GOVERNMENT OF THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC HEARING

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WEDNESDAY

DECEMBER 16, 1998

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The Board of Zoning Adjustment met in Hearing Room 220 South, 441 4th Street, N.W., Washington, D.C., at 9:30 a.m., Sheila Cross Reid, Chairperson, presiding.

PRESENT

Sheila Cross Reid, Chairperson
Betty King, Vice Chair
Jerry Gilreath, Board Member
John F. Parson, Zoning Commission Member

STAFF PRESENT

Tracey Witten Rose, Office of Zoning
Paul Hart, Office of Zoning
John Nyarku, Office of Zoning
Beverly Bailey, Office of Zoning

APPEARANCES:

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9:45 a.m.

MS. REID: The hearing was delayed this morning. We had a couple of issues that we had to take care of prior to the meeting's beginning.

The hearing will please come to order. Good morning, ladies and gentlemen. My name is Sheila Cross Reid, Chairman of the Board of Zoning Adjustments, District of Columbia. Joining me today are Betty King, John Parson representing the Zoning Commission, and Mr. Gilreath representing the National Capital Planning Commission.

The topic of today's hearing agenda are available to you. They're located to my left near the door. All persons planning to testify, either in favor or in opposition, will have to fill out two witness cards. These cards are located at 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 exception and the various will proceed as follows. Statement and witnesses of the Applicant, government reports including Office of Planning, Department of Public Works, ANC, etcetera. First, the parties in support, the parties in opposition, closing remarks by the Applicant.

The procedure for appeal application will be as follows. Statement of witnesses of the Appellant, the Zoning Administrator or other government officials, the owner, lessee, or operator of property involved if not the Appellant, the ANC within

which the property is located, Intervenor's case, rebuttal and closing remarks by the Appellant.

Cross examination of witnesses is permitted for persons or parties of direct interest in the case.

The record will be closed at the conclusion of each case except for when material is specifically requested by the Board and the staff will assess by 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.

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

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

MS. ROSE: Madam Chair, could I address the preliminary matters that staff has prior to getting into the case.

MS. REID: Okay.

MS. ROSE: We just have a couple of affidavits. 16406 of Patrice Andrews. The affidavit indicates that the property was posted one day late. It was posted 14 days prior to the hearing

instead of 15 days and it would need a one day waiver.

MS. REID: Okay. What's the number?

MS. ROSE: 16406, Patrice Andrews.

MS. REID: Okay. One day waiver. I have no problem with that. Board members?

MS. KING: Is there anybody here in opposition?

MS. REID: For case #16406, is there anyone here in opposition to that case? We will grant the waiver.

MS. ROSE: And then 16402, St. Paul's Lutheran Church. We can not find an affidavit of posting in the office.

MS. REID: Is there anyone here that is affiliated with that particular case, 16402? Is it St. Andrews?

MS. ROSE: No. It's St. Paul's.

MS. REID: St. Paul's Lutheran Church.

MS. McCARTHY: My name is Ellen McCarthy. I was going to testify for them as an expert witness, but I know that they told me that they were not planning on being here until 10:30 today because of knowing that it was the fourth case on the agenda.

MS. ROSE: We can get back to it.

That's all that we have with regard to affidavits this morning.

MS. REID: Any other preliminary matters, please come forward.

MR. BROWN: Good morning, Madam Chair, members of the Board. My name is Patrick Brown from the law firm of Greenstein, DeLorme and Luchs.

I'm here this morning on behalf of the Appellant, Mrs. Crary, in 16405. The matter was scheduled for a hearing this morning. The property owner, who is not Mrs. Crary who's the subject of the appeal, has filed, 1) a request to intervene as a party and, 2) a continuance of this hearing as a result of being out of the country today. I believe Singapore.

My role here this morning is threefold. 1) to consent to Mr. Cisian, the property owner's request for intervenor status, 2) to consent to the continuance requesting a specific date of February 17, 1999. I coordinated that date, as best I can without any favorable response from Mr. Cisian and I've also coordinated that date with the Acting Zoning Administrator, Mr. Lorenko, who had no objection to it.

In the file there should be a letter from ANC 3D which heard preliminary discussion of this matter at their December 9th meeting. They also requested the continuance to, 1) allow Mr. Cisian to appear before the ANC and a full presentation by the Appellant and the Commission to take action.

And the final item is I requested in a letter filed with the Board a request to amend the appeal to add an additional item on the three building permits that were issued to add the appeal issue that in each case the applications failed to provide the required off street parking required in the applicable zoning district where the property is located. So those are the issues that I'd like the Board to certainly take up this morning.

MS. KING: It seems to me that the postponement is totally appropriate. It is possible to schedule it then and do we have to

re-advertise it because of the addition of the issue of the off street parking?

MS. ROSE: Yes, we would and we should have time to do that if we place it on the February 17th agenda.

MS. KING: Is there room on the 17th agenda?

MS. ROSE: Yes.

MS. REID: We would honor a request for postponement continuance with it being re-advertised with the amendment indicated by Mr. Brown. Should we do it in one motion or should we just do it by consensus?

MS. ROSE: Either way is fine.

MS. REID: Okay. And also the issue regarding Mr. Cisian receiving intervenor status.

MR. BROWN: That's correct.

MS. REID: His request.

MS. ROSE: You can deal with that at the hearing. At least he would be able to speak to the issue.

MS. REID: Well, he may want to prepare for the hearing.

MS. KING: I mean it's his house for God's sakes. I don't see any circumstances under which he wouldn't be given.

MS. REID: Well, I mean understandable so but nonetheless we're just following procedures here so that based on the request that came from Mr. Brown, we will then for the record just address it accordingly. Do we have a motion?

MS. KING: I so move.

MR. GILREATH: I second.

MS. REID: We what?

MS. KING: I move that we postpone, that we re-advertise --

MS. REID: That we grant the continuance.

MS. KING: We grant the continuance, that we re-advertise the amended whatever, that we schedule it for the 17th, and that we grant Mr. Cisian intervenor status.

MS. REID: Okay. Mr. Brown, exactly what was the request for the amendment?

MS. KING: It's the issue of parking.

MR. BROWN: Failure to provide the required off street parking, and it's laid out in the letter that I've previously filed with the Board.

MS. KING: It's one space, is it?

MR. BROWN: One space.

MS. REID: And that we grant the intervenor status to Mr. Cisian.

MS. KING: And we grant the intervenor status to Mr. Cisian.

MR. GILREATH: I second that motion.

MS. REID: All in favor.

(Ayes)

MS. ROSE: Staff will record the vote as four to zero with Ms. King, Mr. Gilreath, Mr. Parsons and Ms. Reid to grant the request.

MR. BROWN: Thank you very much.

MR. NETTLER: Good morning. My name is Richard Nettler. I have a number of preliminary matters that I have filed motions on in 16404 if you want to take them now or want to deal with them when you pull the case. But they are preliminary matters.

MS. REID: Well, in the first place, the Zoning Administrator is not present yet, so we would not be able to proceed with this particular case right now. We have been in contact. Have we gotten a response?

MS. PELZER: My name is Linda Pelzer, staff member. I spoke with Mr. Ed Gunaly of DCRA. This project has been given over to him to come down. He indicated he will be here as soon as possible. He's not that familiar with it, so I indicated to him someone may have to brief him. They can't find Mr. Lorenko, which is the Zoning Administrator. So he will be here as soon as possible to do whatever he can, he said.

MR. NETTLER: Can we deal with the preliminary matters?

MS. REID: Yes. We can go ahead and deal with those, Mr. Nettler, and then what we'll do is we'll just table this. We'll take some other cases, one or two, and bring you back.

MR. NETTLER: Depending on how you deal with the preliminary matters, I guess.

MS. REID: Depending on how we deal with the preliminary matters. That is correct.

MR. NETTLER: I have three motions before you.

One is a motion to dismiss, a motion in limine and a motion to strike. And let me preface each of them because I've been thinking a long time actually about this because from the time the appeal was filed until today, what's troubled me is what your responsibility is regarding the appeal that's before you. And I tried to think of this in terms of other cases in which you've had to review actions taken by the Zoning Administrator with regard to approvals of whether it's a home occupation permit or certificate of occupancy that have come before you in terms of appeals or even when the court has looked at these.

And the striking difference between this, taking for the moment as if this had been filed timely, let's say even March or April of last year before we even got into the special exception that was sought. This is really an attempt to deal with a civil infraction, a supposed civil infraction, in the context of an appeal because what normally happens with a certificate of occupancy which never comes before you is the Zoning Administrator is dealing with prospective conduct.

Someone comes into the Zoning Administrator and says, I am either going to purchase a piece of property or I'm going to rent a piece of property and I am going to use it for this purpose. Let's say it's a lawyer. I'm going to use it for a law office. And the Zoning Administrator checks the regulations and this is appropriate for a law office, whether it's in a C1 or whatever, and says fine. A certificate of occupancy is issued for a law office.

Similarly with home occupation permits. In most circumstances and not all, someone will come in and say, This is my

residence, this is what I'm going to use it for. Does it fit within the guidelines of the Zoning regulations? And the Zoning Administrator will look at those guidelines and say, Based on those representations -- and that's what I'm sure this record will have, this very, very small record that the Zoning Administrator will have, will say fine. I'm going to issue a home occupations permit.

If you are then to review the action of the Zoning Administrator taken in February on a prospective use based on the file that has been developed by the Zoning Administrator prior to his or her issuance of that home occupation and certificate of occupancy, there's no way for you to judge that the decision that's made based on a prospective use was a wrong decision because that's the only issue before you is whether what the Zoning Administrator did in February of this year was wrong based on what the Zoning Administrator had before you.

Now, that's quite different from one particular case that I mentioned in our motion in limine which is the Samaritan Inn case where the Zoning Administrator was given a whole body of information on which to decide whether the restoration of an apartment building was being restored for an apartment building use or a CDRF or something else, whether they had bathrooms in the rooms, whether they had kitchens in the rooms, all types of issues that go into a review of a project for the issuance of a certificate of occupancy that's not the type of review that happens here.

When you have a certificate of occupancy or a home occupation permit issued to someone who somebody then challenges

them as being the rightful person to have that permit, normally what will happen is, since it's a prospective use, is that the Zoning Administrator or the inspectors of DCRA will go out to that property to determine whether in fact it's being used in accordance with what's been issued. That then goes through a separate process. It goes through the civil infractions process and it ultimately may wind its way to here through a review of whatever the inspector determines.

It's for that reason why this, in my view, is before you in a very unusual context, in the context of an appeal of a decision that's based on representations regarding prospective use. Now, if we're going to deal with it in terms of the motion to dismiss, obviously whatever happened after that was issued, whatever facts were supposedly found out in July, ones which we in our view, if we were to get to the merits of it, disagree with in terms of resolving the issue here and I think that corporation counsel's memorandum actually supports us on this.

Those facts are irrelevant as to whether the Zoning Administrator did something appropriate or not. They're irrelevant to whether you filed a timely appeal or not because if you are filing an appeal from an action that was taken base don the information that the Zoning Administrator had before him or her at that time, you can only deal with the rationale for not filing it within a reasonable period of time after that action was taken, not because you discovered something later on. And that's the gist of our motion to dismiss.

There's no doubt here -- and I will be sworn in and testify to this -- that Capital Hill Restoration Society called me in April

of 1998, asked me about an appeal that was mis-named by the Board and, therefore, was advertised improperly which ultimately came to special exception, about the case and I would testify -- and I don't think there's any doubt here -- that I made it clear to the Capital Restoration Society that a home occupation permit had been issued to Mr. Fields who was in the midst of purchasing this property who was going to purchase it for the use which was set forth in that home occupation, the permit which was to live there and to use it for his consulting business, that a permit had been issued and nothing was done in response to that. Nothing was done because what the challenge that ended up being made by the Capital Hill Restoration Society was to the extension of that use to encompass more than one employee. Not to challenge the underlying home occupation permit that had been issued, not until after the hearing, in fact, not even until two months after the hearing in the case regarding the special exception.

Well, whatever happened between the time that I discussed this with Mr. Schauer and Ms. McCarthy actually will testify that she informed him of even further facts that related to the occupancy of this property. None of those facts are relevant. What's relevant is when the individual who files the appeal first learns of the action that was taken and then goes forward and files an appeal with this Board.

Well, that appeal was filed in September of 1998 but the action was known in April of 1998. There's no difference in the evidence that you can consider in terms of whether the Zoning

Administrator acted properly from April to September, but there has been prejudice here because based on the action of the Zoning Administrator which was taken prior to Mr. Fields purchasing this property and moving into this property, Mr. Fields went ahead and purchased the property and you would hear testimony to the fact that he would not have purchased the property but for having obtained that home occupation permit before doing so, purchase the property, made renovations to the property -- you would also hear testimony which the neighbors have been particularly happy about -- for his use as his residence and, for that reason, has been prejudiced by the action that's now taken two months, three months after he's purchased it, five or six months after the action taken by the Zoning Administrator and certainly five months after the Appellant was on notice of the action that was taken by the Zoning Administrator.

For that reason, it's our belief that a motion to dismiss is entirely appropriate here. There simply is no basis for the delay that was taken by the Capital Restoration Society.

That leads us to our motion in limine. I've been hoisted upon this petard by the corporation counsel, both in the Samaritan Inn case and many other cases in which I've challenged an action by the Zoning Administrator in terms of them granting a certificate of occupancy and this is if you want to challenge that action, you challenge it on the basis of what's in that file in the Zoning Administrator at the time that it took the action.

There is no basis for me -- and I've been precluded by this Board from doing it, as have other people when they've

challenged an action of the Zoning Administrator -- from bringing in any evidence that is obtained after that Zoning Administrator made that decision or took that action. It's simply inappropriate to do that. You can not then rely on a transcript from another hearing that took place afterwards because that doesn't go to show you that the Zoning Administrator acted improperly.

Remember, this is an appeal, an appeal in which the Appellant has the burden of proof, not the Zoning Administrator in defending it, not the intervenor in defending it, but the Appellant has the burden of proof of showing what's in that file that was given to the Zoning Administrator should have led the Zoning Administrator to act differently and there's nothing in that file and I'm sure they will concede that because the whole premise of their appeal is the Zoning Administrator did not know of facts that your Board took into account and heard in July of 1998. Well, if that's the case, then there is no basis for presenting any of that evidence in a challenge to what the Zoning Administrator did in February of 1998.

For that reason, we've also moved to strike those portions of the pre-hearing statement that either reference any testimony or evidence that was deduced after that fact or provided as exhibits to those motions. The plain fact here is, as I finally have myself realized, is this is a civil infraction that's being handled in the guise of an appeal. It should be dealt with.

If they seriously believe that the property is not being used as Mr. Fields says it was going to be used when he obtained that home occupation permit from the Zoning Administrator, it should be

dealt with the way every other prospective use of property is dealt with in this city and that's through the process that goes through the Department of Consumer and Regulatory Affairs and not through avoiding that process and coming here for you to waste your time on an action taken by the Zoning Administrator for which you can ont possibly undermine based on what's in that file.

MS. KING: Would you talk a little further about, you say that you have been hoisted on this very same petard that you're trying to hoist the CHS on. Could you be more specific about the cases where this motion was invoked against you and that you were not permitted to --

MR. NETTLER: Well, I've attached for you -- I provided a reference in my motion, particularly in the Samaritan Inn's case because that was a record that had been extremely well developed. I don't know if Mr. Parsons did sit on that case, but I know that the three of you were not. But where there was a very vigorous challenge being made to a certificate of occupancy that was granted for a -- I don't know if it was a boarding house but our challenge was that it was in reality a CDRF or a tenement house.

And there had actually been a challenge made to that permit that had been heard through Civil Infractions in which the Civil Infractions Branch had set aside the appeal because it, as well, said that all it could rely upon was what was in the evidence that was before the Zoning Administrator when the Zoning Administrator considered that case. There was an appeal made of that Civil Infractions Branch to this Board which was dismissed on jurisdictional

grounds.

A separate appeal was filed to this Board based on what was actually in the record before the Zoning Administrator and before the -- actually, at that time the Administrator of the Building and Land Regulation Administrator, Mr. Cross, as well, challenging it and it was made clear and the advice that was given to this Board in what turned out to be some very lengthy proceedings on that case, that no one was to testify about -- was to provide any evidence about anything that came into their possession after the time the Zoning Administrator had made her decision to grant that certificate of occupancy, and we all abided by that.

Actually, the city was sued over this by the Samaritan Inns for the action it had taken previously for not doing that, for not complying with the direction that was given by the corporation counsel's office. The city has had to pay substantial damages for doing that. The court ultimately precluded, in a similar case, precluded this Board from issuing a decision in a case that was Western Presbyterian Church which had a similar certificate of occupancy issue, from even issuing this decision where the city again had to pay damages for trying to take action that went beyond what was specifically in the Zoning Administrator's file.

So there's sufficient precedent for this having been done in the past, for the corporation counsel having advised you that that's the limited nature of your role, and for this Board agreeing that that is exactly what it is required to do.

MS. KING: And if we dismiss, the Capital Hill

Restoration or Historical or whatever -- the Capital Restoration Society still has the option of going to DCRA, asking them to investigate if in fact he is complying with permits that he has and, if he's not, that that is a recourse for them. Is that correct? What you're saying is that that's the full recourse, in your opinion.

MR. NETTLER: That's correct. I think the -- it's not the sole recourse. It is the consequence -- it is the -- they could have filed an appeal in April of the Zoning Administrator's decision. The result would not be the same because all you would be able to do is review the Zoning Administrator's decision in the context of what was before her in February of 1998.

But I think the corporation counsel's memorandum actually provides some guidance for the Zoning Administrator if they were to go back to the DCRA and request to review, provide some guidance for analyzing whether Mr. Fields is in fact using this as his principal residence or not. I do take issue with one aspect of that memorandum which relies on Black's Law Dictionary since both your regulations and the court has recognized that the only things that you're entitled to look at when defining something is either if it's defined in your regulations or Webster's and has actually in one case specifically said you can't use Black's Law Dictionary to do that.

But the point is that there is guidance established. There's conduct that has to be reviewed and it's not the conduct that was prospective at the time that the Zoning Administrator issued her -- that the Zoning Administrator approved of the home occupation permit.

MS. KING: I don't know if you want to get into this. Excuse me. Do you mind if I continue this line?

MS. REID: Well, we don't want to get into the case. We just basically want to try to hear any salient points that you have in regards to the dismissal and one of the issues that you just raised, Mr. Nettler, with regard to Black's Law Dictionary, are you saying that the Board has been instructed not to use Black's and to only refer to Webster's or are you saying that corp counsel can not refer to Black's Law Dictionary?

MR. NETTLER: Corp counsel can refer to whatever it wants to but in terms of the --

MS. REID: If corp counsel then in proffering to us their opinion uses Black's Law Dictionary, that's okay. Is that correct?

MR. NETTLER: To the extent that we're asking you to look at Black's Law Dictionary, no. To the extent that they want to do so for purposes of whatever explanation, that may be appropriate. But that's ultimately, in our view, irrelevant to what we're asking you to do here which is to essentially agree with us that if somebody wants to look at the conduct of the occupant of this and owner of this property and do so in the context of the corporation counsel's memorandum, that they do so in the proper way and that's through DCRA looking at that not through this Board handling an appeal that's not going to get you --

MS. REID: Okay. Okay. You already said that. So let's let Mr. Schauer give his rebuttal, I guess, to your request for the dismissal so we can kind of move on through this, please.

