2 to the Ghafoorian deposition.

MR. WILLIAMS: Yes, sir.

MR. O'BRIEN: It's a diagram that he drew.

MS. PRUITT: Mr. O'Brien, you need to stay closer to the mic. I know you're used to walking around. Unfortunately, we don't have a portable.

MR. O'BRIEN: I should try decaf, I'm sure.

Mr. Ghafoorian's testimony refers to an exhibit he drew which is attached again as Exhibit 2 to this deposition which shows three internal support walls in addition to the four outer walls of the platform.

MR. NIEDERMAYER: i'm going to object to that again. Same objection. There is testimony in the deposition but Mr. O'Brien continues to supply additional adjectives to the testimony. It says -- it does say there are two walls, but those walls are

not defined as he's defining them or does not contain any adjectives as he's supplied them.

MR. O'BRIEN: Having reviewed Mr. Ghafoorian's testimony and the diagram that Mr. Ghafoorian drew, have you formed an opinion as to the structural characteristics of the parking platform?

MR. NIEDERMAYER: I'm going to object to that. This witness was offered as an expert in zoning, not construction.

VICE CHAIRPERSON SOCKWELL: Mr. Niedermayer, we have in the file detailed structural drawings of Mr. Ghafoorian's project, and we can from those detailed drawings, make our own conclusions and, since they are part of the record, Mr. O'Brien may proceed.

MR. O'BRIEN: You may answer.

MR. HOLMAN: I was just trying to follow what was being said. How does what you just said qualify him as an expert in construction?

VICE CHAIRPERSON SOCKWELL: It's not. A third grade child can see from a drawing like this that there are intermediate vertical supports underneath the slab that forms the surface of the so-called raised platform, and since they are detailed in the drawings that were supplied, it's assumed that

they are existing since these were the drawings of Mr. Ghafoorian's project and carry the address of his home on them and were submitted to the record.

MR. HOLMAN: I understand what you just said and that's a heck of a third grade child, but the point I'm trying to make is --

VICE CHAIRPERSON SOCKWELL: It's all what they watch on TV now.

MR. HOLMAN: Right. I'm just trying to follow what's being said. How does that qualify him to speak as --

VICE CHAIRPERSON SOCKWELL: Well, let's put it this way.

MR. HOLMAN: Okay. That's what I'm trying to find out.

VICE CHAIRPERSON SOCKWELL: Mr. Williams did not in fact see the construction prior to its completion to a certain level. So Mr. Williams can only state from his observation of the drawings what he believes exists, which is based on the fact that those are assumed to be the drawings from which the deck was constructed.

MR. HOLMAN: Right, which is a different kind of answer from the answer we're getting. That's all I was trying to get clear.

VICE CHAIRPERSON SOCKWELL: So let's adjust the answer then slightly.

MR. NIEDERMAYER: Mr. Sockwell, could you point out to me, because I didn't see them when you held them up, which are the drawings on which those -- they're part of the submissions and I could find them if you could give me a minute.

VICE CHAIRPERSON SOCKWELL: I have drawings A0, A1, A2, A3, and A4 of the architectural set.

MR. NIEDERMAYER: Was it behind --

VICE CHAIRPERSON SOCKWELL: These were submitted some time in the past.

MS. PRUITT: They may have been part of the July submission.

VICE CHAIRPERSON SOCKWELL: These are part of the July submission. The Board tries not to lose its materials and yet, we get so many that sometimes we don't find these things.

BOARD MEMBER RENSHAW: We received them on July 10.

VICE CHAIRPERSON SOCKWELL: Thank you.

MR. O'BRIEN: Just for clarification, Member Holman, where I'm going with this is that a structure, the definition of a structure in the

regulations contains specifically a platform.

VICE CHAIRPERSON SOCKWELL: Well, a structure doesn't have to contain a platform.

MR. O'BRIEN: No. I'm speaking specifically of the definition within the regulations. it says a structure --

VICE CHAIRPERSON SOCKWELL: Maybe a building. A building is a structure.

MR. WILLIAMS: Actually, Mr. Sockwell, it says and it provides a number of illustrations of what a structure might be and one of the words that's in that list is the word platform.

VICE CHAIRPERSON SOCKWELL: Okay.

MR. O'BRIEN: Whether it is considered a building or not is utterly irrelevant. It's either a structure or it's not.

VICE CHAIRPERSON SOCKWELL: Right. But you're talking in terms of occupying a yard as opposed to the other definition in --

MR. NIEDERMAYER: Could I object. Could we have it pointed out where in the definitions in the zoning regulations under building it says a platform is a building.

MR. O'BRIEN: No, it does not, Mr. Niedermayer.

VICE CHAIRPERSON SOCKWELL: It's not in the definition section that he is referring to. I was referring to the definition section, and he's referring specifically to miscellaneous zoning requirements, I believe, for the section on yards and what not.

MR. NIEDERMAYER: That's what I wanted to clarify, that it's not in the definitional section. I thought that's what he said.

MR. O'BRIEN: If I may, on page I-24 of the definitions behind Tab 1 that I submitted, if you look at the definition of a structure it states "Anything constructed including a building, the use of which requires permanent location on the ground or anything attached or something having a permanent location on the ground and including, among other things, radio and television towers, reviewing stands, platforms, flag poles" --

MR. NIEDERMAYER: Excuse me. What page?

MR. O'BRIEN: One twenty four under the definition of structure. It includes specifically platforms as an illustration of what a structure is.

VICE CHAIRPERSON SOCKWELL: Right. Page 124 of the zoning ordinance has been reproduced in the Appellant's submission. The 1-24 as opposed to

page 124.

MR. NIEDERMAYER: I just wanted to know where it was.

MR. O'BRIEN: The setback regulation specifically referred to structures. There is some dispute as to whether or not this thing that was built that we've been calling a platform is in fact a structure or whether it's slab on grade. If it has supporting walls, both external, outer walls and inner supporting walls and it's elevated, it is by definition a platform.

MR. NIEDERMAYER: Objection. How about we get an expert opinion on that as opposed to a statement from counsel on this.

VICE CHAIRPERSON SOCKWELL: To be honest with you, the way the zoning ordinance reads, it would be considered a structure for zoning purposes only if it rises more than four feet above grade.

MR. O'BRIEN: At any point.

VICE CHAIRPERSON SOCKWELL: At any point, not including railings and other --

MR. O'BRIEN: Which I guess gets us to the ultimate question. Are any of these walls, outer or inner walls, based on your observation, over four feet?

MR. WILLIAMS: The outer walls are over four feet on at least two now exposed face -- three faces that are now exposed. First, the face of the wall, particularly to the west of the new stairway that has been added from the platform down to the ground is at least six feet in height. That would be the eastern -- the northern face of the addition. Second --

MR. O'BRIEN: What does it face?

MR. WILLIAMS: It faces Indian Lane.

MR. O'BRIEN: Okay.

MR. WILLIAMS: Sorry. The second face of the structure that is more than four feet and it is more than four feet for the entire distance that is exposed is the western face of the addition which faces the remainder of the rear yard. It is the part of the building that --

MR. O'BRIEN: The rear yard at the Ghafoorian residence.

MR. WILLIAMS: At the Ghafoorian residence. Yes. And I have been in that area myself. I am 6' tall and it is taller than I am over the entire stretch. I estimate it to be on the order of 7' but it varies slightly as a function of the topography. The final face that has portions that

are more than four feet is much but not all of the rearmost portion of the addition. The topography on the site --

MR. O'BRIEN: This would be the face that faces the rear property line.

MR. WILLIAMS: The rear property line.

MR. O'BRIEN: Thank you.

MR. WILLIAMS: The topography slopes with the highest point of the rear yard on that axis being at the Potter/Ghafoorian boundary and it then descends and becomes lower as you move further toward the main residence and on to the next property. And while I believe at the -- let me get my bearings -- southeast corner, it is something on the order of 2 1/2 - 3'. It then tapers so that it becomes 4' at some point along the rear property line.

MR. O'BRIEN: Based on the outer structure, do you have any opinion about the height of the interior support walls?

MR. WILLIAMS: The only wall that I can speak to with any certainty now on the interior is the portion that is now in effect constructed and affixed to the house in front of the former garage where you can see pictures directly in evidence of the height of that wall rising up to the entire

height of an old style garage door which is in excess of 6'.

MR. O'BRIEN: We just went through looking at Mr. Ghafoorian's diagram of three internal walls.

MR. WILLIAMS: Yes.

MR. O'BRIEN: Do you have any basis for forming an opinion as to how high those internal support walls would be?

MR. WILLIAMS: They would be a function of the underlying original topography which I couldn't speak to. They would be probably in -- I--

MR. NIEDERMAYER: Objection.

VICE CHAIRPERSON SOCKWELL: If you don't know --

MR. WILLIAMS: I saw photographs, Mr. Sockwell, and the photographs were unclear as to the depth, so I couldn't even make an estimate from them. By the time I really got on the job, it was poured over.

MR. O'BRIEN: So the answer would be no, you can't.