MR. SCHAUER: Madam Chairperson, my name is Lyle Schauer. I reside at 1107 Independence Avenue, S.E. I'm the Zoning Chair of the Capital Hill Restoration Society and authorized to represent the Society in this matter.

I found this kind of an extraordinary presentation because I have the motion to dismiss in front of me and it's a motion to dismiss as untimely. I've heard nothing about or very little about untimeliness here. What we're mainly concerned about, I gather, are the other two motions that limit the amount of evidence that we can bring in. Now, we are very desirous of bringing in evidence from the July 22nd hearing on BZA 16 --

MS. ROSE: Three seven zero.

MR. SCHAUER: One six three seven zero because that would represent the first time that we knew that there were impediments to Mr. Fields' home occupation license. Those impediments existed at the time the original license was granted to him.

We feel that we acted as quickly as we could in bringing that matter to the attention of the Board. I guess the trouble I'm having here is that we're really dealing with a case in main here instead of dealing with motions, and I think this is a matter of considerable concern because the problem that was created was that these very questions were raised at the July 22nd hearing but were not addressed by this Board because you didn't have before you the testimony of the Zoning Administrator.

So you deferred in effect to accepted the fact that

since the Zoning Administrator had made a determination in February to issue a license, home occupation permit, that therefore she must consider all of these matters. Mr. Nettler said, in fact, exactly that in testimony at that hearing.

We do not believe the Zoning Administrator knew those things. Not only that, but the applicant was required to bring them to her attention. When I go down to the Zoning Administrator's office and pick up a packet of application form and instruction for application for a home occupation permit, one of the instructions in that packet tells me, Read the attached regulations and, if you have any questions about the application for your case, go to the Zoning Desk on the second floor and pose them. And we believe that that did not happen.

And if so, the Zoning Administrator was in ignorance of the facts that we believe would have caused her to deny the application in February. She was not in receipt of those facts as a result of a failure of the applicant to bring those matters to her attention as he was directed.

Now, those facts became known to us only on the July 22nd hearing and they're facts that deal with things like where does the applicant pay his income tax? Where does he have his car registered? Where does he vote? Those were the matters that were brought forth. Those are matters that only the applicant knows. It doesn't appear on the application form, but there is an instruction. If you have a question of whether or not your residence is your principal residence, please pose them to the Zoning Administrator. Let the

Zoning Administrator make a decision one way or another whether you should or should not have the permit. But make the facts known to them.

Therefore, I don't think it is proper to grant these motions to strike these facts. I think there might be an argument to that effect if there was no requirement of the applicant to have made these facts known to the Zoning Administrator. But there is such a requirement and, therefore, by not doing so, he left himself open to an appeal. So we don't think you should strike these facts.

We think that they are indeed crucial, and we simply believe that the Zoning Administrator erred and erred probably. Now I don't know exactly what the Zoning Administrator will say if his representative ever gets here, but I don't think the Zoning Administrator knew those facts. Certainly we didn't know them. So we had no actual knowledge of the situation until that July 22nd hearing.

Now, while we're on these preliminary matters, Madam Chair --

MS. KING: Can we deal with this first one before you raise another one? Don't you think? Can I ask a question?

MS. REID: Sure.

MS. KING: Have you instituted any kind of civil infractions action through the Department of Consumer and Regulatory Affairs?

MR. SCHAUER: We sent a letter August 19th to the Zoning Administrator calling attention to the facts that were raised in

the July 22nd hearing. I talked to Gladys Hicks after that. She had received that letter and read it. She said she was uncomfortable with moving without direction from this Board and, since the only action she saw in this case from this Board was your decision at the public meeting on September 2nd not to go back to the February permit.

You said, in effect, Look, the Zoning Administrator, when she made this decision in February to grant the permit for one non-resident employee must have considered all of these facts and, indeed, she should have because the applicant should have placed them in front of her. But that didn't happen.

MS. KING: Have you filed this correspondence with DCRA as part of your -- I haven't seen it. I mean you have, in effect, been told that DCRA will not pursue a civil infraction action and you have written testimony to that effect?

MR. SCHAUER: Well, I've included in my testimony --

MS. KING: No. I mean you say that you had an exchange of correspondence with Gladys Hicks.

MR. SCHAUER: No, not an exchange of correspondence. I sent the letter to her.

MS. KING: And have you filed a copy of that with us?

MR. SCHAUER: I don't know. I should have.

MS. KING: And you have nothing in writing in response to that?

MR. SCHAUER: No, I did not. I did have a conversation with her, but that was the extent of it.

MS. KING: But it seems to me to be very germane in the case of the issue that's before us now which is the question of whether this is properly before the BZA or whether it is a Civil Infractions question. In other words, if he was granted -- on the basis of the information that was gathered by DCRA in order to give that initial C of O and permit to have a home occupation. And it's clear that the application does not ask the questions about where you vote, where you pay your taxes, where you have your driver's license and so forth. That's not the question. Is it your principal residence? And if he answers yes to that. But you know.

So the whole issue that we considered was that he had a C of O for a home occupation, that it was apparently properly granted by DCRA. And what Mr. Nettler is saying is that your recourse, therefore, is to DCRA. Now, you say that you wrote to DCRA.

MR. SCHAUER: Correct.

MS. KING: And said this was not properly done and what are you going to do about it, and then you have no -- all we have is that you said that Gladys said she didn't want to deal with it. But I mean it seems to me that you have not really pursued a Civil Infractions complaint.

MR. SCHAUER: Well, the second reason, Ms. King, that I did not is at the September 2nd hearing, staff advised this Board that the proper course of action was to appeal the original home occupation permit and, as far as I could see, this Board accepted that advice from staff, and that is exactly what I did. I filed within 10 days

my appeal.

MS. REID: Okay.

MR. NETTLER: Could I respond or did you want to have other questions?

MS. REID: I wanted to hear from the other Board members, Mr. Nettler. Then I'll give you an opportunity to respond.

MR. GILREATH: I don't see how that we could consider this matter until we have word from Ms. Hicks because I wasn't here at the time but from the logic and so forth, that we acted in good faith on the certificate of occupancy and, until it's determined that she erred in issuing this, how are we in a position to take any kind of action? We have to assume that she made an error and, therefore, we have to answer this error and that we consider it. We need a determination made that there is an error. I don't know whether an error was made or not.

MS. REID: That's what we're being asked to do right now.

MR. PARSONS: Certainly Mr. Nettler is correct, in my view, regarding the material that came before us. it should not be a part of this appeal at all. That is his motion -- I don't know which one it is, but the one that says remove from the record all of the material that we learned in July based on I don't know how many hours of the Samaritan Inns which was the same. How much did she know, when she knew, that kind of thing. Obviously the material that we learned in July is not appropriate to her decision in February and I would urge that we grant that motion to remove that from this record.

And I agree with Mr. Gilreath that unless we at least have an opportunity to review the record of the Zoning Administrator which isn't here and is similarly thin enough that we could do it in about five minutes, that kind of information I think would be helpful since we based our decision on the fact that she -- was there.

I am troubled, however, by the -- not troubled but informed by the corporation counsel's memorandum and would hope at another time that we could revisit our decision frankly based on the corporation counsel's memo. But that's a separate matter. Did you hear me? I mean I know you were--

MS. KING: I'm sorry.

MR. PARSONS: I was saying based on the corporation counsel's memo, I would like at another time to revisit our decision but that's another matter. I just want to let you know that I --

MS. KING: Yes. I have some questions about that other matter as it relates to the court case that arose out of the Georgetown University students voting in the election two years ago. But that's another matter, too, because they were -- but anyway --

MR. PARSONS: That certainly is another matter.

MS. KING: but I mean it relates to this whole question of who has the rights of residency. I mean it is a very complicated issue.

MR. PARSONS: So I would urge that we grant Mr. Nettler's motion to remove from the record that material that came before us.

MS. KING: Second.

MR. PARSONS: And I've got a second so I'll shut up.

MS. KING: What about the other -- in regard to this missile?

MR. PARSONS: I'm not --

MS. REID: Okay. Let's just go ahead and vote on that. All in favor.

(Ayes)

MS. REID: Abstain.

MR. GILREATH: If Ms. Hicks' is out, how are they going to determine -- will they have access to information, go back and review and say did they make a mistake. How are they going to ascertain that or do we make that decision?

MS. REID: Mr. Parsons just indicated that we need to have some type of testimony that actually was the basis of the decision being made. We don't have that, so we can't really -- I just go by oral testimony as to what in fact happened. So we need to ascertain whether or not in fact the information was put forth or wasn't put forth or whatever happened in that particular hearing.

MR. GILREATH: Ms. Hicks' office, they're going to go back and review this.

MS. REID: Mr. Nunley is here now.

MR. GILREATH: What kind of information will that have to decide?

MR. PARSONS: They're on record.

MR. GILREATH: Okay. So they can go back and review it and get any information they want then. We're just saying

we're not going back. Is that right?

MR. PARSONS: No. They're going to tell us what's in their files and their decision making of last February. Not what's in our file of August or July or any other time.

MR. GILREATH: Will we end up then making a determination whether or not they made a mistake or not? Are they going to have a chance to go back and review this? Say their information isn't complete and, therefore, it was not a complete submission and they erred and they're going to make a different decision.

MR. PARSONS: Oh, no. It's just whether they erred on the decision they made. Not whether they've learned other information later. That's Mr. Nettler's point. That's a different forum. If the applicant in February misrepresented in some way what he was going to use the property for and the Zoning Administrator wasn't aware of that, it's an honor system, if you will. I mean write down on the application what you're going to do and, if somebody has violated that, it's not a matter for this panel at all.

MR. GILREATH: Okay. If we make a determination there's been a violation of what they were seeking, does this come back to us and we say the exception we granted, we can rescind that then? I think we granted the right that he could put his office there and use it as a --

MS. KING: We granted him permission to have more than one --

MR. GILREATH: Three instead of one.

MS. KING: Three instead of one employees.

MR. GILREATH: If they determined that he's not fulfilling what or he was not --

MS. KING: Then they revoke his original C of O and it does him no good to have two additional employees because he doesn't have permit to have the home occupation.

MR. GILREATH: Well, are we through with it then if that determination is made? If he is in violation -- irrelevant and moot.

MS. REID: I think that if in fact it is determined that there was an error made and it was predicated upon a misrepresentation of some sort, then the subsequent ruling that we made becomes moot because it was done based on unsubstantiated means.

MS. KING: If DCRA finds that he misrepresented facts, then they, I presume, void the C of O and, therefore, it does him no good to have permission to have two extra employees when he can't have a home occupation.

MS. REID: Okay. Let's go ahead and move on the motion to the Board by Mr. Nettler to dismiss the case. I would move that we not dismiss the case.

MR. NETTLER: Can I just --

MS. REID: Oh, I'm sorry.

MR. NETTLER: Because I think, first of all, Mr. Schauer is wrong in saying that I moved from the motion to dismiss to the motion to strike because of part and parcel of the motion to dismiss is you have to establish whether the time frame in which an

appeal was filed was reasonable, not on the basis -- as I think you've just actually acknowledged in terms of my motion to strike and motion in limine, not on the motion of what information was gathered after this decision was made but when you became aware of the decision.

I ask you to make particular reference to Woodley Park Community Association case. That was a challenge to a certificate of occupancy that was issued to the Sheraton Hotel where the community challenged the certificate of occupancy based on a variety of facts that they discovered long after the certificate of occupancy had been issued.

In fact, I was in corporation counsel's office and represented the Board on this case on appeal, and the court held that you can not -- that the Board should have dismissed that appeal because it could not, the community could not have relied on these facts in waiting to file the appeal. You had to use the date upon which the action was taken and they became aware of that action as a benchmark for deciding whether the appeal that was ultimately filed was reasonable.

And here, the action was taken in February. They were aware of the action in April. That's your inquiry. The question is whether having waited until September is appropriate without regard to what took place after April. And our position is that under the established precedent by the Court of Appeals, both in Godo and Woodley Park and other cases, that waiting more than two months or waiting more than even a month more was unreasonable and that it's simply not permissible for them to take that time to wait to challenge a

decision.

And the sole defense to waiting for that is because they discovered things in July which they say purport to support their position as a basis for having waited that period of time and, in fact, what I'm hearing today is it wasn't even based on what they heard in July. It was based on something that was said at the September hearing meeting of the Board with regard to that special exception. Well, that's simply not permitted under the interpretation given the zoning regulation by the Court of Appeals. This appeal is untimely under the court's decision.

I understood Mr. Parsons' questions about whether we should reconsider the other matter and you may very well decide to do that. I'm sure that the Capital Restoration Society will ask you to do so and I look forward to the opportunity to have the DCRA review Mr. Fields' occupancy of this premises because I think if we get to the merits in the appropriate forum that we will find that our position, consistent with the corporation counsel's opinion, is correct and that he is using this as his principal residence and the facts will bear that out.

But that's not what we're here for today. We're here today to decide whether the Zoning Administrator's decision was wrong based on the record that was made and, first of all, whether the appeal is timely. Our position is it simply is not timely. The rationale being given to you is a rationale that's been rejected time and time again by the courts and there's no other rationale that's being given to you that has ever been accepted for waiting the time period that they

waited to do something after they learned of the home occupation permit that was issued.

MR. SCHAUER: Madam Chair, can I respond to that? I'd just like to quote you a paragraph from the Woodley Park case. It says, "Thus, by October 6, 1978, the date the full building permit was issued the task force, that full actual notice of the aspects of the building project relating to height setback and use. Nevertheless, one year elapsed between the issuance of the building permit and the filing of the appeal on October 12, 1979. During that time, the construction work on the hotel had commenced and was substantially completed."

The words that I think are really key here are "full actual notice." The task force had been working with the Sheraton Corporation for 10 months before the building permit was issued. They knew the plans, they knew the elevations, they had discussed them numerous times. So when the building permit was issued, they had full actual knowledge. Even if they didn't, I would present to you on a building permit one can go down to the Permit Office and look up the plans. It's as simple as that.

In this case, there was a question posed in the regulations that said, Is this your principal residence, Mr. Applicant? And if you have any question about whether or not this is your principal residence, that is whether this applies to you, whether you're qualified for a home occupation permit, you should go down and pose the question to the Zoning Administrator. That was not done. It certainly doesn't appear in the record.

So when we looked in the record, what we found was the application for the building permit -- I'm sorry -- for the home occupation permit. It says nothing, there isn't even a question in there, Ms. King, about whether or not it's a principal residence. There are a number of questions, but they don't really relate to the principal residence issue. That is, nevertheless, threshold issue that an applicant must cross because if they can not, if they can not show that the premise is their principal residence, they can't have a home occupation permit of any size, whether it be for one or three or whatever. They can't have any home occupation permit.

We did not have the knowledge that there were impediments. When I first heard about this case, the question was who is Mr. Fields because we didn't know. It wasn't until much later that we discovered that there might be questions as to whether it was the principal residence. On June 9th, we had a Zoning Committee meeting at which a representative from Mr. Nettler's firm appeared and we posed some of the questions and we did not get very many answers.

When I wrote the report to this Board about our committee meeting, I indicated that we had not received satisfactory answers on the principal residence issue and, therefore, we could not either oppose them nor were we satisfied with them. We simply didn't get any information. We knew only that Mr. Fields' family was in Texas. We knew nothing else. We knew nothing about his plans, and there was no way we could find out because all the facts were in the particular control of Mr. Fields who did not, as far as we can tell,

inform the Zoning Administrator. Certainly there was nothing in the record that showed that he had informed the Zoning Administrator.

Therefore, we only learned about this at the July 22nd hearing. It was our first opportunity to see Mr. Fields in person and cross examine him. What were we to do? So I say that on the timeliness issue, the clock began to run on July 22nd.

MS. REID: Okay.

MR. SCHAUER: Not in April. July 22nd was the date it began to run.

MS. REID: Okay, Mr. Schauer.

MR. SCHAUER: Thank you.

MS. REID: Thank you very much.

Let us move to addressing this particular issue regarding the request to dismiss based on the issue of timeliness. Correct, Mr. Nettler?

MR. NETTLER: Yes.

MS. REID: I would move that we not dismiss the case. We'll move forward with the hearing.

MR. PARSONS: Is that a motion?

MS. REID: Yes.

MR. PARSONS: Second.

MS. REID: All in favor.

(Ayes)

MS. REID: Opposed.

MS. KING: Aye. No, nay, whatever.

MS. REID: Nay?

MS. KING: Yes.

MS. ROSE: So we have three to one.

MS. REID: Yes.

MS. KING: Mr. Nunley is here. At what point is it appropriate for us to look at the record?

MS. REID: Well, this is preliminary matter. What we'll do now is have them to go back or actually you can almost stay there and have the case called properly and then we'll proceed with the case.

MS. ROSE: This is Case Number 16404, the appeal of the Capital Hill Restoration Society pursuant to 11 DCMR 3105 from the decision of Gladys Hicks, Acting Zoning Administrator, to issue certificate of occupancy permit #98-0271 for a home occupation in a CAP/R4 district at premises 434 New Jersey Avenue, S.E., Square 694, Lot 811.

Would all persons planning to testify in this application please rise and take the oath.

(Whereupon, the witnesses were sworn.)

MS. ROSE: You may be seated.

Do we want to deal with the motion for intervenor status?

MS. REID: From whom? From Mr. Fields?

MR. NETTLER: Yes.

MS. REID: You're representing him. Okay. I have no problem with having Mr. Fields to be granted the intervenor status. Is there objection? He's being represented by Mr. Nettler today.

MS. KING: Madam Chair, I would like to -- before we begin to hear this case, I would like a legal interpretation of Mr. Carson's motion which I seconded and we've voted on with regard to what is permitted to be entered into the record in hearing this case. Nothing that came out of the July or September hearings in this case is permitted to be considered. Is that correct?

MS. ROSE: To be considered in determining whether an error was made by the Zoning Administrator in February.

MS. KING: Just simply the record is the question of what was considered by the Zoning Administrator.

MS. REID: That's exactly right, so we'll be looking at what in fact was the basis for making the determination by the Zoning Administrator and then we'll see if in fact it was done properly or the information submitted was in order and proper. All right. Statement and witnesses of the Appellant go first.

MR. SCHAUER: Madam Chairperson, members of the Board, Section 203.2, as I mentioned in my remarks before, sets forth the threshold that the dwelling for which a home occupation permit is sought is the principal residence of the practitioner. Now, principal residence is not defined in the regulations so far as I've been able to find out nor am I aware of any other definitions of it except one from the forbidden Black's Law Dictionary which I will not put before you. It's not defined in the regulations.

But I think when you look at that it says "the principal residence." It doesn't say "the residence." It says "the principal residence." But what does that mean? Obviously, that adjective has

some considerable meaning or it wouldn't have been put in. It's not any residence, it's the principal residence. And I think if you look at the previous Section 203.1 which is the purpose section for the home occupation section, it talks about the intent and it says "The intent is to protect residential areas from the adverse effect of activities associated with home occupation while permitting residents of the community the opportunity to use the home as a work place and source of livelihood under specific regulatory conditions."

And the word I think that are tremendously important there, the word is the community. This is not to provide a convenient place to hang one's hat. The building, the residence must be occupied by someone who can conceivably be a member of the community.