MR. WILLIAMS: I can't form an opinion.

MR. O'BRIEN: Okay. Let me reverse it. Do you have an opinion with regard to the

characterization of the garage on top of the platform as to its legality with respect to its overall size?

MR. WILLIAMS: It is too large.

MR. O'BRIEN: What is the basis for that?

MR. WILLIAMS: The basis for that is the provision in the regulations relating to the R-1 District which permits garages but limits them to 450 square feet and two cars.

MR. O'BRIEN: What happens when regulations conflict?

MR. WILLIAMS: When regulations conflict, any number of things can happen, but the administrative course to take on the part of a zoning administrator is to take the most conservative interpretation.

MR. O'BRIEN: Is that what the statute and the regulations require?

MR. WILLIAMS: The statute and the regulations require that the most conservative treatment be applied when there is a conflict between regulations and, thus, in that spirit, I would also say it applies when it is within the regulations.

MR. O'BRIEN: All right.

MR. PARKER: Excuse me. Can you restate that, please.

MR. WILLIAMS: Can I restate it?

MR. PARKER: Can you restate that, please.

MR. WILLIAMS: Sure.

MR. PARKER: Because I don't want to cross examine you on something you didn't say.

MR. WILLIAMS: Okay. In the letter I wrote to the Board, I suggest and state, "The Board should recall the zoning regulations state that when there are varying standards between or among several regulations, then the more or most restrictive provisions apply. There's a key principle, in my view, that the Acting Zoning Administrator should have followed but did not, and I would urge the Board to follow that course now.

MR. O'BRIEN: What do you think of the characterization of this parking platform as slab on grade?

MR. WILLIAMS: I disagree with that interpretation.

MR. O'BRIEN: Why is that?

MR. WILLIAMS: This is not a slab on grade situation. It is a situation where a foundation wall has been built up and then the deck or surface has then been extended out to over

crossing onto and is a part of and I saw rebars that made me feel like this was not just kind of laid on there and floating as a slab on grade would. This is not a driveway situation. This is not the type of concrete pad that is allowed in the zoning regulations for an air conditioner compressor to be put in a side yard and have something to rest on. This is an integral part of that structure. It is not slab on grade.

MR. O'BRIEN: Have you ever known slab on grade to require a six foot staircase?

MR. WILLIAMS: I haven't known it but I wouldn't say it doesn't exist.

VICE CHAIRPERSON SOCKWELL: Let's say this. A slab on grade could have a six foot staircase rising up to it if it were built against the side of an incline or hill or slope and, therefore, yes, the situation could exist normally. So I think that the question is difficult for you to put into context of where you're trying to take that. Thank you.

MR. O'BRIEN: In the District of Columbia, have you ever known a six foot staircase to lead up to a slab on grade?

MR. WILLIAMS: Not in my experience.

MR. O'BRIEN: Thank you.

I have no further, Mr. Chairman.

VICE CHAIRPERSON SOCKWELL: All right. Board Members?

BOARD MEMBER RENSHAW: Mr. Williams, based on your reading of the plans, what is the percentage of lot occupancy with this improvement to Mr. Ghafoorian's residence?

MR. WILLIAMS: The Ghafoorian property is a very large one, Mrs. Renshaw, and I did some early calculations on it and it made me feel that the standard that applies to that area was not even beginning to be approached, even with the addition. So I don't know the answer because I studied the question. I just didn't produce anything adverse to Mr. Ghafoorian, and I tried to only identify the things that were flawed.

VICE CHAIRPERSON SOCKWELL: Mr. Williams, and this is just to clarify one issue about slab on grade. In the event that a slab were built on a site that had a knoll or plateau and the remaining portion of the site was at a lower level, then in order to reach the upper portion one might install a staircase within the slope of the hill to reach the upper level, and that could achieve a height of six feet or

even more.

MR. WILLIAMS: You're absolutely right, Mr. Sockwell. It could. The question that I responded to from Mr. O'Brien was whether in my experience I had seen such a thing, and I said no, I hadn't because in my memory I hadn't come across it. I didn't say it didn't exist or couldn't.

VICE CHAIRPERSON SOCKWELL: And the thing is that with sloping sites, it is not impossible to have a stair rising, and that is strictly to put that particular question in context. Thank you. That's all. I don't have any other questions so, if we can proceed with cross.

Now, Mr. Niedermayer, you have questions to ask Mr. Williams.

MR. NIEDERMAYER: I do.

VICE CHAIRPERSON SOCKWELL: And you have questions to ask Mr. Williams.

MR. PARKER: Yes, sir.

VICE CHAIRPERSON SOCKWELL: Is it safe to assume that you will not ask the same questions?

MR. NIEDERMAYER: I'll try. I certainly will hear the questions where he asks them first and endeavor, if I think the answers are --

VICE CHAIRPERSON SOCKWELL: If you pay

close attention to Mr. Parker and he says something that you want to feel comfortable with, just take notes on what he said and then proceed with another question that will be different when you get your chance.

MR. NIEDERMAYER: I always listen very carefully to Mr. Parker.

VICE CHAIRPERSON SOCKWELL: Thank you.

MR. PARKER: Mr. Williams, let me discuss first this last statement you made regarding the genera principle that if there's bearing standards that the most significant standard -- or most restrictive standard should be applied. You recall that.

MR. WILLIAMS: I certainly do.

MR. PARKER: All right. Now there's also a corollary principle in interpreting regulations or statutes and that's that all elements of regulations or all elements of a statute should be construed to give them the greatest effect. Correct?

MR. O'BRIEN: I'm sorry. That's asking for a conclusion of a lawyer. He's not a lawyer.

MR. PARKER: He's made a statement here that there's a -- there's some guiding principle here in terms of zoning.

VICE CHAIRPERSON SOCKWELL: There is within the zoning ordinance a principle.

MR. PARKER: All right. But there's also the principle -- my question to him is he also familiar with the principle that all the regulations should be given the fullest effect possible?

MR. O'BRIEN: I'm going to object.

VICE CHAIRPERSON SOCKWELL: Actually, the way the Zoning Act reads, if any requirement of the Zoning Act or any other act is more restrictive, then that one would be assumed to be the one that bears, which is the issue of more -- is one issue of more strict or more conservative enforcement. And that's within the Zoning Act itself which was dated 1938.

MR. HOLMAN: But Mr. Chairman --

VICE CHAIRPERSON SOCKWELL: Yes. I think what he's asking --

MR. HOLMAN: But there

VICE CHAIRPERSON SOCKWELL: But there are rules of statutory construction and how he, 1) interprets statutes and regulations that Mr. Williams may or may not be as familiar with --

VICE CHAIRPERSON SOCKWELL: This is true.

MR. HOLMAN: -- that also may apply. I think that's --

VICE CHAIRPERSON SOCKWELL: Depends upon which ones he's speaking to.

MR. LOVE: Absolutely.

VICE CHAIRPERSON SOCKWELL: I mean in a general sense --

MR. HOLMAN: And I'm not expressing an opinion one way or the other.

VICE CHAIRPERSON SOCKWELL: In a general universal sense, one always tries to look at everything, but if you could narrow it down to a specific area, it might be of a little bit more relevance.

MR. O'BRIEN: Well,if I may, Mr. Chairman, there is a statute that says the most restrictive alternative applies. There is a regulation which says the most restrictive interpretation applies.

MS. PRUITT: Mr. O'Brien --

MR. O'BRIEN: What is going on in --

MS. PRUITT: -- that should be put in your testimony in closing. You're beginning to testify. Mr. Williams, you either answer yes or no and we can move on and then you can address that whole issue about your statute in your closing remarks.

VICE CHAIRPERSON SOCKWELL: And Mr. Williams, if you'll --

MR. O'BRIEN: What I'm getting to is that his question is irrelevant.

VICE CHAIRPERSON SOCKWELL: Well, Mr. Williams can answer the question in context of the ordinance that is being dealt with here as opposed to in a universal sense.

MR. WILLIAMS: Members of the Board, I drew the statement in my letter from the principles that are contained in Chapter One of the Zoning Regulations which speak to their setting out certain minimum standards. They also speak in Section 101.3 that say that the provisions of this title should govern the regulations whenever -- the provisions of this title shall govern whenever the regulations require larger yards, lower height or more restrictions in the bulk of buildings and the number of stories require larger percentage of the lot to be unoccupied.

Provisions of other statutes, it goes on to say in 101.4, shall apply when they do the same thing. So that basically the zoning regulations are not going to trump others and they're not going to have others be trumping them. It's going to try to

say the ground rules for development in this city are set to the minimum set of standards that are provided by the panoply of laws and regulations that are in the environment. Thank you.

MR. PARKER: The point of that, however-- let me ask you this question. The point of that is to make clear between statutes and regulations as you've said, is to make sure that if there's a conflict between statues and a regulation, you use the most restrictive regulation or the most restrictive statute. Correct?

MR. O'BRIEN: I'm going to object insofar as the question asks for a legal conclusion.

MR. PARKER: Well, he's just stated three legal conclusions. I'd like him to answer my question. He's trying to relate his testimony as basing his opinion on his interpretation of legal issues.

MR. O'BRIEN: He's quoted the statute, he's quoted the regs, that that's what he bases his opinion on period. Anything beyond that is irrelevant and I'm going to object to it.

MR. PARKER: All right. I'm going to withdraw the question. I'll save it for argument.

VICE CHAIRPERSON SOCKWELL: Thank you.

MR. PARKER: Let me ask you another question -- well, let me ask you more specific questions. There is at least two provisions in the zoning regulations that deal with private garages. Correct? There's one in 11201.1(h) which is what I think you primarily rely on which states a private garage designed to house no more than two motor vehicles not exceeding 400 square feet in area and subjects that provisions of Chapter 23 of this title. That's what references private garages in one instance. Correct?

MR. WILLIAMS: That's one instance.

MR. PARKER: And that's talking, as you said, as a matter of right. Correct?

MR. WILLIAMS: That's under --

MR. PARKER: Would you also consider that to be something of a principal use, those areas listed in uses of matter of right?

MR. WILLIAMS: I would --

MR. PARKER: As opposed to an accessory use.

MR. WILLIAMS: I would not exclude accessory.

MR. PARKER: No. That's not my question. My question is that 201.1(h) when it talks about a

private garage under the heading of use as a matter of right, that that would imply that garages that meet that criteria are principal uses.

MR. O'BRIEN: I'm going to object.

MR. WILLIAMS: No, it's --

MR. O'BRIEN: I'm going to object. It's not a -- he's not -- he's asking what this thing implies. In fact, the regulation says what it says.

MR. PARKER: Let me respond to that. He's asking this witness to give interpretations of regulations and I'm challenging his interpretations.

VICE CHAIRPERSON SOCKWELL: All right. Repeat your question again. I think I missed a piece of what you said.

MR. PARKER: All right. Very well.

MR. O'BRIEN: Just so I'm clear, we're on 2.101(h), use as a matter of right in an R-1 District. Correct?

MR. PARKER: That's correct.

MR. O'BRIEN: Okay. And we're addressing specifically sub-part H, private garages.

MR. PARKER: Right.

MR. O'BRIEN: Which I think is in page 2-2 of the materials that we supplied. I think it's the same thing.

MR. PARKER: Okay. Let's start with the top. It talks about uses as a matter of right. Correct?

MR. WILLIAMS: Yes.

MR. PARKER: And it prefaces all the list of uses by saying, "The following uses shall be permitted as a matter of right in an R-1 residential district -- or residence district." Correct?

MR. WILLIAMS: That's what it says.

MR. PARKER: And then it gives A through P as various uses as a matter of right.

MR. WILLIAMS: Yes.

MR. PARKER: Okay. Now, these uses, if you go through each and every one of them, would be a list of primary uses of a particular property. Isn't that correct?

MR. WILLIAMS: It includes a number of uses which are potential primary uses. It does not restrict it only to primary uses, Mr. Parker.

MR. PARKER: All right. Let me then ask you to take a look at accessory buildings which is 204.1. And that regulation talks about, "The following buildings shall be permitted as accessory buildings in R-1 Districts incidental to the uses permitted in this chapter" and it says there, "A) A

private garage subject to the special provisions of Chapter 23." Correct?

MR. WILLIAMS: It says that.

MR. PARKER: All right. Now, in this particular instance, would you consider the private garage that was built in this case to be an accessory building to the principal residence of this property?

MR. WILLIAMS: I would consider it to be an accessory building. Yes.

MR. PARKER: And would you therefore concede that the accessory building, if it's a private garage and it's accessory building, it's subject to the special provisions of Chapter 23?

MR. WILLIAMS: The garage itself is subject to the Chapter 23 provisions as a building.

MR. PARKER: All right. And would you also -- is it also correct that private garage has its own definition in the definition sections of 199?

MR. WILLIAMS: It does.

MR. PARKER: And private garage, I believe, I guess it's under garage, private is where you have to find it. That would be on page 1-17 garage, private. It's "A building or other structure or part of a building or structure not exceeding 900 square feet in area used for the parking of one or

more motor vehicles and having no repair or service facilities." Correct?

MR. WILLIAMS: That's the definition.

MR. PARKER: All right. And in there it talks about having it not exceeding 900 square feet. Correct?

MR. WILLIAMS: That's what it talks about there. Yes.

MR. PARKER: Okay. Let me go to the side yard, rear yard portions of your opinion. Would it be proper to say that the objections to the placing of the parking area and the garage within four feet of the property line flow from your conclusion that the addition parking area and garage are all one structure?

MR. WILLIAMS: Mr. Parker, I do not understand your question.

MR. PARKER: All right. I'll try it again. I believe you testified that in your view there's a violation of the side yard requirements of the zoning regulation because the portions of this construction are within four feet of the property line. Correct?

MR. WILLIAMS: They are not only within four feet of the property line, they are part of a

structure, portions of which rise more than four feet above the grade triggering the requirement that the whole area be examined for conformity to side and rear yard requirements. This is not a low lying configuration that would be removed from that requirement by virtue of the language of the provision in the 2300s.

MR. PARKER: And what I was asking you is that within that statement is the conclusion that this is all one structure. Am I correct in that conclusion?

MR. WILLIAMS: It is all one structure. Yes.

MR. PARKER: And that's your -- now, if your opinion was different, if you had concluded that the addition to the house, the parking area and the garage, were not all one structure, would you have a different conclusion as to side yard and rear yard violations?

MR. O'BRIEN: I'm sorry. Isn't this asking for speculation?

MR. PARKER: No.

VICE CHAIRPERSON SOCKWELL: Well, the pint is that he didn't conclude that and you're asking him to vacate his conclusion under some other

circumstance. His analysis as he has reported it to the Board in the hearing is that it's all one structure and that is his opinion as the designated expert brought forth by the Appellant. For you to ask if he would have concluded otherwise with another set of circumstances, those circumstances were not his to achieve. They would be some other criteria. You don't have -- his criteria or the way he evaluated what he saw was to say that it is one structure. That is his opinion.

MR. PARKER: Could I respond to that?

VICE CHAIRPERSON SOCKWELL: Go ahead.

MR. PARKER: At some point I'm going to have a chance to put on my own case.

VICE CHAIRPERSON SOCKWELL: You certainly are.

MR. PARKER: And I would expect you to hear certain types of testimony which I think would set a foundation for the question that I just asked which I believe, as an expert and an adverse expert, I'm allowed to question him on relevant hypotheticals to challenge the basis of his opinion. So what I would be suggesting to you is that you will eventually hear testimony that will set a foundation for the question that I am posing at this point.

VICE CHAIRPERSON SOCKWELL: Okay. So I mean you're not going to continue and ask him if the lot were four times the size, would it still be this or if the elevations were different. I mean you could carry this out infinitum and I don't think it's relevant.

MR. NIEDERMAYER: Mr. Sockwell, may I abe heard?

VICE CHAIRPERSON SOCKWELL: You certainly may.

MR. NIEDERMAYER: I would join in support of Mr. Parker. Mr. Williams has made certain factual assumptions that underlie his opinion. Now, it's perfectly proper to ask him as an expert if the facts were different, would his opinion be different because I would suggest that I know that he will testify honestly that if the facts were different and they weren't all connected, as he believes them to be, that he will testify that that would give him a different conclusion because he has testified to that effect previously in the court cases.

So I believe that it would be a fair question to ask him. Then the Board will be in a position to make a determination on what the facts are and then reach a conclusion based upon what Mr.

Williams says.

VICE CHAIRPERSON SOCKWELL: Let's do it this way. Perhaps you might just ask a general reference question to Mr. Williams. Under the circumstance of your testimony, if you found some facts to not be as you have examined them and determined them to be, would you have different conclusions? And then he can answer yes or no. Then we can go on to the next thing.

MR. PARKER: All right. Let me try it that way then. If your examination had led you to the conclusion that the garage, the parking area, and the new addition were not all one structure, would that have affected the conclusions you reach with regard to the rear and side yard violations?

MR. WILLIAMS: Potentially.

MR. PARKER: All right. And could you -- assuming for the sake of a hypothetical here, assuming that you had reached that conclusion that they were not one structure, could you tell the Board how that would have affected your opinion?

MR. O'BRIEN: Could I ask for clarification?

VICE CHAIRPERSON SOCKWELL: I think that that would require a set of circumstances to be

defined rather than a general reference, and I don't think you've asked enough, and I think you should go on to the next question because you're not going to get there with what you asked.

MR. PARKER: Well, let me try one more.

VICE CHAIRPERSON SOCKWELL: Well, I'm not sure I want you to try one more.

MR. PARKER: Very well. I'll defer to the Board.

MR. HOLMAN: Mr. Chairman.

VICE CHAIRPERSON SOCKWELL: Yes, sir.

MR. HOLMAN: I obviously don't want to prolong this, but I actually am following what's going on and it might be helpful to -- because actually, the way Mr. Williams is testifying is almost as if he were the zoning administrator, so I think --

VICE CHAIRPERSON SOCKWELL: He's testifying as an expert.