Now, I'd like to talk just a moment about our Capital Hill community because I think it is a very unique community. It is a part of the city, but it also is a neighborhood which is really a village unto itself, as we like to think of it. It is a place where residents walk down the street. They not only know each other, they know the names of their neighbor's dogs. We have families on Capital Hill whose children go to the public cluster school or to the Capital Hill Day School or to St. Peter's. They're part of that community.

So what we're looking for here is something more than just a residence where somebody can hang his hat while he conducts his business. We're looking here -- and I think what this regulation has in mind -- we're looking here for somebody who'll contribute to the vitality of the community and I pose to you that somebody whose allegiance is divided between Capital Hill and some

place 600 miles away is not going to be a fully contributing member. He's not going to be able to go to many of our cultural events. When we have an art show opening in one of our galleries --

MS. KING: Excuse me, Madam Chair. I think this is irrelevant to whether or not this is his principal residence. I have lived over 20 years in my present principal residence. I have none other. I don't know the names of the dogs or the children in my neighborhood nor do I socialize very much with the people who live around me. I think it is irrelevant to a description of what is legally a principal residence.

MR. PARSONS: I concur.

MR. SCHAUER: We believe that Section 203 contains many prohibitions. These are the performance standards that are set forth. Contains many restrictions. This means to us that this regulation should be strictly applied by the Zoning Administrator and by this Board and so something like the words principal residence should be very strictly interpreted. They should not be something that anyone can claim a residence and come within the regulation. Not the principal residence. Principal residence, in our feeling, is not the place where one spends even most of his time. It's where he is located intellectually, where he contributes to the political life of the community.

This appeal is made in the alternative and the question is what the Zoning Administrator knew when the original permit was granted in February. If the Zoning Administrator knew the facts about Mr. Fields and his situation, his circumstances --

MR. NETTLER: Objection. I think that's inconsistent with the order that you set. It's not a question of if you knew something. It's simply a question of what material the Zoning Administrator acted upon, not what he supposedly should have known from something else.

MS. KING: Would it be appropriate at this time, Madam Chair, to see the material from the Zoning Administrator?

MS. REID: I'm not going to rule on that. Mr. Nettler --

MR. NETTLER: I don't know if Mr. Schauer is testifying or if he's offering an opening statement, but if it's testimony, I'm objecting to it because it's not appropriate testimony.

MS. REID: Is this your opening statement or testimony?

MR. SCHAUER: Well, I'm just outlining the appeal that we set up. I'm merely quoting from the appeal itself.

MS. REID: And your objection is? Repeat it, please.

MR. NETTLER: My objection was that the characterization of what the Board is supposed to be doing in reviewing the Zoning Administrator's action which is if he had known of some other facts he would have acted differently is not what's before this Board. It's what the Zoning Administrator did based on the facts that were before the Zoning Administrator.

MS. REID: Sustained.

MR. SCHAUER: I would agree with that except that I think the applicant was under a duty to reveal facts to the Zoning

Administrator.

MS. REID: Mr. Schauer, we will then be able to ascertain that when the Zoning Administrator has the opportunity to speak to us, so that will be made clear.

MR. SCHAUER: I think we should simply proceed to that.

MR. NETTLER: Well, is Mr. Schauer offering any testimony in support of his appeal or his first witness the Zoning Administrator?

MS. REID: What's your question?

MR. NETTLER: is the Capital Hill Restoration Society offering any witnesses in support of their appeal or are they simply calling the Zoning Administrator as their witness?

MS. REID: I did not see him or hear him call any witnesses. So now he's given his particular presentation. So we move now to the Zoning Administrator.

MR. SCHAUER: I think between the preliminary motions and the short statement I made, this will finish my case.

MS. REID: Okay.

MR. SCHAUER: I just did want to point out that the appeal was in the alternative and so, depending on what the Zoning Administrator says, we will pursue one of those two alternatives.

MS. KING: I'm sorry. Would you explain what you meant by that? I don't understand.

MR. SCHAUER: The appeal said that the facts that we are now familiar with lead to one of two possibilities: that the

Acting Zoning Administrator knew of these facts when she issued the permit or that the Acting Zoning Administrator was not apprised of the facts at the time. And in the former, we believe the Zoning Administrator erred. In the latter case, it was simply a matter of mistake in that the information that should have been provided was not.

MR. PARSONS: So what's the alternative?

MS. KING: Yes, what's the alternative?

MR. PARSONS: The alternative doesn't lie before us. It's an alternative for you to go seek relief somewhere else. Is that what you mean?

MR. SCHAUER: Well, in the first case, if the information was in front of the Zoning Administrator, then this is a matter for this Board because the interpretation of the term principal residence is at issue. If it's not, then the case should simply be remanded to the Zoning Administrator for further consideration in view of the facts regarding Mr. Fields' circumstances.

MS. REID: Mr. Nunley.

MR. NUNLEY: Thank you, Madam Chairperson, and good morning, members of the Board and all the participants.

MS. KING: Mr. Nunley, would you identify yourself by our title and give us your home address, please.

MR. NUNLEY: Yes, of course. My name is Edgar G. Nunley. I am Chief of the Zoning Review Branch within the Zoning Division of the Department of Consumer and Regulatory Affairs. I currently reside at 4707 Brinkley Road in Temple Hills, Maryland.

I first want to apologize that Ms. Hicks could not be here nor the current Acting Zoning Administrator. I apologize that you got the third party instead of the first party. I can also say that I have very little knowledge of the case other than what I read on the way over here. I do have knowledge of the process for home occupation permits and I do have a copy of the application that was submitted resulting in the issuance of this home occupation permit.

In terms of process, the applicants submits an application, and the gentleman was correct earlier, it doesn't specifically ask is this your principal place of residence. It doesn't define principal place of residence or domicile. However, it does ask certain questions that we use to ascertain whether a person lives there. On the application it says "Owner occupied single family dwelling" as the residence.

The applicant requested home occupation to have a government affairs consulting and strategic planning office. The information that he provided on the application indicated that he intended to operate under the constraints of Section 203. In terms of -- well actually, in terms of all of the restrictions or limitations, if you will, and the application was approved based on the assertions that he made on this form.

MS. REID: Mr. Nunley, may I see that form?

MR. SCHAUER: Madam Chair, I believe I have copies of the application form.

MS. REID: Do you?

MR. SCHAUER: Let me verify this, Mr. Nunley, first if

this is the paper.

MS. KING: Dated 11-21-97.

MR. NUNLEY: Yes.

MR. GILREATH: Mr. Nunley, this application here neither refutes nor confirms that Ms. Hicks did or did not ask this gentleman, Mr. Fields, was going to be the principal owner. In other words, this referred to the conversation with --

MS. REID: The principal residence.

MR. GILREATH: The principal residence. When this was filled out, she could have asked him that and he could affirm it. In other words, we just don't know. There's no way of confirming whether this information was actually conveyed to Mr. Fields.

MR. NUNLEY: That's correct.

MS. REID: Mr. Nunley, there is nothing on this application that I see that actually specifically asks -- I don't see it -- is this going to be your principal residence?

MR. NUNLEY: The closest that we get to that question and the response to that question is in Item #4 where it asks "Applicant is owner, tenant, other premises indicated in question, Circle one below." And the gentleman has circled "owner occupied single family dwelling."

MS. REID: Okay. Then it appears that the application itself is deficient in actually being able to determine whether or not the person who's applying for the home occupancy permit is actually going to use it as his principal residence. Is that correct?

MR. NUNLEY: I'd say that's correct. Yes.

MS. REID: So then the other discussion in regard to the criteria for ascertaining principal residence becomes moot here because there's nothing here that requires that they even represent that it is their principal residence, even though the zoning regulations stipulate such.

Mr. Parsons, what has been your experience in this situation? The regulations clearly stipulate that as a criterion for the granting of the home occupancy permit that it be the applicant's principal residence. Then they come to apply for it and the application itself is silent as to making a determination as to whether or not -- they don't even address it.

MR. PARSONS: I have no particular experience with this, this issue.

I'd like to ask Mr. Nunley a question. Let's go to number four. Number four has two questions within it. First, you have to circle on the first line owner, tenant or other. He apparently did not circle that or whoever filled this out form. Are we all looking at the same piece of paper?

MS. KING: No, he did. He circled A.

MR. PARSONS: No. Not on the first line.

MS. KING: Yes, but it says circle one below.

MR. PARSONS: He was other. In this circumstance, he was other. He was not the owner, he was not a tenant. He had an option to purchase, as I understand it. And that should be obvious by the fact that he filled in Fields, Jack at #1 and in #5 he filled out Gerald

Cassidy as the owner. So there may have been some confusion here but it appears as though the question should have been asked, Mr. Fields, who are you?

MS. REID: There's no provision for a contract holder.

MR. PARSONS: No. There is a provision for other and he should have identified what he was. Upon reflection, Mr. Nunley, would you agree that a question should have been asked as to who he was?

MR. NUNLEY: No, since he didn't circle line one on #4. Yes.

MR. PARSONS: So if he circled other, what would you have suspected he should have inserted under -- I guess you would write in the margin other.

MR. NUNLEY: If one of the four was not appropriate, then yes, we would write in the margin.

MR. PARSONS: One of the three.

MR. NUNLEY: It would be a reasonable thing.

MR. PARSONS: One of the three. Right? On the first line.

MR. NUNLEY: Well, when I said the other four, I meant the A, B, C or D, which is the second part of the question.

MR. PARSONS: Well, what would he have written under other? Contract purchaser? If you don't know, I mean, but is that an appropriate term for somebody who is engaged in the process of purchasing a piece of property?

MR. NUNLEY: It would be appropriate.

MR. PARSONS: So if he had circled that other and had written that, contract purchaser or potential purchaser, what then he would have done with question #2? That is, in this #4. "Premises indicated in #3. Circle one below."

MR. NUNLEY: What we would expect is that he would give his current relationship with the property. Obviously not owner.

MR. PARSONS: So he should have left that blank because he was none of A, B, C or D.

MR. NUNLEY: That's right. It would have taken a narrative.

MR. PARSONS: If he had done that, wouldn't that have engaged in a different line of questioning from your staff or yourself?

MR. NUNLEY: Yes.

MR. PARSONS: As to where this was going.

MR. NUNLEY: Yes.

MS. KING: Excuse me for intervening, Mr. Parsons. Do you have the entire file or just the application?

MR. NUNLEY: Just the application.

MS. KING: You don't have a covering letter that might have answered the questions that Mr. Parsons is now putting to you?

MR. NUNLEY: No, I'm sorry. I do not.

MS. KING: So we don't know if there was additional information.

MS. REID: Mr. Nunley, at the time that the application was submitted, is there an oral interview where you have an opportunity to actually question the applicant?

MR. NUNLEY: Only if there is something in the application that would generate the review person requesting that oral interview.

MS. REID: Not routinely.

MR. NUNLEY: Not generically. No.

MS. REID: So when this was -- when the application was submitted and then it was analyzed by the Zoning Administrator, it was just done on its face.

MR. NUNLEY: That's the normal process. Yes.

MS. REID: If there was an oral interview, would it be so indicated on this application?

MR. NUNLEY: No.

MS. REID: You would have no knowledge of it nor is it recorded. Right?

MR. NUNLEY: Correct, unless during the oral interview the Zoning Administrator determines to deny the application. Then the reason for denial will be stated in response to the applicant.

MS. REID: So even if Ms. Hicks -- if there was a red flag for Ms. Hicks in that the first question in #4 had not been answered, then she would not routinely request that that be answered saying that there was an omission, be it deliberate or not. But obviously it's incomplete.

MR. NUNLEY: Yes, and I can't speak to what took

place on this particular application as regards item 4.

MS. REID: Okay. Well, when the applications are reviewed, do you review applications?

MR. NUNLEY: No.

MS. REID: All right. Do you know what the person who's reviewing the application is looking for particularly?

MR. NUNLEY: The first thing that they're looking for is completeness, that all the questions are answered. Secondly, they look to make sure that the responses indicate compliance with Section 203.

MS. REID: And if it is not complete, if it's incomplete, then what happens?

MR. NUNLEY: What should happen is that they contact the applicant and have them complete the application correctly. In other words, put in the missing information.

MS. KING: But the fact is that you don't know whether there was a covering letter submitted with the application that explained the relationship of Mr. Fields to the owner, Mr. Cassidy, or whether or not there was a followup interview or any correspondence or anything of that nature. Is that correct?

MR. NUNLEY: That's correct.

MS. REID: Mr. Nettler, do you have any knowledge?

MR. NETTLER: I would cross examine him. This isn't my case. This is --

MS. REID: No. My --

MR. PARSONS: I'd like to continue where I was

interrupted. Could I do that?

MS. REID: Go ahead.

MR. PARSONS: Mr. Nunley, not Mr. Nutley. If he had circled other and explained he was contract purchaser, he then should not have been checking any of the A, B, C, D below. Is that correct?

MR. NUNLEY: It's difficult to answer. He could have been renting there and also been a contract purchaser.

MR. PARSONS: All right. But if he had checked other, wouldn't it have stimulated a question as to what his residence was, what his address was?

MR. NUNLEY: Yes, it would seem. I would have asked.

MR. PARSONS: And his address is apparently New Jersey Avenue. The address of the property in question is 13th Street.

MR. NUNLEY: That's correct.

MS. REID: No, no.

MR. NUNLEY: No, no. New Jersey Avenue is his address.

MR. PARSONS: I'm sorry. I'm getting confused. So there is no place on this form then for Mr. Fields to disclose his address, is there?

MR. NUNLEY: Line #3.

MS. KING: But where does he put the address of the premises for which he's requesting the permit?

MR. NUNLEY: Line #3. They are required to be the same.

MR. PARSONS: But he was not living at that address or certainly was not the owner of that address as he's represented here in #4 and is conflicted in #5. From this, it appears to me very quickly -- and it may have been an error -- but it is a misrepresentation of what the situation was.

MS. REID: Should he have put the Texas address?

MR. NETTLER: I would object.

MR. PARSONS: I don't know where he lives.

MS. REID: But that's not where he was living at the time.

MR. NETTLER: I would object to the characterization without you knowing whether he was living there at that time.

MR. PARSONS: All right. Fine.

MS. REID: Well, that's what we're trying to --

MS. KING: But this says address and Mr. Nunley has said that in fact that is the address for which the application is made. It doesn't say home address.

MR. PARSONS: Correct. You presume on this form that the owner lives there.

MS. KING: It says "home telephone" and he puts N/A because he apparently doesn't at that time have a home telephone. What it appears to me that we're critiquing is the appropriateness of the DCRA form.

MR. PARSONS: No. I'm critiquing the fact that the

staff didn't do an adequate job.

MS. KING: Or that there is missing from what is before us some kind of covering letter that may have explained what the relationship was between Mr. Fields and Mr. Cassidy and so forth. I mean all we have before us is that form.

MR. PARSONS: But Mr. Nunley says nothing else exists in the record.

MS. KING: No. He says that he has nothing. He has nothing.

MR. NUNLEY: That's correct. I'm aware Ms. Hicks has additional information on the case. Again, I apologize but I learned of this case five minutes before I caught the subway down here. So I do apologize.

MS. REID: Even if there was a cover letter, still on the form itself it should be indicated what is true and correct. Now, what I find baffling is if, in fact, Mr. Fields was the contract holder at the time and neither owned nor lived at that address, there is no provision in the application to so indicate, so it gets to be really confusing. It does not even specify the address in question. We're not even clear, looking at this form, what address is the address that they're applying for because if Mr. Fields had another address in Washington, then he could have put that there because he was the contract holder. I think the place was in renovation or something like that so, therefore, it's just very ambiguous as to what in fact --

MR. PARSONS: I want to ask Mr. Nunley another question. Let's presume a hypothetical here so Mr. Nettler won't

object again, that a conversation may have occurred -- it could be any applicant, it doesn't even have to be this one -- where the applicant says, Well, I don't live here. I'm trying to purchase it. What does your staff do in that circumstance? He says, I can't purchase it unless I know I can use it for this purpose. I don't want to purchase it if I can't use it for this purpose. In your experience, what is negotiated or discussed in that circumstance where the owner is not really the applicant here or the intended user? How do you sort that out?

MR. NUNLEY: In response to that hypothetical, I would not issue the home occupation permit. Again, as we said earlier, the gentleman could have been renting and also been a contract purchaser. Now, that should come out in the interview. I know that were I do to it and hopefully and any of my staff were to do it, then the interview would go into that level of detail so that they could make a decision.

If the person is speculating, in other words, they are going to use our action as a basis for making a decision whether to purchase, then we would give them verbal. We would not give them an official document allowing them to operate from a home when we have information that they do not reside there. I plan to buy or I plan to move does not make it their residence. Once you have moved, come back and see us.

MR. PARSONS: All right then.

MR. SCHAUER: Madam Chair, could I ask Mr. Nunley a question?

MS. REID: Yes. There will be a cross examination

but in the mean time Mr. Parsons now has the floor.

MR. SCHAUER: Thank you.

MR. PARSONS: What would you say then about the circumstance as we see it on the form, even though you learned about it five minutes before you got on the subway?

MR. NUNLEY: I see what appears to be an inconsistency that should have generated some conversation.

MR. PARSONS: Thank you. That's all I was trying to get to.

MS. KING: Excuse me, but you're not aware of whether such a conversation took place.

MR. NUNLEY: I am not.

MR. GILREATH: If Mr. Fields, assuming he lived here, he spends most of his time here, at least a substantial portion of his time here, if there had been another place where he could have said I reside at this place in Washington and I'm interested in purchasing this, there would still have been nothing to indicate, unless he were interviewed, saying is this your principal address? Do you live out of state? So by putting this other address here in Washington still would not have told us that he is legally registered to vote and his driver's license is in Texas. So an interview is the only thing that could bring that out, it seems to me. Whether or not he talked to Ms. Hicks or whether he was ever interviewed or was aware of it, we still do not know whether or not that occurred.

MR. PARSONS: What Mr. Nunley has said, as I grasp it, if Mr. Fields had circled C, other, and had written contract

purchaser in the column or some other term that shows he was not the owner, he would not have received this permit. The further clue here is no home phone number and 2) that he's listed himself as the applicant and the owner as somebody else. So it seems to me there's plenty of evidence here that somebody should have conducted an interview.

MS. KING: And, in fact, such an interview may have taken place.

MR. PARSONS: Correct.

MS. REID: Mr. Parsons, have you finished?

MR. PARSONS: I'm finished. Thank you very much.

MS. REID: Mr. Nunley, so that we can all be on the same page, am I understanding you to say that DCRA does not recognize the status of contract holder in granting a home occupancy permit?

MR. NUNLEY: No, that's not at all what I said. What I said is that if the person does not reside on the premise -- and one of the ways that we determine whether they reside on the premises is through this form. If they give us a narrative that they are contract purchaser, well fine. Do you currently live there and are a contract purchaser or do you live somewhere else and are under contract to purchase this property?

If they respond that they live somewhere else and that they have a contract on this property, then my response to them would be well, when you get there, when you have bought the property or once you reside there, whether you have yet bought it or not, then we

can issue the certificate but not until then.

MS. REID: So are you saying that the contract holder would have to actually be in occupancy at the time that they apply for and receive the permit?

MR. NUNLEY: That's correct.