MR. HOLMAN: As an expert. I understand, but experts are allowed --

VICE CHAIRPERSON SOCKWELL: In D.C. zoning.

MR. HOLMAN: Yes. Understood. But experts nevertheless are allowed to offer opinions on

hypotheticals and --

VICE CHAIRPERSON SOCKWELL: Well --

MR. HOLMAN: I mean one or two more questions might not kill us.

VICE CHAIRPERSON SOCKWELL: I'll defer to you in this case and let Mr. Williams answer the question in any way he sees fit.

MR. HOLMAN: Sure.

MR. O'BRIEN: Could we restate the question, please, because I think I lost it.

MR. PARKER: Let's assume everything that you've observed remains the same. All right?

MR. WILLIAMS: So far.

MR. PARKER: All right. The only thing that changes is that in some manner you have concluded that the buildings do not aggregate as one structure. However that would have taken place. If there had been a separation between the wall in some manner or some other observation that you made that led you to the conclusion that they are now not all one structure, but everything else remains the same.

MR. WILLIAMS: That is not what I observed. Let's be clear.

MR. O'BRIEN: If I may --

VICE CHAIRPERSON SOCKWELL: You may -- I

think that what Mr. Parker is asking you is with regard to the universe of situations, whether or not if it were determined that the two buildings did not reside as one structure in your mind, in your observation from your conclusions, would you something.

MR. O'BRIEN: Excuse me. Just for clarification. Is the question --

VICE CHAIRPERSON SOCKWELL: The something is would he have potentially -- and I don't see why I should ask the question myself, but would he potentially have a different opinion about the side and rear yard issues revolving around the structure and, if you say it in that general term, Mr. Williams has a way of answering it.

MR. PARKER: I'll adopt that question if you understand it.

MR. WILLIAMS: I think I'll answer the question as I understand it, and we'll see how close that comes to being relevant to the way you posed it. I believe that had Mr. Ghafoorian gone about this project in a different manner and a different fundamental design manner, that the garage portion of the project could have been built in a manner that would not have triggered this in the first place. If

it had been on its own foundation, separate and apart from the rest with a slab of some sort providing a means of access to it -- however that would have been affected on the topography I don't know -- but the garage itself, if it were not an integral part of the connective tissue that flows all the way through, not only the platform but now into the house, then it would have been a garage which, in its entirety, would have rested on a foundation that would have been an accessory structure, an accessory garage. It could have been located in any portion of the rear yard from one side to the other without triggering rear yard setback rules and without getting into the same types of problems, even on the side yards.

It is simply the manner in which this came about with the elevation and grade changes and everything. It led me to conclude, as I stated earlier, with the facts as I saw them, with the photos as I saw them, with the plans as I examined them, this is now one composite structure from the far end of the house to the far end of the addition to the back of the garage. One structure. And taken as such, it must meet the applicable standards. It must meet the lot occupancy, and it does, Mrs. Renshaw. It must meet the height, and it does,

Members of the Board. It must meet the use, the primary uses as a residence. It is that. It has an accessory garage. But in toto, it is too close on the side yard to the Potters and too close to the neighbors on the rear.

VICE CHAIRPERSON SOCKWELL: Thank you. You got an answer, Mr. Parker.

MR. PARKER: I'm not sure I did because I asked -- the question was --

VICE CHAIRPERSON SOCKWELL: Yes. You asked -- we know what the question was, Mr. Parker.

MR. PARKER: Right.

VICE CHAIRPERSON SOCKWELL: The answer that he gave was the answer that he saw fit to give.

MR. PARKER: And the Board wants me to move on. He doesn't want me to probe any further on this.

VICE CHAIRPERSON SOCKWELL: The Board assumes that you are going to testify as to a set of conditions that differ from the ones to which Mr. Williams testified.

MR. PARKER: All right. I think that's fair.

VICE CHAIRPERSON SOCKWELL: Are there any more questions for him?

MR. PARKER: I just want to just review. No, I don't have any further questions. That takes care of all four issues.

VICE CHAIRPERSON SOCKWELL: Mr. Niedermayer, would you step to the plate.

MR. NIEDERMAYER: Mr. Williams, I'm obviously not as educated in this subject as you, so I'd like to go over a couple of basic concepts to see if I can understand them. Could you tell me what is meant in the zoning regulations by a principal use of a lot.

MR. WILLIAMS: Principal use is a use that is the majority -- it is the major reason for the activity that takes place there. There may be additional uses that take place which are separately recognized and, in some situations, they would be, in a commercial setting typically. This would not happen in a residential zone where the use is a dwelling of one sort or another.

MR. NIEDERMAYER: And what is an accessory use?

MR. WILLIAMS: It is a use that is incidental to the primary use. A home occupation for an example is an example of an accessory use.

MR. NIEDERMAYER: So I think your

previous testimony was that the garage at 4900 Indian Lane is an accessory building. Is that correct?

MR. WILLIAMS: Yes. It meets the definition of an accessory garage. It is an accessory building and the use itself is accessory to the principal use.

MR. NIEDERMAYER: Isn't it true that it is also that the garage meets the definition of a private garage under the zoning regulations?

MR. WILLIAMS: The garage portion does, I believe, meet the definition in terms of the uses, but it does not have the authority in light of the provisions at Chapter Two, to go up to the upper limit of what a private garage may be of 900 feet.

VICE CHAIRPERSON SOCKWELL: Mr. Williams, I think that it would be fair for you just to answer the question in this case yes or no without elaboration.

MR. WILLIAMS: Certainly, Mr. Sockwell.

VICE CHAIRPERSON SOCKWELL: Thank you.

MR. NIEDERMAYER: So Mr. Williams, could you go ahead and just answer the question the way Mr. Sockwell posed it, yes or no.

VICE CHAIRPERSON SOCKWELL: From a use standpoint, it is intended to be used as a private

garage and I think that you can answer it one way or the other, whether you agree that it, from what you know of it, that it is for private garage use.

MR. WILLIAMS: I'm going to answer it as an accessory private garage because a private garage can be an independent principal use and it can also be an accessory use, and here it is not contemplated that this garage will be used by others remote from the site. It is to be used by the occupants of the site and is thus accessory.

VICE CHAIRPERSON SOCKWELL: I think that's fair.

MR. NIEDERMAYER: Okay. Haven't you previously testified that the garage at 4900 Indian Lane is within the definition of private garage in the zoning regulations?

MR. WILLIAMS: I believe I testified to that. Yes.

MR. NIEDERMAYER: You did that in the court case. You remember that?

MR. WILLIAMS: I believe so. Yes.

MR. NIEDERMAYER: Okay. Mr. Williams, is there a definition of the term grade in the zoning regulations?

MR. WILLIAMS: Not that I remember.

MR. NIEDERMAYER: Do you have a definition of the term grade?

MR. WILLIAMS: If you're referring -- do I have a definition?

MR. NIEDERMAYER: Yes. I'm just asking do you have a definition of the term grade?

MR. O'BRIEN: I'm going to object to the question. I'm going to object to the form and I'm going to object the vagueness of it.

MR. NIEDERMAYER: It's a pretty simple straightforward question, I thought. What -- does he have a definition of the term grade?

MR. O'BRIEN: Of milk? Of --

MR. NIEDERMAYER: Okay. I agree, Mr. O'Brien, that we're talking about milk, so I'll try to clarify it.

Mr. Williams, in terms of building construction, do you have a definition of the term grade that you understand? I presume it to mean the place where the earth ends and the air begins. That is where you are at grade and, if there is adjacent points and they are not at the same relative height, then there is a slope which is sometimes what is also referred to as the grade. It's the angle between one place and another.

MR. NIEDERMAYER: Okay. So would you accept the definition that the grade -- I mean excuse me. I would accept your definition that the grade is where the dirt ends around the building. Is that fair? And the sky begins.

VICE CHAIRPERSON SOCKWELL: Mr. Niedermayer.

MR. NIEDERMAYER: Yes.

VICE CHAIRPERSON SOCKWELL: I know where you're going with this, and I think that you are stepping on very, very soft soil. So I hope that you're not going where I think you're going. But I am willing to listen.

MR. NIEDERMAYER: Well, Mr. Sockwell, I don't know where you think I'm going.

VICE CHAIRPERSON SOCKWELL: I know where you're going, sir, but please continue.

MR. NIEDERMAYER: Well, I think I'm entitled to ask a few questions and make a record. You may disagree with me, Mr. Sockwell.

VICE CHAIRPERSON SOCKWELL: No. I just know where you're going. I didn't say anything except that the soil was soft.

MR. NIEDERMAYER: Okay. Mr. Williams, could you tell me what is meant by finished grade in

the construction trades.

MR. WILLIAMS: Absolutely not. I do not have expertise in the construction.

MR. NIEDERMAYER: Okay. Do you know what the term finish grade means in the zoning regulations?

MR. WILLIAMS: I don't believe that term exists in the zoning regulations. In Section 2503.2 the term is only above the grade at any point.