MS. KING: In this specific case, as I understand it, the house had been vacant for some four or five years. Therefore, presumably there was some fixing up to do before anybody could move in. Certainly some extensive and expensive cleaning and so forth. So that DCRA would not recognize the right of a contract purchaser to get an indication of what might happen before they had expended substantial amounts of money in order to put a house that had been vacant for four or five years into condition to be physically occupied by other than mice and rats.

MR. NUNLEY: The permit -- the information submitted on the permit application could also be -- would also be used as -- or should also be used as evidence as to whether or not the person will reside at the premises.

MS. KING: But you said that they had to be already in residence either as a renter or an owner--

MS. REID: Right.

MS. KING: -- before you could consider giving them a home occupancy permit.

MR. NUNLEY: When -- if they are -- I mean we make decisions daily. If there are additional facts, then those facts play in the decision. What I would do in a case such as that -- again, my

response about the person having to be physically there was in response to the simple question, single information, contract purchaser. I've been in this business a number of years and I know that just because you have a contract doesn't mean that that contract will ever come to fruition to conveyance, and we don't issue an official document on something as speculative as this simple information that I have a contract to purchase this property.

Now, if there is additional information that gives assurance that this person will reside on the premises, then of course that can be taken into consideration. It's a judgment call. Now, I don't know what the permit says. I don't know what the application says, whether it was in the name of Mr. Fields or whether it was in the name of Mr. Cassidy. I don't know what others kinds of assertions Mr. Fields may have made that he would in fact reside on the premises. I personally am skeptical unless I have some very strong evidence that I'm not issuing something to a phantom property or a phantom residence.

MS. KING: But we don't know whether or not there was any evidence, any interview, or any information other than the application.

MR. NUNLEY: Unfortunately, I do not.

MS. REID: When we get to the intervenor's segment, then we can question that.

I'm sorry, Mr. Nettler. Earlier on before we got to Mr. Nunley, I forgot to give you the opportunity to cross examine Mr. Schauer. Did you have any questions?

MR. NETTLER: I wasn't sure whether that was an opening statement or testimony. If it was an opening statement, then it's not evidence. If it's his testimony, I'll take it --

MS. REID: Well, he kind of blended it all together so if you did, I'll now give you the opportunity to do so.

MR. NETTLER: I'd appreciate that, and then I will obviously reserve my right to cross examine Mr. Nunley after Mr. Schauer does.

Mr. Schauer, just a few questions. I understood from your statement that you believe that if -- notwithstanding the fact that someone may spend most of their time living on the premises, that wouldn't make this their primary residence. Do you recall saying that?

MR. NUNLEY: I did.

MR. NETTLER: Do you know the difference between domicile and principal residence?

MR. NUNLEY: No. I'm sure you're going to enlighten me on it.

MR. NETTLER: No, I'm just asking you. Do you know what the definition of principal residence is in Webster's Dictionary?

MR. NUNLEY: In what?

MR. NETTLER: Webster's Unabridged Dictionary.

MR. NUNLEY: Well, I presume it means a place where one lives, where one resides.

MR. NETTLER: You're aware that the dictionary definition says that it is different than where one's domicile is?

MR. NUNLEY: That could well be.

MR. NETTLER: Do you know what connotes someone's domicile?

MR. NUNLEY: No, I don't.

MR. NETTLER: Do you know that -- are you aware as to whether you pay taxes in a certain place or vote in a certain place is an indicia of your domicile or indicia of your principal residence?

MR. NUNLEY: I think that's probably indicia of domicile.

MR. NETTLER: I have no other questions.

MS. REID: Mr. Nunley?

MR. NETTLER: Well, Mr. Schauer, I think. It's his appeal.

MR. SCHAUER: Mr. Nunley, the permit, the home occupation permit that was issued was issued on February 5th to Jack Milton Fields. Based on what you have told us --

MS. KING: Do we have that document? The permit. Do we have that document?

MS. REID: Yes. It's the very last page.

MS. KING: Oh, here it is.

MR. SCHAUER: Now, testimony was given to this Board in July that Mr. Fields entered into that house. He settled --

MS. KING: I'm sorry but this is information not --

MR. SCHAUER: He settled on this --

MR. NETTLER: Objection.

MR. SCHAUER: He settled on this house on July 1st.

MS. REID: I haven't heard the question.

MS. KING: Okay. He was referring to testimony given in July which I thought we had barred.

MS. REID: I thought he was referring to -- well, let me hear what he has to say.

MR. SCHAUER: The only point I'm making is that Mr. Fields settled on that house on July 1st and moved in. The permit was issued on February 5th.

Mr. Nunley, from what you said, should that permit have been issued?

MR. NETTLER: Objection. To the extent that the question is based on what happened in July as opposed to what -- simply the question of whether he knew him to be the owner of the property at the time, a renter, whatever, tenant, I would have no problem but not as to something that happened some other time.

MS. REID: Overruled.

MS. KING: I disagree with you, Madam Chair. We passed a motion, three in favor of the motion, one abstention, that any testimony that was subsequent to the grant that occurred in July was not to be permitted as part of this hearing today.

MS. REID: What I'm going to do is to ask Mr. Schauer to rephrase that question.

MR. SCHAUER: The permit was issued on February 5th and -- how do I ask the question?

MR. PARSONS: There's no way to rephrase that

question.

MR. SCHAUER: There is no way to rephrase it.

MS. REID: He could ask -- he could simply ask him --

MS. KING: Madam Chair, I think that's not appropriate.

MS. REID: To rephrase the question?

MS. KING: He has said and Mr. Parsons and I concur that it's not possible to rephrase the question and for you to rephrase it for him I think is inappropriate.

MS. REID: Okay. Move on.

MR. SCHAUER: Mr. Nunley, these applications for home occupation permits, when somebody goes on to the Zoning Administrator's office and picks up one of these permits, it comes with a package that has instructions and the regulations attached to it. Is that not correct?

MR. NUNLEY: That's correct.

MR. SCHAUER: And the very first instruction says be sure you read the regulations which are attached before completing the application. Do you recognize those words?

MR. NUNLEY: Yes.

MR. SCHAUER: And finally, the instructions also tell an applicant if there are any questions about the application, that's his application to the regulations. They should raise those questions with the Zoning Administrator's desk. Is that not correct?

MR. NUNLEY: That's correct.

MR. SCHAUER: And so Mr. Fields would have been

under obligation to go down to the desk and ask, having read the regulation that says this must be your principal residence, he should have gone down to the desk to ask under the circumstances, am I entitled to claim this as my principal residence.

MR. NUNLEY: I might have done that. Yes.

MR. SCHAUER: And whether he did that or not, you don't know.

MR. NUNLEY: No.

MR. SCHAUER: Ms. Hicks might know, but she's not here. So you really can't answer that question as to whether or not these instructions were carried out.

MR. NUNLEY: No. I can't. The public counter is open and available to anyone to ask questions regarding any of our zoning processes.

MR. SCHAUER: I have no further questions.

MR. NETTLER: Mr. Nunley, following up on what Mr. Schauer said, you have someone who wants a home occupation permit, gets a package which they're supposed to fill out, they get instructions that go along with that package and they get a copy of the regulations that they must comply with to obtain a home occupation permit. Correct?

MR. NUNLEY: That's right.

MR. NETTLER: Okay. And that package, as I said, includes those regulations which list the criteria for being able to obtain a home occupation permit. Correct?

MR. NUNLEY: That's correct.

MR. NETTLER: And one of those criteria is that this is the principal residence of the individual seeking the home occupation permit. Correct?

MR. NUNLEY: Yes.

MR. NETTLER: And if the person believes that this is their principal residence, do you expect them to ask you a question whether this is my principal residence or not?

MR. NUNLEY: If they have that belief, I wouldn't expect them to.

MR. NETTLER: But if somebody fills out this form, they get a home occupation permit and somebody brings to your attention the fact that the person who obtained the home occupation permit isn't actually living there, what happens?

MR. NUNLEY: If it's in the application process, then we --

MR. NETTLER: No, it's after the application. You've already issued the permit.

MR. NUNLEY: Then we dispatch a zoning inspector to do a field check, an investigation.

MR. NETTLER: Okay. Let's say -- let's go back to the application process. Somebody comes in, they're filling this out, you have a number of questions here and let's say they ask you -- I don't know whether this has happened to you or not, you can tell us whether that has -- I'm not sure this is my principal residence. Has anybody ever said that to you?

MR. NUNLEY: No.

MR. NETTLER: Okay. Has anybody ever said to you I have a car that's registered in Missouri. Does that mean this is my principal residence? Anybody ever say that to you?

MR. NUNLEY: No.

MR. NETTLER: Or say that I vote somewhere else but I live here most of the time. Is this my principal residence? Anybody ever say that to you?

MR. NUNLEY: No.

MR. NETTLER: Okay. I notice from the form that was submitted by the Appellant here that the application was executed and the permit wasn't issued until February. Do you know how many times or what conversations took place between November and February when this home occupation permit was issued?

MR. NUNLEY: No, I do not.

MR. NETTLER: Do you even know the person who dealt with this home occupation permit?

MR. NUNLEY: I do not.

MR. NETTLER: There's a person on the second floor, isn't that correct, who's sort of an intake person who deals with most of these applications. Is that correct?

MR. NUNLEY: On the third floor actually.

MR. NETTLER: On the third floor. Excuse me. Who takes that and that changes day to day, doesn't it?

MR. NUNLEY: Yes, it does.

MR. NETTLER: And also changes depending on the times of the day. Correct?

MR. NUNLEY: That's correct.

MR. NETTLER: And if the person had a question about any particular application that was being submitted and wanted additional information that was not ascertained in any conversations that the had, there might be some notation in a file that's made up. Is that correct?

MR. NUNLEY: That's right.

MR. NETTLER: Did you find a file that had such questions or notations made in it here?

MR. NUNLEY: No, I did not.

MR. NETTLER: Okay. And you certainly weren't privy to any conversations that took place. Correct?

MR. NUNLEY: No.

MR. NETTLER: You don't even know who -- whether it was Mr. Fields himself or somebody on behalf of Mr. Fields who submitted the application directly to that intake person, do you?

MR. NUNLEY: No, I don't.

MR. NETTLER: I see Mr. Parsons had asked you about question #4 here. There's nothing here under A, B, C or D for someone who is occupying the premises but is not paying rent. Do you see that?

MR. NUNLEY: That's correct. It's not there.

MR. NETTLER: Okay. In fact, there's not even an other for that particular type of circumstance, is there, under A, B, C, or D, is there?

MR. NUNLEY: No.

MR. NETTLER: Now if somebody, the applicant -- there was also a question asked of you about the address. You've handled these applications before, haven't you?

MR. NUNLEY: I have.

MR. NETTLER: Okay. And when the person fills out the application and fills in #3 as the address, you understand that to be the address for which the application is sought. Correct?

MR. NUNLEY: That's correct. It's a home occupation permit application. Yes.

MR. NETTLER: Okay. And if the person is executing this in terms of compliance with the regulations that have been given to that person and in terms of what they are in terms of their relationship to that property, it's with the understanding that person is going to be occupying those premises and using this home occupation permit. Correct?

MR. NUNLEY: That's correct.

MR. NETTLER: Because it can be used by a tenant of an owner of a building. Correct?

MR. NUNLEY: That's right.

MR. NETTLER: It can be used by a cooperative owner who's somewhat a quasi tenant but still somebody who's occupying the premises as their residence. Correct?

MR. NUNLEY: That's right.

MR. NETTLER: Okay. And in that situation -- strike that.

Now, you don't know whether at the time that this

home occupation permit was issued whether there actually was a phone that was installed at the premises in working order, do you?

MR. NUNLEY: No, I don't.

MR. NETTLER: But a phone was given to you in case you had any questions, both in item #3 -- in item #3 to call the person who was seeking the permit. Correct?

MR. NUNLEY: That's right.

MR. NETTLER: Do you have any idea about how many home occupation permits are issued on a daily basis or a monthly basis? Do you keep any figures on that?

MR. NUNLEY: Records are maintained. I have not seen a monthly report. I don't know.n

MR. NETTLER: Okay. Do you have any -- is there any training that you go through in your staff or yourself in terms of how to deal with issues that are supposed to be addressed under a home occupation permit?

MR. NUNLEY: My staff are conversant with the regulations. They don't -- they very rarely do home occupation permits. Ms. Hicks, I believe, has trained the staff at the front desk but I don't know the scope of that training.

MR. NETTLER: Based on what you had in your record before you came here today, was there any reason for you to believe that this home occupation permit was issued in error?

MR. NUNLEY: No.

MR. NETTLER: I have no other questions.

MS. REID: All right. Is the ANC present? Do we

have any response from the ANC?

MS. KING: Do we have a request for a waiver to permit a -- ANC 6B on the 9th of December asked for a waiver from the regular rules to receive a report.

MS. REID: Okay. We will so waive.

MS. KING: The report is that ANC 6B has voted nine to nothing to support the appeal of the Capital Hill Restoration Society in this case. The ANC voted at its properly noticed meeting of October 13th with a quorum of commissioners, that is seven which is a quorum present. Nine to nothing was the vote and signed by Tommy Wells.

MR. NETTLER: I would just note for the record that the ANC has a continuing policy of not allowing presentations to be made by people before them at their regular meeting.

MS. KING: So nobody was able to make a presentation?

MR. NETTLER: We have been told that we would not be able to do so at a regular meeting but only to their Planning and Zoning Committee which is an issue that we had raised before. We did not make a presentation to their Planning and Zoning Committee.

MS. KING: Did the Capital Hill Restoration Society make a presentation to the meeting?

MR. SCHAUER: Yes, we did.

MS. KING: That's interesting.

MR. SCHAUER: I assume that Mr. Nettler was informed of the meeting.

MR. NETTLER: I was not.

MS. REID: Okay. Intervenor's case.

MR. PARSONS: Madam Chairman, before we proceed, I have to leave at 12:00. The staff knew that. I just have to leave. I'll be back at 1:30 but I am concerned that I don't know where Mr. Nettler is going with his witnesses but it appears to me that with the absence of Ms. Hicks that we're going nowhere here this morning and so I would suggest a postponement until she can make herself available.

MS. KING: Might I amend your suggestion further by suggesting that if Ms. Hicks herself -- because I know how things work in government, it's possible that some member of her staff dealt with this case and put it before Ms. Hicks -- that Ms. Hicks and any member of her staff who was involved in this case should appear before us in order to augment the record that we have so far and bring with them the entire file on the case including any exchange of correspondence or notations or anything like that that would be evidence.

MR. PARSONS: At the same time, I don't want to inconvenience Mr. Nettler or his witnesses in allowing them to proceed. I can leave at noon and read the record and so forth, but we'd continue at another date then.

MR. NETTLER: If you're going to continue at another date to have someone from the Zoning Administrator's office testify, I'd rather go in order rather than having a witness come in, somebody from the Zoning Administrator, us come back and forth. I'd rather deal

with them in the order that it's supposed to be. I just don't think it's appropriate --

MR. PARSONS: That's reasonable. Sure.

MS. REID: All right. Well then, if everyone is in agreement to --

MR. GILREATH: Absolutely.

MS. REID: -- to postponement until we can get Gladys Hicks or the staff members who specifically were involved in this particular application to appear, then Ms. Rose, what would be the --

MS. ROSE: February 17th.

MS. REID: February 17th and at that time -- that is in agreement with everyone?

MR. SCHAUER: Madam Chair, I understood in the conversation with Ms. Hicks that she had briefed Mr. Lorenko on this --

MS. KING: That she had?

MR. SCHAUER: That she briefed Mr. Lorenko on this case and he was assigned here this morning and has apparently not appeared, but he should be aware of whatever Ms. Hicks knows about the case.

MS. KING: But we have an opportunity now, since we're postponing this by two months, to have the actual people who actually, not briefed by other people, that actually acted on the case and I would much prefer to see them than somebody who was briefed by Ms. Hicks.

MR. NETTLER: In fact, it was not Ms. Hicks who actually acted on this.

MS. KING: What?

MR. NETTLER: It was actually not Ms. Hicks who did so.

MS. KING: I mean I think we need to have all the players.

MR. PARSONS: Is that testimony, Mr. Nettler?

MR. NETTLER: No. I'm just trying to help the record.

MS. REID: And also ask that they read the record for what has transpired here today so that when they do appear they will be properly apprised.

MS. ROSE: So are we going to continue this from this point?

MS. REID: Yes.

MS. ROSE: Until the morning, 9:30, February 17, 1999.

MS. REID: Okay. Thank you.

MR. HART: Case 16406. Application of Patrice Andrews pursuant to 11 DCMR 3107.2 for a variance from the -- department, Subsection 404.1 to construct an addition in an R-1 district at premises 5338 Belt Road, N.W., Square 1742, Lot 92.

All persons going to testify in this case, stand for the oath. Please raise your right hand.

(Whereupon, the witness was sworn.)

MS. REID: Give us your name and your address.

MS. ANDREWS: Good morning. I'm Patrice K. Andrews. I live at 5338 Belt Road in ward 3. I put an application in for a deck addition on the back of my house. I am looking to extend my property line right now which sets exactly 25'. The deck addition would extend the property line or I should say condense the property line down to 15'. The deck would actually be positioned 10' from the back of my house.

MR. PARSONS: You don't mean that you're going to amend the boundary of the property. You're not going to acquire more property.

MS. ANDREWS: Correct.

MS. KING: In essence, you're required to have a 25' rear yard and at present what you're asking for is that the rear yard be 11 1/2' instead of 25.

MS. ANDREWS: I believe that's correct.

MS. KING: Is there something unique or unusual about your piece of property? Is like all the other pieces of property in your neighborhood?

MS. ANDREWS: Yes, it is. The residences, you walk in the front door up about five steps but as you go straight back out the back door, you drop down 20. So, in essence, this is a first floor addition except that it happens to be up higher than in the front yard.

MS. KING: Do not the other properties in your neighborhood -- I mean if you're standing at your front door looking at Belt Road, do not all of the properties to your right have deeper back yards than you do?

MS. ANDREWS: Yes, they all do.

MS. KING: The one on the left has an even smaller plot of land than you do but --

MS. ANDREWS: Correct.

MS. KING: -- yours is unusual in your block in terms of the amount of back yard depth that you have.

MS. ANDREWS: That's correct.

MS. KING: And, in fact, you presently have how deep a back yard?

MS. ANDREWS: I believe it's -- I don't have the figures in front of me but I believe it's probably about 16' or something from the back. It sort of goes on an angle so from the widest point it's actually 25 but it angles off so from the shallow point I think it's about 11'.

MS. KING: Is the deck in place at the present time?

MS. ANDREWS: Oh, no.

MS. KING: No, no. You haven't built it yet.

MS. ANDREWS: There's actually a small porch that's on the back that is on the original plans and it's about 5 X 5. It comes directly off the kitchen in the back.

MS. KING: So, in fact, the bottom of the existing steps off the existing porch, both of which presumably are permitted as existing variances, those steps in fact protrude further out into the back rear yard than your proposed deck. Is that not correct?

MS. ANDREWS: No. Actually, they would probably be equal because the deck itself isn't going to go out any further. The

steps are going to be attached to the deck.

MS. KING: So the deck will, in fact, project out the same -- in spite of this document which shows that the steps go out -- I don't know what the --

MS. ANDREWS: I guess what he's looking at doing, what the designer is looking at doing, is actually keeping the existing porch and the existing steps and attaching the deck around the porch so that the steps actually remain in the current position.