MR. NIEDERMAYER: Okay. Can I ask you if you would, do you have a copy of the zoning regulations?

VICE CHAIRPERSON SOCKWELL: Actually, let's not go further with this. Mr. Williams, the term finished grade is used in the zoning ordinance, in particular in the definition of height and where height is taken.

MR. WILLIAMS: You're right.

VICE CHAIRPERSON SOCKWELL: And it varies from one situation to the next.

Mr. Niedermayer, continue.

MR. NIEDERMAYER: Mr. Sockwell, do I understand that I shouldn't ask any more questions about this?

VICE CHAIRPERSON SOCKWELL: The finished

grade, I understand what finished grade is. The Board understands what finished grade is. Mr. Williams may have forgotten because he's dealing with a specific issue, but neither here nor there. Continue on your line of questioning.

MR. NIEDERMAYER: Could I make a proffer then for the record?

VICE CHAIRPERSON SOCKWELL: You may proffer. Yes.

MR. NIEDERMAYER: Okay. I would proffer that my questioning line would be about the finish grade with respect to the height measuring point for a building which I think is very pertinent to the issues about how tall the building is here, and I understand that the Board is requesting me to discontinue these questions and I will do it.

VICE CHAIRPERSON SOCKWELL: I'm not asking you to discontinue the questions. I'm asking you to continue the questions. If you pay attention to what I tell you, you will understand that I didn't want you to continue to ask Mr. Williams about his understanding of the term finished grade. Beyond that, you may continue.

MR. NIEDERMAYER: No. I understand I may continue with other questions. I have --

VICE CHAIRPERSON SOCKWELL: No. You can continue along your line.

MR. NIEDERMAYER: Well, I just wanted to ask Mr. Williams if he would look at Section 2500.5 which has the term finished grade and ask him if he understood what it meant in that section.

MR. WILLIAMS: Twenty five hundred point?

MR. NIEDERMAYER: Five, if I have the section correct.

MR. O'BRIEN: As I understand it, an R-18 District, an accessory private garage may have a second story use for sleeping or living quarters.

MR. NIEDERMAYER: I'm sorry. 2500.7.

MR. WILLIAMS: Well, I'll do my best, Mr. Sockwell, to answer the question if you'd like but I don't remember in these remarks that I've made to the Board today or any correspondence I have with this Board taking up the issue of height of the building.

VICE CHAIRPERSON SOCKWELL: I do not believe that it was your testimony that the building violated the height requirements. In fact, I believe it was your testimony that the building met the requirements for height, and that is true.

MR. NIEDERMAYER: Okay. I will then continue on a different line then.

Mr. Williams, is the reason that you conclude that there is no height issue because you deem the garage, the structure on the parking access that you call a platform and the building to be one structure?

MR. WILLIAMS: The rules permit an accessory building to have a height of 15 feet, as I remember it, Mr. Niedermayer, and this building height measured from the surface or the top of the poured concrete which is sometimes called the slab but not the slab on grade, I hasten to add, is not in excess of 15 feet. There is an ambiguity in the zoning regulations about what side you measure from. I just didn't take it there because I had enough other points that I thought the Board would have to look at that it could make a decision.

MR. O'BRIEN: Mr. Chairman, just for point of information. We're not contesting the height of the garage.

VICE CHAIRPERSON SOCKWELL: I understand.

MR. NIEDERMAYER: Mr. Williams, is there any covered portion of the structure that connects above grade the residence with the parking garage?

MR. WILLIAMS: The last time I was close enough to establish that, in fact, the answer was no.

I went past the property today, as I earlier reported to this Board. I did not examine the connective linkage that may or may not exist as of this time. But the last time I was there, there was no roof, if you will, that went from one to the other.

MR. NIEDERMAYER: Mr. Williams, would you agree that a retaining wall may be located in any yard, side yard, rear yard, front yard of a lot under the zoning regulations?

MR. WILLIAMS: There is a provision to that general effect. Yes, Mr. Niedermayer.

MR. NIEDERMAYER: And there is no restriction on the height of a retaining wall located in any yard on a lot, is there?

MR. WILLIAMS: There is no zoning restriction that I know of that would apply to the limit on that retaining wall. I would presume that the other sections that we discussed earlier, other building codes, might impose such restrictions and they then of course would apply.

MR. NIEDERMAYER: Well, I'm only asking as to the zoning code whether you can point us to any section in the code --

MR. WILLIAMS: No, I can not.

MR. NIEDERMAYER: Okay. Mr. Williams, is it your view that it is not proper -- let me withdraw that.

Mr. Williams, what does a retaining wall retain?

MR. WILLIAMS: Materials that are located on one side or the other side of the wall that would, but for the existence of the wall, flow through the perimeter, the line the wall demarks.

MR. NIEDERMAYER: Is it your contention that it's not proper under the zoning regulations to build retaining walls and fill them in with dirt to raise the level of the finish grade around a building?

MR. WILLIAMS: If you need to retain something for structural reasons, then it is proper to do. If you are creating a topography that was not there before that is to make -- on -- to deal with situations that you're facing in design, then I think it's a matter of interpretation.

MR. NIEDERMAYER: Okay. So it's a matter of interpretation whether under the zoning regulations you could build the type of structure that Mr. Ghafoorian built with retaining walls and fill it in with dirt. Is that your testimony?

MR. O'BRIEN: I'm going to object to the form of the question. It's argumentative, and Mr. Williams never characterized the parking platform as unrelated retaining walls. He's always characterized it as a structure.

MR. NIEDERMAYER: I'm not asking him to. I'm just asking my question whether Mr. Ghafoorian could build this. I'll defer to Mr. Sockwell.

MR. O'BRIEN: I object to it as speculative.

VICE CHAIRPERSON SOCKWELL: The issue of retaining walls and their general uses is within the description that Mr. Williams gave. Where are you trying to go with the retaining wall issue?

MR. NIEDERMAYER: Mr. Sockwell, I think that the testimony is going to be that these walls that we have on this area where there's the concrete for the access to the garage are retaining walls and that, under the regulations, there is no restriction, either on the height or the placement of retaining walls in any particular yard and, under that interpretation, this would be legal. I just wanted to ask Mr. Williams whether he would agree that there isn't anything -- that it's his position that to build that kind of a structure violates the zoning

regulations. I'm just trying to understand where he's coming from.

MR. O'BRIEN: In that case --

MS. PRUITT: Mr. Sockwell, he was put forward as an expert in zoning and his interpretation has been asked before.

VICE CHAIRPERSON SOCKWELL: Yes. The thing is that within the limits of the zoning ordinance's description of retaining walls there is no prohibition for locating retaining walls. Now, one has to transfer oneself over to the building code to begin to discuss other aspects of retained earth structures and what one structure versus another might be. I don't think we were going there immediately. I think that we're going to get there with Mr. Niedermayer's testimony. But I think that the foundation has been laid for the description of a retaining wall to be that which holds back earth on one side or another.

MR. NIEDERMAYER: I'm trying to restrict myself to just the zoning regulations and not the building code at this point because Mr. Williams hasn't been qualified as an expert in construction. I'm just trying to find out what his views are on this particular subject in terms of the zoning

regulations.

VICE CHAIRPERSON SOCKWELL: All right. Well, I think if you can quickly get down the road on this.

MR. NIEDERMAYER: I'm trying.

MR. O'BRIEN: Mr. Chairman.

VICE CHAIRPERSON SOCKWELL: Yes, sir.

MR. O'BRIEN: I'm going to have to object. He stated his characterization of this thing as a structure. Mr. Niedermayer is asking him to assume that it is retaining walls.

VICE CHAIRPERSON SOCKWELL: A retaining is, by definition, a structure and it is a structure that, by definition, is allowed to exist in yards. Now, beyond that, where do we want to go with this?

MR. NIEDERMAYER: I just wanted to ask the one question whether Mr. Williams' view under the zoning regulations is that to build the retaining wall that Mr. Ghafoorian has built and to fill it in with dirt in this area he calls a platform violates any provision of the zoning regulations.

VICE CHAIRPERSON SOCKWELL: Now, the question is you're stating to fill it in with dirt. How is Mr. Williams to know that the retaining walls are filled in with dirt?

MR. NIEDERMAYER: Well, I'll ask him to assume as an expert for the first question that they're filled in with dirt.

VICE CHAIRPERSON SOCKWELL: Why should he assume that?

MR. NIEDERMAYER: Because I'm asking him a hypothetical question.

VICE CHAIRPERSON SOCKWELL: Oh, you're just asking hypothetically. You didn't say they were filled in with dirt.

MR. NIEDERMAYER: I'll try and clarify.

VICE CHAIRPERSON SOCKWELL: Okay.

MR. NIEDERMAYER: Mr. Williams, let me ask you to assume that the walls surrounding this area you describe as a platform are retaining walls and that the area within those retaining walls is filled in just with dirt for the moment. Would that constitute a violation of any provision of the zoning regulations?

MR. WILLIAMS: No.

MR. NIEDERMAYER: If -- my same question. If in the inside there were additional retaining walls in the interior of this area you call a platform, would that violate any portion of the zoning regulations?

MR. WILLIAMS: No.

MR. NIEDERMAYER: Does it say anywhere in the zoning regulations that you can't level your lot by the building of retaining walls and filling them in with dirt?

MR. WILLIAMS: There is no such provision.

MR. NIEDERMAYER: Would it be fair to say under the zoning regulations if you have a hilly lot and wish to level out a portion of it, you could use a retaining wall, then fill it in?

MR. WILLIAMS: There is no guidance provided on that subject. What there is, Mr. Niedermayer, is guidance that says once the wall, whatever wall it is, retaining or otherwise, projects by more than four feet and then is part of this overall larger structure that's bonded to it, that then the yard requirements apply. It's not a violation. It's just it triggers it to be scrutinized under the yard requirements.

MR. NIEDERMAYER: I understand your interpretation, Mr. Williams, but could you point to me a section in the zoning regulations where it says the height or the limited height to which a retaining wall can be.

MR. WILLIAMS: It says wall. It doesn't say retaining wall. It would include retaining walls and other walls.

MR. NIEDERMAYER: Okay. I think we've agreed that a retaining wall -- in the section dealing with retaining walls that I pointed to you previously, there's no restriction on height, is there?

MR. WILLIAMS: I stated before and I'll repeat. There is no stated restriction there. Not in the zoning ordinance.

MR. NIEDERMAYER: Thank you. I think we've already agreed that if this garage was, in your view, was on its own separate footings and it had no communication above grade with the residence, that that would not be a violation of the --

MR. O'BRIEN: Objection. That's a mischaracterization of his testimony. He said it's on--

MR. NIEDERMAYER: Could I finish my question first. Then you can tell me it's a mischaracterization. I think --

MR. O'BRIEN: I'm going to object to the form of your question.

MR. NIEDERMAYER: Can I finish it first

so we know what the form is?

MR. O'BRIEN: It's leading and it's multiple.

VICE CHAIRPERSON SOCKWELL: Let's hear the entire question. If you'd start from the beginning, please.

MR. NIEDERMAYER: Mr. Williams, do I understand you correctly that there would be no side yard or rear yard violations if the garage was on its own separate footings and had no communication or touching of any of the other structures on the lot?

MR. O'BRIEN: Object. His testimony was entirely contained in the rear yard and on its own foundation.

VICE CHAIRPERSON SOCKWELL: We have allowed Mr. Parker to ask hypothetical questions of this sort. I will allow Mr Williams to answer this particular question of Mr. Niedermayer.

MR. WILLIAMS: If the garage structure, its foundation, the wood frame garage above it, were on an independent foundation, all portions of which were behind the rear-most portion of the principal residence as it is configured on that lot, then it would be able to sit anywhere within that rear yard which runs from one side yard to the other and

anywhere from the back edge of the house to the back edge of the property. It can float. But this is not the fact situation there that we have before us and it would not address the question of the size of the garage, which Mr. Niedermayer didn't get to in this question.

MR. NIEDERMAYER: Mr. Williams, is the basis of your opinion about the violation of the side yards and the rear yards based upon this garage sitting on this structure that you've described?

MR. WILLIAMS: No.

MR. NIEDERMAYER: Would you agree that under the zoning regulations if there is not a roof connecting the principal residence with this garage, that the garage is not deemed to be connected to the principal residence and that there's no communication above grade otherwise?

MR. WILLIAMS: That's about right.

MR. NIEDERMAYER: Excuse me. Did you say not right?

MR. WILLIAMS: That is about right. Yes. If I could clarify a previous question, Mr. Niedermayer. Let's imagine this structure that I'm calling a platform and let's imagine it without a garage. It would then be an area of about 2,200

square feet, give or take, a large area and, if it had no garage on it, you could sort of visualize it as being large enough for a basketball court or a tennis court. It would still have around its perimeter the stairs. It would still have on its face a height in excess of four feet on the front that faces Indian Lane, on the side that faces the rear yard, and in the rear facing the property to the rear, and that would trigger the fact that that structure, whether it has got retaining walls around it or wall walls, built as it has, placed where it is, that structure would be part of the principal residence and it would trigger the necessity to review it under the applicable rear and side yard situation and it would fail then whether it had a garage on top of it or not.

MR. NIEDERMAYER: Okay. So the reason it fails is because what is under the garage, not the garage itself.

MR. WILLIAMS: The garage itself triggers additional problems, in my view.

MR. NIEDERMAYER: Okay. Now, is it accurate in your interpretation that the mere touching of two elements does or does not constitute connection of those elements?

MR. O'BRIEN: I'm going to object. Relevance. I'm totally failing to see where we're going with this.

MR. NIEDERMAYER: I would respectfully suggest that your failure to see it is not the measure of whether it's relevant or not. But I'll proffer what it is relevant. It is relevant because Mr. Williams' theory is that these elements are all connected, and I'm trying to explore whether simply touching means connected or there has to be some other aspect of connection.

MR. O'BRIEN: Perhaps you could ask that question then.

MR. NIEDERMAYER: Well, I'm trying to. I'm getting a lot of interruptions, and I apologize for that remark.

Mr. Williams, does the fact that two elements of two separate structures touch each other make them connected under the zoning regulations?

MR. WILLIAMS: No. But if I may add --

VICE CHAIRPERSON SOCKWELL: Actually, that does make them connected if it is a roof.

MR. NIEDERMAYER: Right, that's what I wanted to know, Mr. Sockwell, and I've already asked the questions about roof, so I'm not going to repeat

that.

MR. WILLIAMS: This was not a roof question, as I understood it. The --

VICE CHAIRPERSON SOCKWELL: He said a general reference and the general reference should be specified.

MR. NIEDERMAYER: I want to make it specific because your point is very well taken. Mr. Williams, if two structures touch each other but they are not connected above grade by a roof, are they connected for purposes of the zoning regulations?

MR. WILLIAMS: They are connected.

MR. NIEDERMAYER: Even if they're not communicating with each other above grade for the roofed in area?

MR. WILLIAMS: They are not to be seen as the same building, but they are to be seen, in my view, as part of the same overall structure.

MR. NIEDERMAYER: Okay.

MR. WILLIAMS: Might I add, Mr. Niedermayer, that the analysis that we seem to be looking at is whether the touching part of the addition and the old house is posing -- whether they are now fused in some way, and I believe they are. What is indisputable in the plans and in the drawings

is that the platform on which the garage sits has a-- is itself a single structure that has no breaks in it whatsoever below the level of the slab and the surrounding walls and the interior retaining walls that have been testified to.

That is one, and even if I didn't reach the conclusion I did about the house and the addition being connected, the total addition itself would, if looked at separately, also be in violation because of the same principles that I've talked about. So either way, you're in violation.

MR. NIEDERMAYER: Would Mr. Potter's house be connected to Mr. Ghafoorian's house if his garage, Mr. Potter's garage, is connected to the asphalt in front of it which is connected to the driveway which is connected to the concrete in front of Mr. Ghafoorian's house which is connected to his house? Would that make all those structures connected under your definition?

MR. O'BRIEN: I object to the form. I object to the fact that it's calling speculation. I object to the fact that it's argumentative and I object to the fact that it's utterly irrelevant to the issues before the Board.

VICE CHAIRPERSON SOCKWELL: Let me get to

this. The term connected and the term abutting are two different terms. Connected is generally referred to as a structural connection. Abutting would be more like you and me leaning against one another unless we shared umbilical cord fluids.

MR. NIEDERMAYER: But if the --

VICE CHAIRPERSON SOCKWELL: Now, let me say this. The circumstance of properties below grade that do not extend above the level of grade at any point connected to one another makes them connected structures but does not make them considered lot occupancy. So I'm not sure where you're trying to go with this, but I would certainly like for you to get there as quickly as possible.

MR. NIEDERMAYER: I'm trying to. Maybe it's because of my lack of understanding, which is why I'm asking Mr. Williams questions as to try and explore what his understanding is.

VICE CHAIRPERSON SOCKWELL: I hope you understand.

MR. NIEDERMAYER: Mr. Williams, you said that in the R-1 zoning that the area of the garage can not exceed 450 square feet. Am I correct about that?

MR. WILLIAMS: That's what I said.

MR. NIEDERMAYER: Okay. Under the definitions of private garage in the zoning regulations, it states that a zoning -- a private garage may be up to 900 square feet. Are you familiar with that definition?

MR. WILLIAMS: Intimately.

MR. NIEDERMAYER: Okay. Is it -- I'm not sure if I understand this, but the zoning regulations of the R districts, R-1, R-2, R-3, R-4, and R-5, incorporate by reference, as I read them, the prior zoning permissible uses. Is that an accurate reading?

MR. WILLIAMS: The zoning regulations are generally written in a cumulative fashion and they incorporate by reference as the restriction levels diminish as you proceed later through the chapters.

MR. NIEDERMAYER: Okay. So let me ask you this. Where in any of the R zoning classification could there be located a private garage of 900 square feet if they're all cumulative from the R-1?