MS. KING: Right, and what I'm pointing out to my colleagues is that the steps that currently exist project further towards the rear boundary of your property than the proposed additional deck.

MS. ANDREWS: That's correct.

MR. PARSONS: The real peculiarity here of this property is the diagonal circumstance that the alley is creating. It's not running parallel to the street.

MS. KING: Actually, the alley runs parallel to the street but Bent Road bends which is why it's called -- oh, Belt Road. I was going to suggest it's why it's called Bent Road but I misread it.

MS. REID: The lot is an irregularly shaped lot but, Ms. Andrews, are you familiar with the three prong test that you have to prove -- there's a burden of proof that involves a three prong test for you to be able to obtain the release that you want and that is for a variance. Are you familiar with that procedure?

MS. ANDREWS: No, I'm not.

MS. KING: We've dealt already with the first one which is the unique and unusual situation.

MS. REID: Yes, but at least she should be aware of what she's doing. We're doing it but at least she should be made aware of how this whole process works and why we're asking those kind of questions. You have to demonstrate that there's something unique or unusual about your particular property that would cause a practical difficulty for you to be able to comply with the existing zoning regulations. Why is it that you are not able to or what would cause, would it cause you some type of practical difficulty in order to do so?

MS. ANDREWS: Right.

MS. REID: That's what you want to demonstrate. That's the first prong, and Ms. King and Mr. Parsons and I kind of tried to help you through that by looking at the whole property and to try to see where there could be --

MS. KING: And its relationship to neighboring properties.

MS. REID: Yes. How yours is unique or unusual in relation to the rest of the properties in your particular area.

MS. ANDREWS: Right. I think it's mostly that the property itself is shallow in the back yard. My neighbor, if you are facing my house to the left, has a much deeper back yard than mine. The alley does cut up and around my yard through my back yard and my next door neighbor's to my right and she has a very shallow back yard to my right and that's, I think, where the extenuating circumstances there or I should say unique circumstance is with our back yards.

MS. REID: Does your property slope?

MS. ANDREWS: No, not necessarily.

MS. KING: I think it must because you said there are five steps at the front and 20' at the back. It's got to slope.

MS. ANDREWS: It's a very gentle grade. It's not a drop off. It's just a very gentle grade through the back yard.

MS. KING: But in the back yard you walk in at the basement level, in the front yard you go up five steps to walk into the ground floor.

MS. ANDREWS: Correct.

MS. REID: Okay. Well, let's discuss the practical difficulty.

MS. KING: The practical difficulty is that she's asking for area, isn't she?

MS. REID: No. Undue hardship.

MS. ANDREWS: I'm sorry?

MS. KING: -- practical difficulty is your unique or unusual situation -- I think we've dealt with the unique --

MS. REID: Let's see now. I'd like to get some clarification on it. The practical difficulty pertains to area.

MS. ANDREWS: Yes.

MS. REID: And undue hardship pertains to the use variance. So we're dealing with practical difficulty and we need to discuss that. What is the practical difficulty that would cause you not to be able to comply with the zoning regulations?

MS. ANDREWS: I don't know of any.

MR. PARSONS: From the drawing, it appears to me

that if she tried to comply she'd have an absolutely useless deck. If she tried to set back from the rear property line in conformance with the regulation, she'd have this weird trapezoidal geometry that you might be able to stand on but wouldn't be able to utilize.

MS. REID: Okay.

MS. KING: Not only that, but she might have to destroy some of the steps that permit her to descend from the ground floor to the -- from the first floor to the ground level which would create a hazard in case of fire. There'd be no rear entrance/exit.

MS. REID: All right. The next test then is the adverse impact. Would granting this variance or release that you're requesting cause any type of adverse impact to neighboring properties? Have you had any complaints or --

MS. ANDREWS: No.

MS. REID: There is no opposition?

MS. ANDREWS: I've had no opposition and I would say that most of the houses in my neighborhood all have decks. So it's a pretty common sight in my neighborhood.

MS. REID: Okay.

MS. KING: And there's no one here in opposition.

MS. REID: Right. In regard to traffic or parking or lights or noise, that would not have any adverse impact.

MS. ANDREWS: No.

MS. REID: And the third one is would it impair the integrity of the zoning, regulations or maps if we were to grant this variance?

MS. ANDREWS: Not that I know of. No.

MS. REID: Okay.

MS. KING: No. It's still single family residential use.

MS. REID: Okay. I don't think there's anyone else here that is opposed to the application. Are there any questions of the staff? ANC? Are there any government reports? I don't think we have any.

MS. KING: No.

MS. REID: Did the ANC ever submit anything?

MS. ANDREWS: They should have. I was before them last Thursday evening. They said they were going to write a --

MS. REID: I didn't have anything in my file.

MS. KING: I don't have either.

MS. REID: Did anything come from ANC?

MS. ANDREWS: There was no problem with them.

MS. KING: Did they take a vote?

MS. ANDREWS: Yes, they did.

MS. KING: Was there a quorum present?

MS. ANDREWS: Yes.

MS. REID: We have nothing in the file from the ANC so, therefore, we assume then there was no opposition to your particular application. Persons or parties in support of the application? Persons or parties in opposition to the application? Further remarks by the applicant.

MS. KING: Just say please.

MS. ANDREWS: Please, please, please.

MS. REID: Bench decision summary order today.

MS. KING: Yes.

MS. REID: All right, board members.

MS. KING: I move that we grant this application with a bench decision and a summary order. There being no opposition to it, it is clear from the map that this is a very odd shaped lot in terms of the neighborhood along Belt Road because of the bend in the road and that, as Mr. Parsons has pointed out, to comply with the zoning regulations and the depth of the back yard, she would have essentially an unusable deck.

In terms of the impact on her neighborhood and public good in general, most of her neighbors have decks and there is no opposition. Although we don't have a record of anything from the ANC, she has indicated that she met with them last Thursday and I'm sure that they would have made great efforts to be in touch with us had they had any opposition to this matter and also since it is a single family home and will continue to be, there is no detriment to the zoning regulations or map and, therefore, I urge that we grant this application.

MR. GILREATH: I second the motion.

MS. REID: All in favor.

(Ayes)

MS. REID: We have a proxy for Mr. Parsons in favor.

All opposed.

MS. ROSE: Staff will record the vote as four to zero with Ms. King, Mr. Gilreath and Ms. Reid to grant the application and

an absentee vote from Mr. Parsons in favor of the motion.

MS. ANDREWS: Thank you very much.

MS. REID: We'll recess for about five minutes before the next case is called.

(Whereupon, off the record at 11:57 for a nine minute break.)

MR. HART: Case 16402. Application of St. Paul's Lutheran Church pursuant to 11 DCMR 3108.1 for a special exception under Section 205 to establish a child development center for 20 children, ages four and five years of age, and two staff in an R1B district at premises 3600 Everett Street, N.W., Square 1983. It was advertised as Lot 817, Madam Chair, but that was an error. It was really Lot 64.

MS. ROSE: Madam Chair, before we swear in witness, this was the case that we held over from this morning with a preliminary matter related to the affidavit of posting. The staff did not see an affidavit of posting in the office, and we need the applicant to address whether the property was posted.

MS. REID: Please come forward if you are affiliated with this particular application. You're aware of the fact that we don't have an application of posting.

MS. KING: Affidavit.

MS. REID: Affidavit of posting.

MR. LIPOW: Yes, correct.

MS. REID: Was the property posted?

MR. LIPOW: My name is Herschel Lipow.

MS. REID: And your address, please, sir.

MR. LIPOW: 5347 32nd Street, N.W. I have a child in the extended day program and I'm a former member of the Merchant Development Team.

MS. KING: Are you here representing the Lutheran Church and its application?

MR. LIPOW: I'm speaking on behalf.

MS. REID: Okay.

MR. LIPOW: I have a statement to make about the affidavit. We were not told nor were we aware that such an affidavit was required. We have looked at the form and we have not complied with the posting of those placards. However, we made public notice throughout the process, both in the Merchant Newsletter, before the ANC. These notices that have gone out to the residents have also been posted prominently on the school itself, but we did not formerly post the placards. We were never given the instruction nor told that we were required to do so.

MS. REID: Tell us again, what is your role?

MR. LIPOW: I'm a proponent speaking as a parent and --

MS. REID: But you're not the applicant.

MS. KING: Who represents the applicant?

MS. CHAMBERLAIN: I'm the applicant.

MS. REID: You are the applicant. You are the one who has to respond.

MS. CHAMBERLAIN: Okay.

MS. REID: Your name and address please.

MS. CHAMBERLAIN: My name is Fern Chamberlain. My home address, 2707 Meadowlane Court, Olney, Maryland. I'll say the same thing. I was not ever informed about having to file this affidavit at all in the process and I've been down in person many times.

MS. REID: Isn't that a part of the written instructions on the back of the application form? On the back? Do you see it there?

MS. CHAMBERLAIN: I have the application form in my hand.

MS. KING: Did you receive any placards?

MR. LIPOW: No.

MS. REID: I think the instructions are tell them to come to pick them up.

MS. KING: Right, I understand but we're dealing with two things or, in some cases we deal with two things. People put up the placards but never filed the affidavit but here there were no placards put up and no affidavit filed.

MS. REID: Did they submit to you, Ms. Rose and Mr. Hart, the application itself?

MS. ROSE: Yes.

MS. REID: So you could see that it does not state that or it does?

MS. ROSE: I'm looking for -- I'm not involved that early in the process so I'm looking for where that information is

conveyed to applicants. I think it's the acknowledgement form, but let me check. We have a document which we call -- it's not labeled but an acknowledgement form and it is signed by Fran Fern Chamberlain and paragraph two of that form says, "When you receive the notice of public hearing, it will then be your responsibility as the applicant to post a notice of the public hearing on the property. You must pick up a posting sign from the Office of Zoning and place it on each street frontage of the property a minimum of 15 days prior to the date set for public hearing. You must check the sign at least once every five days to be sure that it is in place and must re-post as necessary." And that document was received in our office in due course.

MR. LIPOW: These forms that we received-- and we were under the impression that this was in compliance with that requirement -- were posted as per the requirements of 15 day notice.

MS. REID: You posted those letters?

MR. LIPOW: Yes. Correct.

MS. REID: Okay. Then obviously what has happened is that you misinterpreted what was being requested.

MR. LIPOW: Yes.

MS. REID: Do they have to be posted?

MS. ROSE: Well, the board has the authority --

MS. REID: There is some opposition.

MS. ROSE: There is some opposition. The Board has the authority to waive the provisions of its rules under Section 3301.1 if there is good cause shown and if you determine that the waiver will not prejudice the rights of any party.

MS. REID: In this instance, there is a letter of opposition.

MS. KING: There is, from somebody who lives on Everett Street. The letters went out to property owners within 200 yards -- 200 feet.

MS. REID: But I'm not sure if the other property owners who may not have gotten a letter or if they saw it posted would have an opportunity to weigh in on this matter.

MS. KING: However, the ANC, although they haven't indicated whether it was a duly noticed meeting or a quorum was present, the ANC 3F has weighed in with an opinion which we've received today. Is there anybody here in opposition to this? Anybody prepared to testify against it?

I would suggest, Madam Chair, that there's no evidence that anybody has been excluded from notice. The ANC and the residents on Everett Street clearly knew about it and I think this is a benign error on the part of the applicant and perhaps would be reasonable to waive.

MS. REID: All right. I have no problem with granting the waiver to waive posting the property.

MS. ROSE: Is this by consensus?

MS. REID: Yes.

MS. ROSE: Then we would need to swear in the witnesses. The case has already been called.

MR. GILREATH: Persons planning to testify, please raise your right hand.

(Whereupon, the witnesses were sworn.)

MS. ROSE: Madam Chair, would it also be okay to proceed with the correct lot number as Lot 64 since the address was correct in the advertisement? Mr. Hart indicated that the Lot umber 817 which appears in the advertisement is incorrect, that it's actually Lot 64 but that the address was advertised correctly.

MS. KING: Okay. Seems good to me.

MS. REID: Okay.

MS. ROSE: Thank you.

MS. REID: You may proceed. Give your name and your address again because now we're starting the case.

MS. CHAMBERLAIN: Fern Chamberlain, 2707 Meadowland Court, Olney, Maryland. And we are proposing to establish a child facility center at the St. Paul's Church for 20 pre-K students ages four to five. It's for the extended pre-K program.

MS. KING: You represent the Lutheran Church. Is that correct?

MS. CHAMBERLAIN: I do have a letter authorizing -- I do have a letter and you should have a copy of that letter representing the church. I am the director of the program, of the Merch extended day program. Since it's zoned as an RIB, we are looking for an exception for the zoning so that we can establish the center, the child facility center.

MS. REID: You have a letter of authorization?

MS. CHAMBERLAIN: Yes, I do. You should have a copy of that, too, from the pastor. Do I need to submit this or do you

have one? It's from St. Paul's Lutheran Church.

MS. REID: I have it. Thank you.

MS. CHAMBERLAIN: Okay. And so it's simply asking for an exception so we're able to establish this center there. At the moment, the zoning does not permit us to do such. This would not make any changes structurally to the building. It will not impinge on any traffic flow. That would not affect that in any way. It should be a very simple maneuver to move the present program that we have now into the area. There's plenty of room and all safety issues and health issues will be enforced in regards to the licensing procedure that we will follow through to get this child care facility enforced. We'll follow all the regulations.

MS. REID: Do you have a copy of Section 203 of the regulations?

MS. CHAMBERLAIN: Section two of --

MS. REID: Two oh five of the regulations which basically specify the criteria under which your special exception would be granted and how you comply with them.

MS. CHAMBERLAIN: Okay. We do not have it at the moment but we have access to --

MS. REID: You're willing to provide that?

MS. CHAMBERLAIN: Okay. Somebody will help us with that.

MS. REID: All right. Is that all?

MS. CHAMBERLAIN: That is basically it.

MS. REID: Okay.

MR. GILREATH: Is this going to be a temporary arrangement for about three years or so or is this permanent?

MS. CHAMBERLAIN: We're looking for -- I would say we have a three year lease with the church.

MR. GILREATH: I think I saw an ANC letter to the effect that presumably the Merch School down the road presumably might expand where they could accommodate kids. In other words, is this a permanent long term relationship with the church or it's a three year arrangement and presumably this would revert back to the Merch School?

MS. CHAMBERLAIN: We're looking for it to be a long term.

MS. KING: But you're asking for three years. Is that right?

MS. CHAMBERLAIN: Right. Little bit at a time, but our viewpoint -- well, our hope is that it should be long term. Our hope is that it should be long term.

MS. KING: And where is your pick up and drop off going to be located?

MS. CHAMBERLAIN: Actually, almost exactly where it is now. We won't make any major changes. Instead of the parents walking this way, they're just going to walk that way.

MS. KING: On what street will your children be dropped off?

MS. CHAMBERLAIN: Elicott. Elicott Street.

MS. KING: Which is where they're dropped off and

picked up now?

MS. CHAMBERLAIN: Yes.

MS. KING: And would you describe -- do you have a map or anything on which you can describe where -- is it in a parking lot or do the parents' and guardians' cards pull off the street or are the children let out on the street? Are they escorted into the day care center or what?

MS. CHAMBERLAIN: They are escorted into the day care center and --

MS. KING: From where?

MS. CHAMBERLAIN: From the curb. Areas are marked off right now just for this purpose, for drop offs presently at Merch so this same area would be used.

MS. KING: But since Merch is on the other side of the street, the children will have to cross the street.

MS. KING: No, there's areas on both sides because the church presently has schools in the church so they have areas for drop off also.

MS. KING: And how are they sign posted?

MS. GILL: Mary Gill, Principal of Merch School, 1432 Irish Street, N.W.

We worked with DOT last year. We have a bumper there. The street is marked with yellow lines. Stop signs have been put in. A crossing guard through the school funds have been purchased to assist and the drop off in the morning and the after school pick up for children so parents can drop either side and be

escorted across and the requirement is that young children pre-K and K ages are required for parents to walk them into the school.

MS. KING: Okay.

MS. GILL: And for the last 25 years St. Paul has already had two early childhood programs. St. Montemoris and the St. Paul Program. So this does not change any of that.

MS. KING: It just augments the number of children?

MS. GILL: Right. The number of children and it's only by seven in a.m. and 12 in the afternoon that would be a part of this program. The main program still remains on the local school site.

MS. KING: Okay. We have a letter which I'm madly trying to lay my hands on -- here it is -- from somebody who lives on Everett Street but Everett Street is not going to be impacted by this?

MS. GILL: That's the opposite side of the church. That's north, the street north. We are talking about Elicott Street.

MS. KING: And so Elicott, all of the drop off and pick up, all of the traffic associated with this will be on Elicott Street, not on Everett Street where Mr. Paul A. Barry lives because he has -- have you seen his letter?

MS. GILL: No.

MS. CHAMBERLAIN: No, not aware.

MS. KING: The church entrance at the rear of Elicott Street is used for the other school activities and the traffic drop off activities are mixed with those of the Merch Elementary School's Elicott Street entrance. None of that traffic interferes with residents because there are only three homes on the block. The Everett Street

entrance, which is a one way street, would cause serious disruption of traffic and resident parking during drop off and pick up times. But you don't intend to use Everett Street for any drop off or pick up or entrance to the program.

MS. GILL: No, ma'am. We went through extensive work with DOT to provide all the access we felt we need at this point.

MS. KING: DPW has in fact filed it but I was just dealing with the concerns expressed by Mr. Barry.

MS. REID: And he says that "Unless another entrance can be used or some method to control traffic and avoid taking up needed residential parking, the special exception should be denied" so it's a conditional opposition. Basically I think that you have addressed that by saying that would not be the case since it will not be used. So then his letter is moot.

MS. KING: It becomes moot. Yes.

MS. REID: Any questions? Do you have other witnesses?

MS. KING: Yes, you do. Ellen McCarthy is just coming up.

MS. McCARTHY: Good morning. My name is Ellen McCarthy. I'm Director of Planning and Land Use Services at -- and I'm also a parent of two students at Merch and I had offered some assistance with this case to a board member, but I did not realize that the case was coming up so soon or I would have worked with the program earlier on posting notices and other things. However --

MS. REID: We need to get your home address.

MS. McCARTHY: My home address is 3905 Morrison Street, just about 10 blocks north of the site.

And what I wanted to do was to briefly address the provisions of Section 3108 and 205 about how the proposed use does meet the criteria in the zoning regulation in terms of no adverse impact on the neighboring properties. Basically, as Ms. Chamberlain already indicated, this is not an expansion of the extended day program. It is merely taking the program and moving it from space which is currently occupied and I can just diagram this to make it a little bit clearer to you what is being requested here.

Here we have Connecticut Avenue, Politics and Prose, that important local landmark that's down here on Nebraska Avenue. This is Merch Elementary School. Here is Elicott Street. St. Paul's is directly across the street and this striped crossing area, as Ms. Gill indicated, with stop signs and a crossing guard on either side. Here's the Merch playground. Here are the residences and Everett Street on the back side of St. Paul's.

There is a small temporary building called the Kaufman Wing which is next to the main building of Merch Elementary School and the extended day is currently located in the Kaufman Wing because of space constraints within the school. We are just basically bursting at the seams and, in particular, for the special education.

MS. GILL: And English as a second language students.

MS. McCARTHY: Our ESL programs and our special education programs which had previously been housed in our

library which just through dent of considerable parent fund raising we managed to refurbish the library last year and equip it properly. But that increase in space in the library has pushed those programs out until sometimes they're now out in the hallway which is certainly not a good learning environment. So we would like to use the space within the Kaufman Wing for the English as a second language and special ed programs and in turn then take the extended day program which is basically sponsored by the Home and School Association because Merch only has a half day Pre-K program. This provides the opportunity for parents and I took advantage of this. If you're a working person, it's hard to just send your kids to a half day pre-school. So the extended day either offers morning extended day for kids who are in afternoon pre-K or afternoon extended day for kids who are in the morning pre-K. And that will be simply be moved across the street to St. Paul's where there already has been a continuing educational use.

So in terms of adverse impact, all the typical ones that one might expect and that you would typically hear from people proposing extended day programs or pre-school programs would not be the case here. There will be no increase in traffic. It's the same number of kids. They're simply on one side of the street as opposed to the other side of the street. There will be no increase in noise. They're still going to do their main playing over at the Merch playground which was another major cooperative effort with the parents and the school several years ago and it's a support playground so there's no reason to be playing outside in any kind of

extended way at St. Paul's. And, as Ms. Gill indicated, this is a continuation of an existing use that's been at that site as long as I've lived in the neighborhood which is now 12 or 13 years.

So in terms of meeting the zoning tests, I would say it meets all of the zoning tests for a special exception in that neighborhood and I don't see any possibility of adverse impact.

MS. KING: Ms. McCarthy, I note in the ANC submission which was received on December 2nd that there's a resolution concerning a temporary trailer and demountable structure. Is that this annex that you're talking about that presently is housing the--

MS. GILL: No. I petitioned the school system to address the space constraints of the school and the options I presented to them because the ones that were previously until permanent resolutions were developed is that on our grounds that we could use a trailer or demountable while we're waiting for their plans of an addition to the building. And so those are just programs that we've already --

MS. KING: Oh, I see. So it's an either/or, either a demountable or the Lutheran Church. Is that correct?

MS. GILL: No. That is what we were doing temporarily. We've been working on that for like four years with the school system. I just had to let them know we were trying other ways of relieving --

MS. KING: I'm just curious as to why this was --

MS. GILL: Just moving that pre-K will not solve the

space problems. It will just solve one programmatic problem.

MS. KING: Okay. But we're not going to have to deal with this here. We don't have to worry about it.

MS. GILL: No. That's what we petitioned the school system to address.

MS. KING: Okay. Now, may I ask you, Ms. Gill, the ANC in their -- this doesn't have to be waived in, does it, Tracy?

MS. REID: It's dated the 23rd.

MS. KING: November 23rd, received by us on the 2nd of November. That's adequate. We just received it today but that doesn't mean that --

MS. REID: We did but the office received it --

MS. KING: Have you seen the ANC resolution?

MS. GILL: Yes.

MS. KING: And they say they don't oppose this special exception for a period of three years provided that no shift in the program occurs prior to the completion of the current school year on June 18, 1999. And then they go on to express their gratitude to you for your dedicated service and your concern for the children. I mean do you have no intention of implementing this until after school closes in June? It seems to me that if you've got this terrible problem and if you are, as they say, such a dedicated and concerned advocate for the children and so forth, that you might -- do you want us to impose that condition on this or if you have permission to use St. Paul's, don't you want to use it as soon as possible?

MS. GILL: We want to use it as soon as possible but

we're talking about three and a half, four, five year old children, moving them in mid-winter. It just didn't make sense because we have to go through licensure if we have approval. It didn't make sense to move children that young with nine weeks to go in the school system. Also moving them mid-winter. And so we expected this to move much faster by petitioning in August. We really thought we could move it by October, but it has not moved that fast so I did make a commitment because there are some things we wanted to address as far as the size of the lavatories, the stairs and to make it exactly appropriate.

And we have had public meetings with parents in pre-K. We've had other open public meetings at the ANC so everyone could address their concerns. Based on the concerns of four parents out of the 15 children who use the program, I did agree that if it was after the semester I would not move the pre-K children --

MS. KING: Okay.

MS. GILL: -- until the end of the year because of the concerns we had about meeting their needs and just moving young children with a few weeks to go in the school year.

MS. KING: I understand.

MS. GILL: We needed the space in September.

MS. KING: When we come to make the motion, I'll say whether I think it's appropriate or not but I just wanted to, you know, because I thought they're putting a restriction on your and saying how terrific you are. It just seemed to me to be a little sort of --

MS. GILL: We felt the same way. We agree with

you.

MS. REID: In regard to the parking, you have two staff members and do you have any other employees?

MS. GILL: Yes, there are a number but we have parking on the school yards. We have a parking lot built into the school where they park so the staff doesn't have to park anywhere on the street.

MS. REID: There's adequate parking.

MS. GILL: All staff parking is on the school grounds. DOT has put no parking because required where there's an entrance to a playground or school, you can't park within a certain distance anyway and so there are signs there where there's no parking because of the church and the school entrance anyway.

MS. REID: And there's ample play area?

MS. GILL: Oh, yes. Completely renovated playground area.

MS. REID: Is there any other child development center within 1,000 feet of yours? Do you know?

MS. GILL: There are two children's programs already in the church.

MS. REID: Okay. What are the stipulations? That the Board may approve more than one child development center within 1,000 feet of another child development center only when the Board finds that the cumulative effect of these facilities would not have an adverse impact on the neighborhood due to traffic and so on. Can you or Ellen address that?

MS. McCARTHY: The children, the total volume of what's in that neighborhood is in there now. It is simply a change of what side of the street.

MS. REID: So it wouldn't cause any adverse impact. Okay.

Are you serving snacks or lunch or anything at your facility?

MS. CHAMBERLAIN: The children provide their own lunches so they come with their own lunch boxes.

MS. REID: So what about dumpsters or trash removal?

MS. CHAMBERLAIN: I don't think there'll be any problem. The church already has facilities for that.

MS. GILL: We have custodial service as part of the lease with the church because the custodian has to be there to service the two educational programs in the church and so we are part of that.

MS. REID: Okay. And how often is the trash removed from the premises? Trash pick up.

MS. CHAMBERLAIN: From inside on a daily basis from the inside daily.

MS. REID: From the outside.

MS. CHAMBERLAIN: From the outside, just regular.

MS. GILL: It's a part of St. Paul's.

MS. REID: So you have a regular contractor?

MS. GILL: The church does. That's not anything we provide. It's a part of the church, what the church already has

contracted and it's their custodian who's already under contract.

MR. GILREATH: Will the children have an opportunity to place their lunches in a refrigerator?

MS. GILL: We have full access to all the church's facilities and the kitchen and all that which is adjacent to the area.

MS. REID: Any other questions?

MS. KING: Yes. Because we'll probably put it in as a condition, I just wanted to verify. We're talking about 20 children, ages four and five years. Is that correct?

MS. GILL: That's the maximum. We are currently under that now, but that's the maximum.

MS. KING: But I mean we will probably say not more than 20 children four to five years of age and not more than two staff members.

MS. REID: She said they had more.

MS. KING: How many staff?

MS. GILL: There may be more but they would be part time depending on age and things like that.

MS. KING: Do you want to give us a ball park figure of full time employees, full time equivalents.

MS. CHAMBERLAIN: I would probably say not more than three. I can't foresee ever having more than three.

MS. KING: Not more than three FTEs. Full time equivalents is what it is. I mean if you've got two people working half time, that's one FTE.

MS. CHAMBERLAIN: So I would say four. Let's just

say four.

MS. KING: Four FTEs. Four full time equivalents. That may be six or eight bodies. And you've been very specific about 8:40 a.m. to 3:20 p.m. If we put a condition on here, don't you want to say 8:00 to 4:00 or something like that?

MS. REID: Monday through Friday.

MS. KING: Monday through Friday, 8:00 to 4:00 p.m. if we put a condition on it.

MS. ROSE: The requirement is for it to be on site. Otherwise, you need a variance, I think.

MS. REID: Ms. Gill --

MS. KING: Address the question to Ellen because she'll understand.

MS. REID: Okay. In regards to the parking, Ellen, the parking that's provided -- I'm reading that you have between four and six staff members and employees combined. Then that would require at least two parking spaces on site. How many -- give us a number -- how many spaces are provided on site?

MS. McCARTHY: On the immediate site of St. Paul's on that particular square, none. They are provided across the street on the Merch property.

MS. REID: Okay. Well, that --

MS. KING: We need a variance then.

MS. REID: -- space has to be provided on site.

MS. McCARTHY: No. You can have accessory parking off site if it's on the lot adjacent.

MS. KING: With or without a variance?

MS. McCARTHY: I don't think it requires a special exception. I just looked at this for Alban Towers. Oh, but you know what? In addition to that, I believe that St. Paul's is an historic structure and, therefore, we don't have a parking requirement at St. Paul's.

MS. KING: What are you saying?

MS. REID: You believe it but we don't have anything from historic preservation.

MS. McCARTHY: Right. I can't swear that it is individually designated.

MS. REID: Ms. Rose, it says that "The center shall provide sufficient off street parking spaces to meet the reasonable needs of teachers and other employees and visitors." So it can be off street parking. It says off street but it has to be on site and then it says "Any off street" -- okay, that's play area. But it's off street but it's silent as to whether or not it has to be off street on site. If it's off street across the street provided, perhaps that would be sufficient.

MS. McCARTHY: They are off street parking spaces and there are numerous parking spaces there.

MS. KING: There are numerous ones. I've seen it.

MS. ROSE: One was referring to Section 2101.

MS. REID: Twenty one oh one?

MS. ROSE: Yes.

MS. REID: This is the stipulation one for each four teachers and other employees. It doesn't say where.

MS. ROSE: And 2101.1 says "All buildings or structures shall be provided with parking spaces as specified in the following table."

MS. REID: What page are you on? It just simply says one for every four employees or staff members and it says that you have to have that number--

MS. ROSE: That has to be provided.

MS. REID: -- off street. It doesn't say off street on site. If it's provided and it's across the street, I would think that that would comply. I have no problem with that.

MS. McCARTHY: As I recall, the purpose of that provision was just to make sure that you didn't aggravate the on street parking situation. We definitely provided off street.

MS. REID: Okay. I'm comfortable with that. Are there any other questions, Board Members? ANC report or government report.

MS. KING: The ANC report says that Mr. Scott Strauss is planning to appear today. Was he here earlier?

MS. GILL: I didn't see him.

MS. KING: I didn't see him either.

MS. REID: But you read their position is.

MS. KING: There is no indication as to whether this was a duly noticed meeting and whether there was a quorum present. But nevertheless, their resolution says, in effect, that they do not oppose -- I read it earlier -- they do not oppose the request and that they ask that implementation be delayed until after June 18th of 1999.

There is nothing in the body of the resolution that indicates that there was a duly noticed meeting with a quorum present and it just simply says, "In response to your letter of November 5th regarding this application, attached is a report of ANC 3F. Commissioner Scott Strauss is planning to appear on December 16th to present the report." So I think we don't have to give it great weight, but it certainly is part of the record.

MS. REID: We'll note for the record that they were --

MS. GILL: We met this morning at school. Mr. Strauss was there and asked for time. -- and said by 10:30 and so he was aware that it would be coming up at 10:30.

MS. KING: It's a legal technicality that if it's a duly noticed meeting with a quorum present and a majority vote, we have to give it great weight. We give it attention without that information.

MS. REID: We note what their position is, and we do have a letter from DPW for the record.

MR. GILREATH: DPW reports that your proposal in part, "From a transportation point of view, DPW concludes that operating a child development center at this location will not adversely impact residential parking in this vicinity of the neighborhood. Therefore, the Department has no objections to the proposal.

MS. REID: All right. Persons and parties in support of the application. Persons and parties in opposition to the application. Closing remarks.

MS. CHAMBERLAIN: I just would appreciate the expediency of the council here.

MS. REID: Do you ask for a bench decision?

MS. McCARTHY: Yes, we would.

MS. KING: I move that we grant this application --

MS. REID: I second it.

MS. KING: -- and a summary order. It is apparent to me that they have made their case, have responded to all of the concerns that they need to with regard to special exception and to the day care center.

MS. REID: Special exception Regulation 205.

MS. KING: Two oh five. I would move that we grant this application with the following conditions. That it be for a period of three years which would extend to the end of the school year in the year 2002 or for a period. Don't say three years. To the end of the school year in the year 2002. That it permit a maximum of 20 children, ages four and five, and a maximum of four full time equivalents in staff. That the operations occur between 8 a.m. and 4 p.m. on Monday through Friday and that the drop off and pick up occur on Everett Street with all due precautions to safeguard --

MR. GILREATH: You mean Elicott Street?

MS. KING: I beg your pardon. Elicott Street. Elicott Street, not Everett Street. With all due precautions to safeguard the safety of the children.

Is there anything else we need to talk about?

MS. REID: Monday through Friday, 8:00 to 4:00.

MS. KING: Eight to four Monday through Friday.

MS. REID: The staff and the employees, I just want

to make sure that we're clear on that. Is it not two full time and four full time equivalents which is a total of six?

MS. KING: No. Four full time equivalents.

MS. REID: Okay. So it's just a total of four. Okay. All right.

All in favor.

(Ayes)

MS. REID: Opposed.

MS. ROSE: Staff would record the vote as three to zero with Ms. King, Ms. Reid, and Mr. Gilreath to grant the application with conditions and the issuance of a summary order.

MR. GILREATH: It wasn't seconded. I will second.

MR. HART: Case 16401, a petition of Carol O. Little and Joan Smith, pursuant to 11 DCMR 3107.2 for a variance from the lot area and lot width requirements (Subsection 401.3) and a variance from the side yard requirements (Subsection 405.9) for the construction of a detached single family dwelling in an R-2 District at premises 1191 Fourth Street Place, N.E.

All people who will testify, raise your hand to take an oath.

(Whereupon, the witnesses were sworn.)

MR. MOODY: Good morning, Chairperson and the remaining Board Members. If you could sort of bear with me. I'm suffering from the flu so I can barely talk. I hope that you can hear me. I'm here on behalf of Marshall Heights Community Development Organization as well as Mr. Carol Little and on behalf of 1101 47th

Place, N.E. Do you need my address?

MS. REID: Please.

MR. MOODY: I currently reside at 6713 Birch Hill Road in Brandywine, Maryland 20613.

If I could before I begin just make a notation. On the notice that was given out, we did call the appropriate personnel. They had the premises listed as 900 Ridge Street, S.E. That is actually the mailing address of Mr. Carol Little and I did make that notation when we were in receipt to be able to post the site.

MS. REID: Let me see. Just let me clarify something. Ms. Rose, in this instance we have an incorrect address but a correct lot and square, so would that be suitable having been advertised?

MS. ROSE: Just a moment.

MR. MOODY: Ms. Chairperson, if I could. When I called the lady back to notify, they had originally sent out the notices to all of the adjacent property owners. I believe it was within 200 feet. When I called back to give an address, they did indicate to me that they did resend out the same advertisement with the corrected address on there.

MS. REID: Okay.

MS. ROSE: If that's the case, it should be okay.

MS. REID: What about in the public record?

MS. KING: They were sent to the people within 200 feet of 47th Street or 200 feet of Ridge Place?

MR. MOODY: If I may, 200 feet of the address, 1101 47th.

MS. KING: The correct address.

MR. MOODY: That's correct. Yes.

MS. REID: And the property was posted? You have affidavit of posting?

MR. MOODY: Thirty days in advance.

MS. REID: Okay. But the publication in the D.C. Register had --

MS. ROSE: That's what we're checking on now.

MS. REID: We renotified the ANC of the correct address? They were noticed 11-5. Whether or not they were re-noticed.

MS. ROSE: Corrected notice to the ANC.

MS. REID: So the only thing we have to check on is the D.C. Register and if we find that at least three of the four notices or methods of notice were taken care of, then we can proceed. I think that we are okay.

MS. KING: It sounds like it to me.

MR. MOODY: Okay. Good. Again, as I mentioned, I'm here on behalf of Marshall Heights Community Development Organization in which I'm the Housing Development Manager there. We are the contract purchasers for 1101 47th Place.

I would also like to duly mention that this was in front of the Board of Zoning Appeals for the exact same items and was previously approved on October 16, 1991, application number 15564. Due to the current owners of the property were unable to complete the construction is basically why we're in front of you again to be able to

get the same items required.

We're basically here for three separate variances, the three being a variance from the lot area. The lot area required is 4,000 square feet. Lot area provided is 3,500 square feet. Thus, we're asking for a variance of 500 square feet. The second item is the lot width requirement. We're required to have 40 feet. What currently is out there right now is 35 feet. Thus, we're asking for a five foot variance.

And the last item is the width of the side yard requirement. It requires eight feet on either side of the house. What we would be able to provide is eight feet on one side and seven feet on the other side. I think what makes this property a little unique, it is an infill lot. There's nothing else that we can really change about it. It's a corner lot.

What we are planning on constructing is about as close to the minimum width house that we can be able to provide on there which is our 20 foot wide prototypical unit that we are placing throughout the entire community. So it'll be well within the confines of the community. And I don't know if you have it of record but there's the plat that pretty much indicates how the lot and what we're proposing. I don't know if you have a copy. I'd be more than happy to share that with you.

MS. KING: We have it.

MR. MOODY: Okay. Perfect. So I think everything that we are doing is definitely consistent with the neighborhood. We're trying to rid itself of the vacant lot such that we can be able to

produce another tax revenue for the city. To sort of keep it brief, I'd be more than happy to entertain any questions that you may have.

MS. KING: It is a vacant lot. Is that correct?

MR. MOODY: That's absolutely correct, Miss.

MS. REID: There was approval you said in 1994.

MR. MOODY: October 16, 1991, Miss.

MS. REID: 1991. On the same lot. Do we have a copy of that?

MR. MOODY: If you can bear with me, I think I may even have a copy --

MS. REID: The previous approval.

MS. ROSE: Do we have a number? If we have a number, we can get a copy of it. You mean the order?

MR. MOODY: If I could approach.

MS. REID: The previous order.

MS. ROSE: Do you have a number for it?

MS. REID: That particular board order expired because of the lack of use. Is it two years or three years?

MS. ROSE: Two years. It depends on when it was done because that changed. It used to be six months. A long time ago it used to be six months in which you had to file for your building permit. Then it changed to two years when it was taking people longer than six months to apply.

MR. GILREATH: 1991. It's expired regardless.

MS. REID: Right.

MS. KING: It's application 15564. Also of Carol O.

Little.

MR. GILREATH: Were the dimensions the same in your first request for variance? You needed 500 feet more per lot area and five more feet for lot width.

MR. MOODY: Mr. Gilreath, I can't answer that question honestly because Marshall Heights has basically just been the contract purchaser in the last year. I can't be exactly sure what they asked for at the original time. But based upon the way that the house is laid out, I can't conceivably imagine that it could have been anything too different than that because the lot is the way that it was in 1991 is the way that it is currently.

MR. GILREATH: Let us take this as is without trying to relate it to the other one since it's unknown. He says they're probably the same but he's not sure that the original variance was identical to this.

MS. REID: What we have here is we don't have any opposition. Is there anyone else in the room here that's in opposition to this case? Okay. Then just go ahead and proceed and demonstrate how you meet your burden of proof for the variances that you're requesting.