MR. WILLIAMS: Nowhere.

MR. NIEDERMAYER: So that definition of private garage can't exist in the District of Columbia in an R zone?

MR. WILLIAMS: No. The definition exists in Chapter One. It limits the size of a garage, a private garage, to 900 feet. Anything larger than that is some other type of a garage, but it is not a private garage. In the residential zone districts, the use, the accessory use, the primary use, the use is limited to 450 square feet and two cars. That's what it says.

MR. NIEDERMAYER: So your answer is that you can't have a private garage as it's defined in the definitional section of 900 square feet in any of the residential zoning classifications.

MR. WILLIAMS: The definition is more generous than the residential zone district regulations permit.

MR. NIEDERMAYER: Is there any place in the District of Columbia where a private garage of 900 square feet could be located?

MR. WILLIAMS: Not at this time.

MR. NIEDERMAYER: So that section of the zoning code is meaningless -- zoning regulations is meaningless.

MR. WILLIAMS: I beg to differ with you, Mr. Niedermayer. It's not meaningless. There is a difference between the two provisions and the most

restrictive provision must apply and if it's not what the Zoning Commission intended, there's at least one member of this Board that's in a position to evaluate that question in another forum. But that's what the regulation states.

MR. NIEDERMAYER: Mr. Williams, I believe you testified in a March 2000 hearing before a judge in Superior Court about these same matters, did you not?

MR. WILLIAMS: Yes, I did.

MR. NIEDERMAYER: Okay. And at that time, was it not your conclusion that you told the court that the parking garage and the platform as you described it in the residence were not a single structure?

MR. WILLIAMS: I think at that point I concluded that they might be separate. Yes.

MR. NIEDERMAYER: Okay. So you've changed your view since March of 2000?

MR. WILLIAMS: I gave that as an alternative at that time, Mr. Niedermayer. I didn't make it as a firm conclusion. I stated there were multiple ways of looking at this. I have since evaluated it and I've now concluded, based on later construction in which some of the seams that were

then open and have now been bricked over in one continuous expanse so that the previous connectivity is now bonded and fused with no visible joint, that it is one, whereas before it was ambiguous.

MR. NIEDERMAYER: In your letter to the Board of October 16 in the next to last paragraph, you say that the April and May plans -- those are the plans for the construction at 4900 Indian Lane -- should have been rejected on the grounds you state above. Do you mean it should have been rejected in April and May of 1999 if you'd looked at the plans?

MR. WILLIAMS: Yes, they should have been rejected by the DCRA one stop walk through permit people.

MR. NIEDERMAYER: Okay. So that the items about the side yards, the rear yards, the area, those things were all obvious from the plans in April and May of 1999.

MR. WILLIAMS: I believe they were evident and particularly in the May plans when the considerable grade difference was made clear in the plans as to the amount by which the platform extended above the ground level.

MR. NIEDERMAYER: Okay. Mr. Williams, I think you testified that as of the time of the trial

in March of 2000 you had been paid about $4,000 to $6,000 for your testimony. Is that correct?

MR. O'BRIEN: I object to, first of all, the relevance of this. Secondly, I believe it mischaracterizes his testimony and, as Mr. Niedermayer well knows, it wasn't a trial.

MR. NIEDERMAYER: I'm not going to quibble about the part whether it was a trial. It was a hearing. Whether it was a trial or a hearing, my point was simply this. I was asking Mr. Williams how much he was paid for his testimony at that time, and I think I'm entitled to ask that because it goes directly to --

MR. O'BRIEN: It was asked and answered in March.

VICE CHAIRPERSON SOCKWELL: I don't know that the amount of money that he may have been paid is important. No one is asking how much money you're being paid by your client and I don't think that that is germane to this discussion.

MR. NIEDERMAYER: Mr. Sockwell, may I --

VICE CHAIRPERSON SOCKWELL: It is understood perhaps that Mr. Williams may have been paid for his services in one situation or another and you can ask that question by either asking were you

under contract or were you retained by, but how much he was paid should not enter this discussion.

MR. NIEDERMAYER: Okay.

VICE CHAIRPERSON SOCKWELL: And I will not accept any argument. Any argument.

MR. NIEDERMAYER: Mr. Sockwell, I will not ask any further questions, but for the record, I will just proffer that I would have asked several more questions about that because I believe it relates to bias and credibility.

VICE CHAIRPERSON SOCKWELL: Well, bias and credibility are not necessarily -- bias is based on who you represent in some instances. Bias and credibility are also based on who a person is. I don't think that how much money one gets paid should become germane to our discussions here. I don't mind you asking if someone was retained. That's fine. But the amount of fee is not necessarily relevant to anything other than an individual's ability to request money and to be paid the amount that he requests. If he asks for $5 and he gets paid $5, that's one thing. Does that make him more or less credible than a person who asks for $105? Not necessarily.

MR. NIEDERMAYER: I agree with you, Mr.

Sockwell, but I agree that I would respectfully suggest that the stake one has and how much one is being paid in a proceeding where you're offered as an expert witness to give guidance is to be judged in terms of how much you're being paid for your testimony.

VICE CHAIRPERSON SOCKWELL: Okay. I'll ask you this one question, Mr. Niedermayer. Have you ever represented a client and lost?

MR. NIEDERMAYER: Of course I have, Mr. Sockwell.

VICE CHAIRPERSON SOCKWELL: Did you give the money back?

MR. NIEDERMAYER: Not when I was paid for my services. No.

VICE CHAIRPERSON SOCKWELL: All right. Then we've finished the discussion. Thank you.

MR. NIEDERMAYER: As a lawyer, if I might add, as a lawyer, I am an advocate --

VICE CHAIRPERSON SOCKWELL: You're finished.

MR. NIEDERMAYER: Since Mr. Sockwell said I'm finished, I won't ask any further questions.

VICE CHAIRPERSON SOCKWELL: No, we're finished with that. You may continue. You may ask

any more questions you'd like. Please don't restrict your representation of your client who is paying you because I have said something that you don't like. That is not fair to Mr. Ghafoorian.

MR. NIEDERMAYER: I'm trying to do that, Mr. Sockwell. I'm honestly trying to do that.

VICE CHAIRPERSON SOCKWELL: Then take this merely as the situation of you being before the Board and some things you don't agree with. Please don't take it out on Mr. Ghafoorian.

MR. NIEDERMAYER: I'm not trying to take it out on Mr. Ghafoorian. I hope you'd agree I'm not taking it out on him.

Let me ask one last question. Mr. Williams, are two townhouses which touch each other one building?

MR. O'BRIEN: I object. It's utterly irrelevant. We're not talking about townhouses that touch each other.

MR. NIEDERMAYER: I'm sorry. I thought I was waiting for your ruling on his objection.

VICE CHAIRPERSON SOCKWELL: You can answer the question.

MR. WILLIAMS: Two townhouses on separate lots would be seen as separate buildings.

MR. NIEDERMAYER: I guess I'm just ignorant on this, Mr. Williams, because I thought townhouses were on sort of the same area and touched each other.

VICE CHAIRPERSON SOCKWELL: They're not on the same area. For your information, Mr. Niedermayer, a townhouse is a row house. I row house may exist as any house within the row all on separate lots. They are considered separate buildings for the purpose of ownership, taxation, etcetera, and if you have never lived in a row house, you should still know that because I'm sure that you know someone who does.

MR. NIEDERMAYER: I have lived in a row house, Mr. Sockwell.

VICE CHAIRPERSON SOCKWELL: Well, good.

MR. NIEDERMAYER: I have no further questions. I'm sure the Board will be happy to hear that.

VICE CHAIRPERSON SOCKWELL: Not really. I'm having a good time with this. I'm perfectly satisfied until we have to leave.

MR. O'BRIEN: Mr. Chairman, I've got one more extremely brief witness.

MS. PRUITT: Actually, that was what I

was going to say, Mr. Sockwell. Do you want to make an assessment of what's left.

VICE CHAIRPERSON SOCKWELL: He said brief. Brief is fine.

MS. PRUITT: About how much time?

MR. O'BRIEN: Can I make a proffer? I'm about to lose Mr. Potter who needs to catch an airplane and I'd like to ask that he be excused.

VICE CHAIRPERSON SOCKWELL: Certainly.

MS. PRUITT: The other thing is it doesn't appear that we will finish today.

MR. O'BRIEN: I can certainly in about five minutes, depending on how brief the cross is, finish my case in chief.

MS. PRUITT: Right, but we still have both the DCRA to put on their case and Mr. Ghafoorian.

MR. O'BRIEN: Oh, I understand that. If you want to get to a good place to rest, that would be it.

VICE CHAIRPERSON SOCKWELL: Let's get through the Appellant's case.

Thank you, Mr. Potter, for your participation.

MR. POTTER: Thank you very much for

listening to us.

MR. O'BRIEN: At this time, Mr. Chairman, I'd like to call Mr. Watson.

VICE CHAIRPERSON SOCKWELL: Mister Whom?