MR. MOODY: Okay. The variance -- and again, I'm not a legal expert so I hope I'm able to answer. There was notes and computation sheet which was a part of the original submission package which I'm assuming that you have in front of you.

MS. KING: Yes, we have it.

MR. MOODY: And we're basically proposing to build

what we call our prototypical unit again that we placed in other surrounding areas there. It's 20 feet wide to make affordable housing for low to moderate income families. I do not think that we'll be doing anything inconsistent with the area. It's also being able to bring again an additional tax service and we'd appreciate the approval so that, A) we can move forward and then be able to rid the Mr. Little of this property because he's an elderly gentleman and his other partner has since deceased since the original 1991 so it's basically something that they would like to be able to rid themselves and I think we have a -- by being a nonprofit group, we would like to be able to oblige that concern.

MR. GILREATH: The other lots where you built this prototypical house, did you have to have variances for that or the lots were such that they could be accomplished without the variance?

MR. MOODY: In answer to your question, sir, both.

MR. GILREATH: Some had variances, some did not?

MR. MOODY: Absolutely.

MS. KING: Looking at this map, it looks to me as if, if you're standing at the front door or in front of your property looking at 47th Place, N.E., that the lot immediately to the right is in fact approximately the same size and it appears to have a double house on it. Is that correct?

MR. MOODY: Again, it looked like it had been sort of remodeled, if you will, so if the original intent was a double wide, I can not answer that question.

MS. KING: No, but I mean is it a double house? I

mean two houses with a party wall or is it a single family house?

MR. MOODY: That right there, if I'm not mistaken, is a semi-detached unit. What we are proposing is a completely detached unit.

MS. KING: But what I'm trying to help you make your case is that on an immediately adjacent piece of property which is approximately the same size as Mr. Little's piece of property, you have in fact two townhomes with a party wall between them. That's two semi-detached houses on an identical piece of land that appeared not to have exceptions that are much greater than the ones that you are asking.

MR. MOODY: That's correct.

MS. KING: Okay. Thank you.

MS. REID: Mr. Little.

MR. MOODY: I'm Kevin Moody on behalf of Mr. Little and Marshall Heights.

MS. REID: Oh, I see. You're Mr. Moody. Okay. Then Ms. King here was trying to assist you in making your case --

MR. MOODY: And I greatly appreciate that.

MS. REID: -- by determining what was unique or unusual about your lot to create a practical difficulty for you to be able to comply with the existing zoning regulations. What we're establishing here is uniqueness and can you speak to the practical difficulty?

MR. MOODY: In being able to build it if I did not get the variance?

MS. REID: Right.

MR. MOODY: I think it would virtually be impossible. There's typically minimum width houses that you can be able to build in order to be able to make them functional and around 19 to 20 feet is generally getting to about the bare bone minimum that you would be able to have a house that's usable. So we're working with the absolute bare minimums as it is with the variance granted. If the variance was not granted, it would virtually be impossible to be able to erect a usable house, Miss.

MS. KING: Also, the property itself which should be 40 feet wide is only 35 feed wide which adds to your practical difficulty. If it were in fact a conforming lot of 40 foot width, you have no difficulty. You wouldn't be here.

MR. MOODY: You got it.

MS. REID: Substandard. You have a substandard lot.

MR. MOODY: Exactly.

MS. REID: All right. The next test, sir, is in regard to adverse impact. Would granting this variance to you cause any type of adverse impact in regard to parking, lights, noise, as far as your neighboring, the abutting neighbors are concerned?

MR. MOODY: Miss, there would be no adverse impact on the adjacent properties nor the community as well as the fact that under new current laws we actually have to provide off street parking which will be accessed off of the public alley in the rear of the property which no other property has on that block. So with that being

an addition, a noise factor, one additional house on an existing established neighborhood I wouldn't conceive would be a problem, Miss.

MS. REID: And you're going to provide parking?

MR. MOODY: Yes. As the requirements now, you do have to provide off street parking for new residential homes unless you get a variance from it but that's one thing that we are not asking for. We will be able to provide the off street parking accessed off of the public alley in the rear.

MS. KING: In terms of public good, is this vacant lot being used for any illegal purposes at the present time or is it an eye sore? Is it full of trash and weeds and stuff or whatever?

MR. MOODY: As a part of our contractual agreement with Mr. Little, we have agreed to maintain the lot. We maintain the landscape and we cut the grass so as to not make it a haven for illegal activities. So no, the lawn is well maintained by Marshall Heights as a part of our original agreement.

MS. KING: However, if Marshall Heights were not to receive these variances and were to abandon its contract, Mr. Little, as an elderly gentleman, would probably not be able to keep up the property and, therefore, it would be. Our not granting this application would, in fact, have a deleterious effect on the surrounding community. Is that not correct?

MR. MOODY: You stated that so eloquently. That's exactly correct.

MS. REID: All right. I think we have aptly determined

that it would not be a detriment to the public good or impair the intent and integrity of the zoning regulations or map. Are there any other questions from Board members?

All right. We move now to government reports and ANC report. I don't think we had a government report. Did we have an ANC report?

MS. KING: ANC 7-C.

MS. REID: So we can assume then that they are not in opposition to your application. Persons or parties in support of the application.

MS. KING: There is a letter that we received today but was received by the office on the 13th of November from Etta Von Buller, Bula or something like that who is a neighbor and has no objection to the construction of a single family home. She lives at 1021 47th Place and this is less than a block away from her home and she has no objection, she says.

MS. REID: Persons or parties in opposition to the application.

Closing remarks by the applicant.

MR. MOODY: First, I'd like to thank you all very much for allowing me to be able to discuss this property. Marshall Heights is very, very eager to be able to begin construction, assuming that the variances are granted before the weather takes place. Actually, we already have a contract purchaser to be able to purchase the property under one of the great programs that the District of Columbia has, the HPAC Program. So looking forward to being able to begin

construction obviously with the permission of the variances being granted, and thank all of you all for your time this morning.

MS. REID: You'd like to have a bench decision and summary order. Right?

MR. MOODY: Exactly.

MS. REID: Board Members, I would move approval of this application.

MS. KING: Second.

MS. REID: I think that the applicant has met its burden of proof and demonstrated that the property does have unique and unusual conditions that would cause a practical difficulty for him to comply with existing zoning regulations. There is no opposition to the application so, therefore, we can assume that there's no adverse impact and granting it would not impair the integrity or intent of the zoning regulations or map. All in favor.

(Ayes)

MS. REID: Opposed.

MS. ROSE: Staff will record the vote as three to zero with Ms. Reid, Ms. King and Mr. Gilreath to grant the application and Mr. Parsons not present, not voting.

MS. REID: You should have your order in about two weeks.

MR. MOODY: Thank you very much. You all have a happy holiday season.

MS. REID: Thank you. Same to you.

MS. KING: Thank you.

MS. REID: We're going to recess.

MS. ROSE: Do you want to deal with preliminary matters? I think we might have some cases to be disposed of that won't be heard today.

MS. REID: For the afternoon?

MS. ROSE: Yes.

MS. REID: Okay. Are they here?

MS. ROSE: I think that one is here.

MS. REID: Okay. For the afternoon, I understand that there are some preliminary matters that we could address at this time before we have a recess, so please come forward.

MR. BROWN: Thank you very much, Madam Chairman, Members of the Board, particularly for accommodating me before lunch. This is a brief matter. It is a request for continuance.

My name is Patrick Brown. I'm with the law firm of Greenstein, DeLorme and Luchs. I'm here on behalf of the applicant, Paul Burman and Promise Hotels. This matter is a special exception application for approval of a hotel in an SP-2 zone. It's been pending for a while. Since then, the Zoning Commission approved a rezoning of the property from its prior zone SP-2 to HR/SP-2 imposing the hotel residential incentive district on the property.

That Zoning Commission order was published the first time and was effective on November 27th. It's since been republished in a corrected version with no substantive change as to this property on December 11th. As result of that rezoning, a hotel becomes a matter of right use at this property without BZA approval. The

applicant intends to proceed as a matter of right. However, 1) there's an appeal period still pending on the Zoning Commission action and there's a building permit application pending. So there's an abundance of caution.

I've asked for a 90 day continuance, both to preserve this Board's resources, not having to go through a hearing at this point and 2) in level of fairness to the applicant, that they can protect their rights and, as a practical matter, they paid $14,000 application fee for this case. So some indulgence from the Board.

My anticipation is that no further hearing will be required. The matter will become final as far as the Zoning Commission and the rezoning and it'll proceed as a matter of right. I would note that the ANC has supported this application. The applicant has incorporated some design changes that would not be required as a matter of right into the structure based on comments from the Office of Planning and Mr. Bastida.

So I think it's a good resolution for the situation and would request the Board's indulgence for a 90 day period to allow the finalization of the Zoning Commission matter and then I can withdraw the case and the Board can move on and so can the applicant.

MS. KING: I move that we grant this postponement. I would also note that we have something from ANC 2-F which is in support of the application and also a recently received letter from Mr. Frank C. Keane, Vice President of the Town Terrace East Condo Association who also asks for a postponement. So I move that we grant it.

MR. GILREATH: I second the motion.

MS. REID: All in favor.

(Ayes)

MS. REID: Opposed.

MS. ROSE: For 90 days. That would put us in March, but we will send out notices. Will we need to re-notice this?

MR. BROWN: I do not believe so.

MS. ROSE: This is the case where the notices keep coming back.

MR. BROWN: if required, we'll be happy to provide new labels.

MS. REID: Are we going to set a date certain or are we going to determine whether or not there is even a hearing necessary before --

MS. ROSE: I would say March 17th in the morning. 9:30 a.m. March 17th.

MS. KING: And you'll inform us --

MR. BROWN: Absolutely.

MS. KING: -- by that date whether you are to withdraw your application.

MR. BROWN: Can I ask if it would be prudent to extend it into the first hearing date in April because again, we're almost at the end of December.

MS. ROSE: April 7th.

MS. KING: Why not the April whatever it is. The 21st or something.

MS. REID: The third Wednesday in April.

MS. ROSE: April 21st.

MS. KING: Let's give ourselves as much leeway as possible.

MR. BROWN: I appreciate that.

MS. ROSE: 9:30 a.m.

MR. BROWN: As soon as I'm able to confirm the matter as not needing to go forward, I will do so so that it can be taken off the agenda.

MS. REID: Thank you very much, Mr. Brown.

MR. BROWN: Thank you very much. It's my last appearance today. Best for the holidays.

MS. KING: Thank you. You, too.

MS. REID: Are there any other preliminary matters?

MS. ROSE: Staff had two with regard to affidavits of posting. Did you want to deal with those now or when we come back?

MS. KING: Let's do it now in case we postpone the cases.

MS. ROSE: Okay. Case 16381 H&M Enterprises. The affidavit indicates that the property was posted one day late.

MS. REID: I'd waive that.

MS. KING: Is anybody here in opposition to case 16381?

MS. ROSE: H&M Enterprises.

MS. KING: You're in opposition to it?

WOMAN: No, ma'am. I'm sorry.

MS. KING: I second your motion that we waive the one day exceptions.

MS. REID: Okay. All in favor.

(Ayes)

MS. REID: And another one?

MS. ROSE: And then 16415, Holy Comforter St. Cyprian, no affidavit of posting was filed.

MS. KING: Is anyone here from --

MS. REID: We're not calling your case right now. We were basically dealing with a preliminary matter. I'm sorry. Are you 16415?

WOMAN: No.

MS. REID: You are Holy Comforter St. Cyprian? Okay. There was no affidavits of posting. Did you post your property with those big orange signs on the property?

MS. ROSE: You will need to speak on the record. If you could come forward, please.

MR. GORDON: I'm Harold Gordon of Holy Comforter St. Cyprian Community Action Group. There's a question posed of me?

MS. REID: Yes. Was your building posted? Those big orange signs.

MR. GORDON: Yes, it was.

MS. REID: Did you file an affidavit of posting?

MR. GORDON: I collected the two signs some 15 days ago, posted a sign, kept a spare. The first sign was torn down. I

came back a couple of days ago and received a couple more signs and they were immediately posted.

MS. KING: You never filed a notarized affidavit of the fact that you had posted it and so forth?

MR. GORDON: No, I didn't.

MS. KING: Is anybody here in opposition to the St. Cyprian case? I would note, Madam Chair, that the Advisory Neighborhood Commission was clearly aware of this with notice and a quorum, etcetera. They appear to have voted in support of the application and, absent any opposition prepared to testify in this case, I would move that no one is going to be harmed by our waiving the requirement for the affidavit since this gentleman has testified that in fact he did post the appropriate placards.

MS. REID: I have no problem with it. What about you, Mr. Gilreath?

MR. GILREATH: No.

MS. REID: By consensus, we will waive and, as a preliminary matter, I'd like to disclose that I represent a seller in an unrelated transaction that involves Mr. Gordon and, unless there is any objection to it, I don't think it would affect my impartiality in this case.

All right. We'll now recess.

MS. KING: Half an hour.

MS. REID: Thirty minutes.

MR. GILREATH: I'm going to be leaving at 2:15. John will be back. But 30 minutes sounds reasonable.

MS. REID: Okay. Thirty minutes until approximately 1:50.

(Whereupon, the hearing was recessed at 1:17 p.m. to reconvene at 1:500 p.m. this same day.)

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

1:53 p.m.

MS. REID: Good afternoon, ladies and gentlemen. The afternoon session of the Board of Zoning Adjustments will now come to order. My name is Sheila Cross Reid, Chairperson. Joining me today is Betty King, John Parsons, Mr. Gilreath representing the National Capital Planning Commission, and Mr. Parsons represents the Zoning Commission.

Copies of today's hearing agenda are available to you. They're 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 at 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 exception variance cases will proceed as follows. 1) statement and witness of the applicant, 2) government reports including Office of Planning, Department of Public Works, ANC, etcetera, 3) persons or parties in support, 4) persons or parties in opposition, 5) closing remarks by the applicant.

Cross examination of witnesses is permitted for persons or parties with direct interest in the case. The record will be closed at the conclusion of each case except for any material specifically requested. 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. The Board will make every effort to conclude the public hearing as near as possible by 6:00 p.m. If the afternoon cases are not completed at 6:00 p.m., the Board will assess whether it can complete the pending case or cases remaining on the agenda.

At this time, the Board will consider any preliminary matters. Preliminary matters are those which relate to whether a case will or should be heard today such as request for postponement, whether proper and adequate notice of the hearing has been given. If you are not prepared to go forward with the case today or if you believe that the Board should not proceed, now is the time to raise such a matter.

Do we have any preliminary matters? We dealt with some before we recessed. Does the staff have any more preliminary matters?

MS. ROSE: No, Madam Chair.

MS. REID: Okay. Then we'll call the first case, please.

MR. HART: Case Number 16381, application of H&M Enterprises pursuant to 11 DCMR 3108.1 for a special exception under Section 354 to establish a retail pet food store (commercial adjunct/convenience store) in part of the basement in an R-5-B/R-5-D District at premises 1629 Columbia Road, N.W. (Square 2589, Lot 476).

Those persons planning to testify, please stand and take an oath.

(Whereupon, the witnesses were sworn.)

MS. KING: This gentleman is not going to testify?

MR. TURNER: I just signed it because I figured you guys wanted to ask me a few questions maybe. I didn't know if that's testifying. I guess.

MS. KING: Did you get sworn in? Did you swear the oath?

MR. TURNER: No, I didn't. I will.

MS. REID: Yes, you should be sworn.

(Whereupon, Mr. Turner was sworn.)

MS. MOSS: Good afternoon, members of the Board of Zoning. My name is Erma Moss. I'm here to assist Mr. Vince Turner in resubmitting his application for a zoning variance. I have prepared a package with the additional information that was required or requested from aerie last meeting and I would like to ask permission to present a pleading now.

MS. REID: Give it to staff.

MS. MOSS: And along with it I have the original plat from the survey --

At our last meeting, there were some questions that came up with regards to how we were filing our -- and I was given the information from your office with the rules and regulations on the particular case that we were filing under. 354 for special use. I have --

MS. KING: Madam Chair, before we begin, unless we have some kind of letter from the owner of the premises, do we have that?

MS. MOSS: It's in the package, ma'am.

MS. KING: Pardon?

MS. MOSS: It's in the package and the original is in the office.

MS. KING: Where is it?

MS. REID: Exhibit G.

MS. KING: The owners of the property are HUM Enterprises. Is that correct?

MS. MOSS: Yes, ma'am.

MS. REID: Exhibit G, we don't have Exhibit G. It's not broken down.

MS. KING: There are no tabs.

MS. REID: Okay. We found it. I found it.

MS. MOSS: In the statement of the applicant, I tried to answer the questions that you had brought up in the last meeting and along with the code from D.C. Municipal Regulations 354 regarding convenience stores and apartments. Starting with the very first one, our statement is -- or Mr. Turner's statement is he's applying for special exception under 354 to establish a retail pet food store, commercial adjunct/convenience store in part of the basement in an R-5-B/R-5-D district at premises 1629 Columbia Road, N.W.

The shop is approximately 20 X 40' in dimensions and is located in the basement. The last time I was here, a shop was on

the lobby level. It is officially in the basement.

MS. KING: Excuse me. What you mean is that it has changed location?

MS. MOSS: It moved from the top floor in the lobby to the basement. We discussed that when I was here before and we had to make a determination of where exactly it was going to be, and it is in the basement. We have the pictures, the original pictures are here in the office and copies are attached to this package.

The law says that adjuncts authorized under this section should be limited to the main floor of the building or below. Our response is the pet food store is in the basement of the building. There should be no direct entrance to the adjunct from the outside of the building. That's #3. There is no direct entrance from the outside of the building to the pet food store.

The law says no part of the adjunct or the entrance to the adjunct shall be visible from a sidewalk. No part of the pet food store is visible from the sidewalk or outside. No signs or display indicating the existence of the adjunct shall be visible from the outside of the building. No part of the pet food store is visible from the sidewalk or outside. There are no visible signs from the outside of the building.

#6, the center of the principal entrance of the apartment house shall be no more than one fourth mile walking distance from the nearest principal business, street frontages or of any business previously established and operating in a commercial/industrial district. The center of the principal entrance of

the apartment house is more than a quarter mile walking distance from the nearest principal street frontage of any district previously established and operating in a commercial or industrial district.

354.7 is just kind of like reiterating what was already stated in 2, 3, 4, 5 that I've already cited. 354.8, the adjuncts authorized under this section are intended to supply tenants of the apartment house with commodities and services not familiar to those in established commercial districts.

But in order to protect the value and stability of these districts, the Board should give consideration to the following: the proximity of commercial districts at the adjunct proposed, the adequacy or convenience of parking spaces in or for those commercial districts, the adequacy or scope of commodities and services provided in those commercial districts, and the size and character of the apartment house since the tenants of the apartment house will be expected to furnish all or substantially all of the financial support of the requested adjunct.

Plaza Paws and Claws primarily serves the tenants of the building. Ninety percent of its income comes from tenants who live in the building. The other 10 percent is by chance from customers who may have heard about the store. The apartment building is pet friendly and the tenants have shown by signing a petition for Mr. Turner and the landlord has submitted his recommendation also. Pictures of the shop are attached and the originals are in BZA possession attached to the affidavit of posting.