MR. WEBSTER: Actually, I ought to clarify. George Watson.

MR. WATSON: George Watson. I live in Wesley Heights at 4323 Cathedral Avenue. I've lived there for approximately 31 years. I'm also President of the Wesley Heights Historical Society.

Mrs. Craiglow, the former owner of the property in question, was a client of my wife's and I've been in that house several times. I was also a colleague of --

MR. O'BRIEN: For clarification, what was the address of the Craiglow house?

MR. WEBSTER: 4900 Indian Lane.

MR. O'BRIEN: Okay.

MR. WEBSTER: And I was also a colleague of Mr. Potter's at a local boys school.

MR. O'BRIEN: Were you present at the ANC meeting where this particular dispute was considered by ANC-3D?

MS. PRUITT: Mr. O'Brien, you got to move closer to the mic. I'm sorry. We're losing you.

MR. O'BRIEN: Pardon me.

Were you present at the ANC meetings of Advisory Neighborhood Commission 3D where this particular dispute and these particular projects were considered by the ANC?

MR. WEBSTER: I was.

MR. O'BRIEN: And could you state -- could you describe for the Board what happened at these proceedings?

MR. NIEDERMAYER: I would like to object that this is entirely hearsay.

MS. PRUITT: Mr. O'Brien, is he reporting for the ANC?

MR. O'BRIEN: Mr. Watson was present at the ANC meetings.

MS. PRUITT: But we do have an ANC report that we will get to later.

MR. O'BRIEN: Thank you. I didn't know whether that was --

MS. PRUITT: Unless he's authorized to represent the ANC.

VICE CHAIRPERSON SOCKWELL: It would only be important for him to rebut the ANC testimony in one way as your --

MR. O'BRIEN: Mr. Chairman, my major

concern was making sure that the ANC's letter was made part of the record. Mr. Watson -- I didn't know whether it was or not frankly. I haven't received a copy of it.

VICE CHAIRPERSON SOCKWELL: Oh, you have not?

MS. PRUITT: Excuse me?

VICE CHAIRPERSON SOCKWELL: Counsel for the Appellant has not received a copy of the ANC's letter.

MR. O'BRIEN: Oh, I have received a copy of it. I didn't know whether it was proper or not for me to file it or make it --

MS. PRUITT: It has been filed by the ANC.

MR. O'BRIEN: Wonderful. Thank you.

MR. O'BRIEN: Go ahead, Mr. Watson. Forget about the ANC.

MR. WEBSTER: I've just got a few remarks, some of which are, I think, very pertinent to the discussions we've had or I've heard earlier. I'm talking now about the Wesley Heights Historical Society, and I've given this statement several times. It was established in 1989 in response to what was perceived as community over-development that

threatened the open tree lined streets and park land aspect of lots in our community.

We sponsored the Wesley Heights overlay district that the Zoning Commission adopted in 1992 that called for reduced density and new setbacks while still allowing residents liberal leeway to make improvements to their homes while keeping those additions to a reasonable level. We are, therefore, extremely interested in seeing to it that the existing zoning provisions, including the Wesley Heights overlay district, are applied and enforced in an even-handed manner.

How fitting that this hearing is held today, and I wore a necktie for it specially, on Halloween because a number of past ghosts are being talked about, both people and properties. I want to call your attention to one ghost in Wesley Heights in particular that is very relevant to this case and that is the notorious over-large pool house at 4524 Garfield Street that towers over a back yard fence and invades the privacy of the next door yard and the pool. It, too, was built on an artificially raised baseline with a retaining wall in an attempt to subvert the 15 foot limit, overall limit. That 900 square foot poolhouse is now being called a

garage/pool house.

In that case, the zoning officials leaned over backwards to try to justify that building by grotesque interpretations of the zoning regulations rather than the most restrictive interpretation. The BZA and the Court of Appeals have seen the illegality of that building but appeals and litigation over the past 10 years -- 10 years -- have cost that injured neighbor more than $50,000 to try to get the city and, in particular, DCRA to be responsive -- i.e., respond to questions and letters and so on -- and to apply and enforce the existing zoning regulations. Why should private citizens have to pay lawyer fees, hourly fees, to try to get DCRA to do their job? Thank you.

VICE CHAIRPERSON SOCKWELL: Thank you.

Questions of Mr. Watson by the Board? Cross.

MR. NIEDERMAYER: None.

MR. PARKER: None.

VICE CHAIRPERSON SOCKWELL: Thank you.

Thank you, Mr. Watson.

MR. O'BRIEN: I have nothing further, Mr. Chairman.

VICE CHAIRPERSON SOCKWELL: All right.

Does the Board have any immediate questions? We are then at the conclusion of the Appellant's case and would proceed next with government reports.

MS. SANSONE: Mr. Chairman, it would be the Zoning Administrator's case.

VICE CHAIRPERSON SOCKWELL: Oh, I'm sorry.

MS. SANSONE: And the appeal.

VICE CHAIRPERSON SOCKWELL: I'm sorry. I'm looking at the wrong thing. Forgive me. Give us a second.

(Off the record briefly at 5:14 p.m.)

VICE CHAIRPERSON SOCKWELL: Mr. Parker.

MR. PARKER: Yes.

VICE CHAIRPERSON SOCKWELL: The Zoning Administrator and the former Acting -- well, the Acting Zoning Administrator -- the Zoning Administrator and the former Acting Zoning Administrator are both here. How long do you think that it will take you to put on your case?

MR. PARKER: I think that what I anticipate is my case would be to have Mr. Lourenco testify and all I would expect Mr. Johnson to do would be under oath to adopt what his statements -- what the testimony of Mr. Lourenco are as the current

position of the Zoning Administrator. I think we could probably get our direct done in a half an hour. I don't know what we can do in terms of -- I can't make a representation about cross examination. I'm a little reluctant -- frankly, I'm reluctant to have him testify and then stop and then have the other side have the opportunity to have however long they're going to have to prepare the cross examination. I don't think that's tremendously fair. So we either have to make a commitment to go through the cross or I would ask to come back.

VICE CHAIRPERSON SOCKWELL: In the past, we've gone as late as 11:00 at night, but we won't subject -- oh sure. We've done that. I'm making a statement and, believe me, if it were necessary, I would take the hearing to 7:00 but it is Halloween night and it is a time when many of us want to be home to feed the kiddies and another time for us to go home and protect ourselves from them, depending on where we reside. So I would suggest that we reschedule the Zoning Administrator's portion and the rest for another time. This hearing has taken a tremendous amount of time and will likely take another session or two, depending. I would like not to have to bring city officials and others back but

one time, and I apologize for the time spent today, but I would like to find a date certain that we can reconvene the hearing, continue it to that date.

MS. PRUITT: Based on your schedule, it appears that January 16 in the afternoon will be your first available date.

MR. PARKER: That would be 1:00 again?

MS. PRUITT: Correct. And we can devote the whole afternoon.

MR. PARKER: Let me check with the witnesses. Everybody shrugs their shoulders. That's as good as any day.

VICE CHAIRPERSON SOCKWELL: All right. So I am, as acting chairperson in this case, allowing you Thanksgiving and Christmas and New Year's to yourselves and we will reconvene on a date certain January 16 at 9 a.m.

MS. PRUITT: No. 1:00.

VICE CHAIRPERSON SOCKWELL: I mean 1:00 a.m.

MS. PRUITT: 1:00 p.m.

VICE CHAIRPERSON SOCKWELL: I gave you three holidays. Come on.

MR. O'BRIEN: I hope we're talking 1:00 p.m.

VICE CHAIRPERSON SOCKWELL: 1:00 p.m.

MR. O'BRIEN: Thank you.

MS. PRUITT: Mr. Sockwell, let me just check the calendar for holidays. I haven't done the calendar for year 2001 yet. I can pull it up though. I don't want us -- Mr. Niedermayer brought it to my attention it might be Martin Luther King. That's a Tuesday though, so it wouldn't be.

VICE CHAIRPERSON SOCKWELL:

VICE CHAIRPERSON SOCKWELL: Yes. Monday is the holiday.

MS. PRUITT: I'm just trying to think. That is a Tuesday, so we would be safe.

VICE CHAIRPERSON SOCKWELL: So I'm giving you four holidays. Yes, I'm being very liberal.

All right. So Tuesday, the 16th of January at 1:00 p.m. we will -- let's see. Ms. Pruitt, what do we have on the docket for that date?

MS. PRUITT: In the morning you have Sibley Hospital Cancer Center, Tomorrow's Gateways, a parking variance for right now.

VICE CHAIRPERSON SOCKWELL: And what do we have on the afternoon schedule?

MS. PRUITT: This would be the only thing on the agenda. That's why I suggested that.

VICE CHAIRPERSON SOCKWELL: Then we can do this and hopefully we'll get through the morning agenda so that we will be able to start at 1:00. There's no guarantee of that but we certainly will try. So we look forward to seeing you then, and thank you very much.

Hearing is now adjourned.

(Whereupon, the hearing was adjourned at 5:19 p.m.)

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