Mr. Turner personally operates the store Monday

through Saturday from 11 a.m. to 6 p.m. and deliveries are made on an as needed basis, usually bi-weekly. However, Mr. Turner needs to have special use zoning approved to qualify for an occupancy permit because he has been fined by D.C. Regulatory Affairs and they are aware that he has applied for a zoning variance.

MS. REID: You're applying for a special exception, aren't you?

MS. MOSS: The letter is in here.

MS. REID: The first one was a variance. That was what we had sent back -- special exception.

MS. MOSS: The letter from the Board is here.

MS. REID: Letter from who?

MS. MOSS: From the Board of Zoning.

MS. REID: The Edgar Nunley letter?

MS. MOSS: From Gladys Hicks, Deputy Zoning Administrator. I had discussed the subject with Beverly Bailey. "This case can be heard as a special exception pursuant to Section 354 of the D.C. Zoning regulations subject to the provisions and conditions set forth for commercial adjuncts for apartment buildings."

MS. REID: Okay. We had basically heard testimony in this case during the hearing that preceded this hearing in regard to this particular case, so we are familiar with it. Are there any questions that you have of the applicant?

MS. KING: I'm concerned about this. You're citing this letter from H&M Enterprises which is dated October 26 as your authorization. Is that correct? Is that what you're citing as your

authorization and Mr. Turner's authorization?

MS. MOSS: I'm looking for the letter now. Yes, this is the letter that the landlord gave us to present to your office.

MS. KING: The landlord says this letter expresses his approval of Mr. Turner coming before us, but it also says, "Please notify us as to the rehearing date and we will send a representative to attend the hearing." Is there a representative here of H&M?

MS. MOSS: No, he didn't. Mr. Turner talked to him and he said he was going to send someone, but nobody came today.

MS. KING: Thank you. That's my only question.

MS. REID: Okay. Is there anyone here in opposition to this particular case? All right. Then just stay right there. No ANC report?

MS. KING: No ANC report.

MS. REID: So we can assume then that they are not opposed since they didn't file anything with us. No government reports?

MS. KING: None that I'm aware of.

MS. REID: Okay. Persons and parties in support of this application? Persons and parties in opposition to the application? Closing remarks by the applicant.

MS. KING: Just say please.

MR. TURNER: Please.

MS. MOSS: Please.

MS. REID: If you have no closing remarks, then what Ms. King is saying if you just want to kind of ask for a bench decision

summary order which means then that you should get a decision today.

MR. GILREATH: I concur that my concerns were that it not be on the ground floor and could be perhaps visible from the sidewalk and so forth. It's in the basement now and apparently from the documentation apparently serves the tenants well there. So I feel that the burden of proof has been met. I'd like to make a motion to give the special exception for the pet store.

MS. KING: And I second the motion.

MS. REID: Basically, we feel that the applicant has demonstrated that they comply with the special exception requirement, Section --

MS. KING: Section 354.

MS. REID: 350.4 and that there does not appear to be any adverse impact nor does there appear to be an impairment to the integrity and intent of the Zoning Commission or the map. All in favor.

(Ayes)

MS. REID: Opposed.

MS. ROSE: Staff will record the vote as three to zero with Mr. Gilreath, Ms. King and Ms. Reid to grant the application. Mr. Parsons not voting, not having participated in the case. And staff indicates that there is an ANC report that may have been submitted earlier, so if we find it, can we just note it in the order?

MS. REID: Okay. It wasn't in our file but it seems like there's one #19.

MS. KING: Here it is. At a regularly scheduled public meeting of 1C, voted to support the application. Met at its regularly scheduled time each month -- six commissioners were present at the meeting which constitutes a quorum. So we give great weight to that.

MS. REID: Okay. You should have the order in about two weeks.

MS. MOSS: Thank you.

MR. TURNER: Thank you very much.

MR. HART: Case 16403, application of the President and Directors of Gonzaga College High School pursuant to 11 DCMR 3108.1 for a special exception under Section 206 to construct an addition, upgrade and renovate existing campus buildings and school grounds in R-4 and C-2-A Districts at premises 19 I Street, N.W., Square 622, Lot 839.

All persons wishing to testify, please come forward.

MS. REID: Is the applicant here? Okay. What we'll do is we'll take the next case and then give him time to get here. Call the next case, please.

MR. HART: Case 16415. Application of the Holy Comforter - St. Cyprian Community Action Group pursuant to 11 DCMR 3108.1 for a special exception under Subsection 334.1 to establish a Temporary Community Service Center in an R-5-B District at premises 1108 3rd Street, S.E., Square 800, Lot 816.

(Whereupon, the witness was sworn.)

MS. REID: All right. Give your name and your address please.

MR. GORDON: My name is Harold J. Gordon. I'm the president and founder of the Holy Comforter - St. Cyprian Community Action Group. My office address is 901 Pennsylvania Avenue, S.E. My home address is 347 11th Street, S.E., Washington, D.C.

MS. REID: Okay. Go ahead.

MR. GORDON: I'm here to process our application for a special exception.

MS. KING: Excuse me, Mr. Gordon. We have a request for a waiver of fees. Is that a preliminary matter in this case? So we should take that up before we hear the case.

MS. ROSE: It doesn't matter if you do it before or after. Sometimes you just wait until the end.

MS. KING: I wasn't sure what protocol was. Continue. I'm sorry, Mr. Gordon.

MR. GORDON: I'm here to forward the application for the special exception in this case. The Holy Comforter - St. Cyprian Community Action Group, we call ourselves CAG for short to save some time in the title, we were founded in 1988 and we have a considerable track record in this particular community in that we have provided substance abuse services to residents of that community for the past eight years. We have found that one of the greatest obstacles to economic development in that area is the fact that residents of the area find themselves in poor condition as far as their job readiness status. And so in addition to drug recovery services that we've offered those residents, my board has decided to

dedicate the building at 1108 3rd Street as a temporary employment center, community center, where we will implement a successful program model after the Strive Employment Program out of New York. We intend to, with your approval, to operate an exciting and dynamic employment training center where clients will be offered this service free of charge and the program centers around job readiness. It's a matter of confronting participants in the program for a three week period, getting them ready to accept conditions of employment so that they might present themselves in better fashion at a job interview.

The area of the building itself has experienced long term abandonment. In acquiring the building some nine months ago, we found it to have been in use as a crack house for a considerable period of time. In fact, we had to announce our entry into the building so that the crack users could vacate and give us time to do some demolition and cleaning up of the property.

We're extremely excited about bringing this service to those residents. We have teamed with another nonprofit organization, Capital Hill Group Ministry, located at Sears Square S.E. in bringing this service to those residents.

We have a situation whereby we have to raise approximately $200,000 to implement this program. My agency has committed to preparing the building. The building is owned by the Community Action Group and we have taken upon the commitment of preparing the building for occupancy. And so we request your consideration in providing a special exception so that this property can be used in the fashion that is beneficial to the community.

MS. KING: Madam Chair, may I ask some questions?

MS. REID: Sure.

MS. KING: You speak of this as a temporary community center. Does that mean that you're asking for a time limit on your special -- I mean what is the proposed future of this building? How temporary is temporary?

MR. GORDON: We think that, in accordance with the code which we took the language from, that the three year duration would be totally sufficient for us to operate the program because we don't expect the demand for those services to exceed the capability of the building in three years, and we certainly feel comfortable with the provision that if we are to renew this special exception, you would grant it only three years according to the code and that time factor we're very comfortable with it.

MS. KING: Okay. And you intend to have a staff of four people. Is that correct?

MR. GORDON: Yes. We envision a staff of four.

MS. KING: Is that four people or is that four full time equivalents? I mean is some of it part time, some of it full time?

MR. GORDON: No. The program requires four staff members for eight hours a day Monday through Friday.

MS. KING: And you don't anticipate that in the three years you would want to exceed that four. It's highly likely that we're going to put conditions on, if we grant this exception, that we're going to put conditions on. So if you can project three years into the future

as to what your maximum requirements as far as staff might be at the end of the three year period, is it going to continue to be four?

MR. GORDON: I would think that we'd have to plan on a reasonable staff growth and the building can not accommodate any more than six.

MS. KING: So perhaps we should limit the staff to six although initially you may well have just four.

MR. GORDON: That would be totally acceptable to us.

MS. KING: And you'll be operating Monday through Friday.

MR. GORDON: Correct.

MS. KING: What will the hours of operation be?

MR. GORDON: Generally from 8 to 5.

MS. KING: If we are to put hours in the -- and I gather that you may be lending the facility to community groups and so forth.

MR. GORDON: Correct.

MS. KING: But for this program, if we're to limit the hours, we would say 8 to 5. Is that correct?

MR. GORDON: The normal operation will be from 8 to 5. A part of the Strive employment concept is to make space available in our computer learning center to persons who are in a job seeking status to return at a reasonable hour to operate our phone bank or operate the computer center.

MS. KING: What would be the latest hour that you

might -- 8:00 in the evening?

MR. GORDON: I think 10:00 would be safe for us.

MS. KING: Ten?

MR. GORDON: Ten as far as the Strive operation.

MR. GILREATH: They may have evening classes as well.

MS. KING: But we don't want to say -- not evening classes per se but I gather that people may come in to use the telephones or may come in to use the computers to prepare their résumés or other materials. We don't want to say the center will operate from 8 to 5 and create a situation where it would be illegal for them to have people to come in in the evening to use the phones and the computers.

MR. GILREATH: Can't we put some kind of special language in, from 8 to 5 and then a proviso?

MS. KING: Is there a maximum number of clients that this center will serve?

MR. GORDON: From the experience in New York and Baltimore and Philadelphia, we have good reason to believe that we will initially start with a maximum of 30 clients in the program for the first year. Depending on demand and our ability to meet that demand. The building can accommodate up to 75 students. We envision no more than 35 students at any one time during the first year.

MS. KING: And what about in the second and third years?

MR. GORDON: We have a maximum capacity of 75.

MS. KING: Okay. So again, as with the staff, if we set conditions, you may want us to say maximum of 75. I mean that doesn't mean that you have to have 75 people but that you can't have more than 75.

MR. GORDON: If the Board finds it necessary to set a maximum capacity, 75 would be comfortable for us.

MS. KING: I have no further questions.

MR. GILREATH: What about the parking? Will there be adequate parking?

MR. GORDON: There is considerable off street parking. We will encourage all participants to use public transportation.

MS. REID: Ms. Rose, for this type of facility -- and I was looking under 2001 --

MS. ROSE: 2101.

MS. REID: 2101. I didn't see clearly that community based residential facilities.

MS. KING: It's not residential.

MS. REID: The point I was making is that while they did have an indication as to parking requirements for that, they did not have specifically that I saw one that determined for us what the parking requirement would be.

MS. ROSE: Your question is?

MS. REID: For a temporary community service center, what would be the parking requirement based on either the

number of persons served, students, or the staff and employees?

MS. ROSE: I don't know the answer to that question. That's really supposed to be determined by the Zoning Administrator and I haven't looked it up but I can take a look for it, but I don't know the answer off hand.

MS. REID: Mr. Parsons, you being our most esteemed --

MS. KING: Our institutional memory.

MS. REID: -- member here with the greatest experience --

MR. PARSONS: I wish I could help.

MS. KING: We don't have a letter from the Zoning Administrator, do we?

MS. REID: It's self-certified.

MS. KING: Oh, it's self-certified. I don't have a copy.

MS. REID: If it's self-certified, they don't have to designate as the Zoning Administrator would.

MS. ROSE: They would have to put whatever relief they would need and if they go to get their permit and don't have all the relief the need, they'd have to come back. That's the risk of self-certifying.

MS. REID: Okay. Then let's try not to have him come back. Mr. Gordon, do you have any on site parking?

MR. GORDON: There is no on site parking on the property that we own. There is parking available. This is on the immediate outer edge of the Arthur Kapper Carrollsburg Community

where there is considerable parking to the rear of the building that I'm sure is intended for residents. It is not designated and we certainly hope to be able to use some of that space if we're not in violation of any of the parking requirements. But there is an awful lot of off street parking in that this is a distressed community, and we have encouraged prospective staff. The program is modeled behind the centers in New York. All of them are in urban setting with no provisions for parking. We think that for the staff there will be sufficient off street parking and both staff and participants will be encouraged to use public transportation. I'm not sure I answered your question.

MS. REID: If the regulations are silent as to specifically what type of parking would be required for this type of facility, do we assume that there is no parking requirement?

MS. ROSE: Well, the last provision under 2101.1 says, "All other uses, all districts, one for each 600 square feet of gross floor area and cellar floor area." That's the only other provision.

MS. REID: Where is that? What page?

MS. ROSE: Page 21-8.

MS. REID: Other uses. Does that mean on site?

MS. ROSE: I think that's what the parking requirements that deal with on site parking.

MS. REID: How many square feet do you have?

MR. GORDON: The building is 29.1 feet by 34.6 feet.

MS. REID: Twenty one what?

MR. GORDON: 29.1 by 34.6.

MS. KING: That's approximately 1,000 square feet.

MS. REID: He would need about two.

MS. KING: But he's testified that there is adequate parking at the rear of Arthur Kapper, off street parking

MR. GORDON: That is not being utilized at this time.

MS. KING: That is not being utilized. Since their clients are coming principally from Arthur Kapper, I believe that that --

MR. GORDON: Arthur Kapper and Carrollsburg and clients from other -- there is a subway station one block away from this building.

MS. KING: It seems to me that it's probably -- in any event, we're only granting this for three years and if it turns out to be a problem for the neighbors, we'll hear about it.

MS. REID: Two off street. It didn't say it had to be on site. Two off street parking spaces are available at the -- what's the name of it?

MR. GORDON: Arthur Kapper Carrollsburg.

MS. REID: Public housing?

MR. GORDON: Correct.

MS. REID: If you have are basically sure that that would take care of the parking problem, we just wanted you to be able to address it, and I have no problem with that.

MR. GILREATH: Nor do I. It serves a very worthwhile community purpose, as well, and -- regulations says it has to be on site. --

MS. REID: Okay. Under Section 334.1, the one that

you are basically complying with in order to get your special exception, it appears in listening to what you've just told us already that you have basically addressed most of the items in the section regarding the purpose of the Community Service Center and we have not heard any objections or anyone who's in opposition to your application, so we can then assume that there is no objection coming from neighboring properties in regard to your having your application approved because you posted the property and you sent out letters to everyone within 200 feet, so we don't have anyone who's objecting in regard to parking, traffic, noise or the like.

No structural changes shall be made except those required by other municipal laws or regulations. Just say verbally yes --

MR. GORDON: Yes. I'm sorry.

MS. REID: This is for the record. The use shall be reasonably necessary for the convenience of the neighborhood in which it is proposed to be located.

MR. GORDON: Yes.

MS. REID: A temporary Community Service Center shall not be organized for profit.

MR. GORDON: Correct.

MS. REID: Nonprofit.

MR. GORDON: Nonprofit.

MS. REID: And then it says for a reasonable time limit of three years, so we've already discussed that.

MR. GORDON: Yes.

MS. REID: Okay. Any questions from Board Members?

All right. Is there a letter from the ANC?

MS. KING: There is, Madam Chair. They ask that we waive our rules in order to receive their letter which was mailed on December 9th and received here on December 11th. And I suggest that we do waive our rules.

MS. REID: I have no problem with waiving the rules.

MS. KING: ANC 6B voted nine to nothing to support this application and it was a properly noticed meeting on December 8th with a quorum of commissioners present. It is a 13 member commission with one vacancy. Therefore, seven people is a quorum and they had nine positive votes in favor. So we give great weight to their recommendation.

MS. REID: Any government reports?

MS. KING: None that I'm aware of.

MS. REID: Okay. Persons or parties in support of this application. Persons or parties in opposition to the application. Closing remarks by the applicant.

MR. GORDON: I'm just appreciative of this opportunity and my board will certainly appreciate the consideration you've given us for delivering these much needed services to very, very deserving members of our community, and I'm appreciative.

MS. REID: Would you like a summary order, a bench decision, today?

MR. GORDON: That would be helpful.

MS. ROSE: The other issue is the fee waiver.

MS. REID: Okay. Let's vote on this issue and then we'll get to the fee waiver.

MS. KING: I move that we grant this application for a period of three years.

MS. REID: Second.

MS. KING: The maximum capacity of the facility is 75 clients. Seventy five clients or 75 individuals?

MR. GORDON: Seventy five participants.

MS. KING: And plus a staff of up to six. Right?

MR. GORDON: Correct.

MS. KING: The maximum capacity of the facility would accommodate 75 clients and, therefore, that's the maximum we place on it although certainly initially there will not be that many people at any one time. The maximum number of staff that we authorize is six. The hours for the regular program are from 8 a.m. to 5 p.m. However, smaller number of participants of the program can be on site until 10 p.m. provided that they don't create any noise or disturbance that might be uncomfortable for residents in the immediate neighborhood.

MS. REID: All in favor.

MR. GILREATH: I think that should excessive noise.

MS. KING: Excessive noise.

MR. GORDON: If I may, Ms. Chairperson, I don't know if the community use aspect is covered in the motion.

MS. KING: In addition to in those evening hours,

local or community organizations can be afforded an opportunity to use the facility should they wish to do so. Again, I guess we should set a curfew of 10:00. Does that seem to be reasonable?

MR. GORDON: I would think that would be a little tough in case there's a community forum that starts at 8:00 that may go to 11:00.

MS. KING: Let me rephrase that whole thing for the staff. The regular hours for the program at the Temporary Community Center shall be from 8 until 5. Clients of the Community Center can also be on site as individuals or in smaller groups until 10:00. In addition, the Community Center can feel free to lend its facilities for community organizations to have their meetings in all cases provided that they don't create any disturbance that would disturb the neighbors in the immediate vicinity. MR. GORDON: Fine.

MS. KING: Thereby setting no time limit on community meetings or day limit I might also say because presumably some of them meet on week ends as well.

MR. GORDON: Yes.

MS. REID: Also, this is the type of facility that would bring into service a dilapidated crack ridden property and this is what we like to see. So all in favor.

(Ayes)

MS. REID: Opposed.

MS. ROSE: Staff will record the vote as four to zero with Ms. King, Ms. Reid, Mr. Gilreath and Mr. Parsons to grant the application with conditions and there was issuance of a summary

order.

MS. REID: And you should have your order within about two weeks. We'll address the issue of the request for waiver of the fee.

MR. GORDON: I'm sorry?

MS. REID: We will now address the question regarding the waiver of the fee.

MR. GORDON: Okay. Should I present now?

MS. REID: Yes.

MR. GORDON: CAG is, like most other nonprofit service organizations, hard pressed for funds. We have been successful in receiving federal funds from HUD for the past four years to accommodate 49 clients, in-house residential clients in our substance abuse recovery residential facility. We now operate, we have 140 clients based on funding assistance for 49. We have done that by effective use of our fund raising mechanism and the ability and the propensity for all clients in the program to have no adversity to work. So we have maintained, we kept our doors open with very few dollars in the way of grant or foundation because our clients are willing to get out and work. Those funds are strapped.

We have accepted this service and providing this Center because we know that there's a desperate need for this kind of program for many of the clients that we serve already and we have committed to preparing the building without an identified funding source. But we will use general funds to insure that the building is completely renovated in a due period of time, but it's using all the

money that we can pull together to do this.

The consortium is currently raising funds to complete the operation and I would appreciate any consideration that this Board might give my agency toward waiving the filing fee.

MR. GILREATH: It seems to me that this kind of activity is badly needed and of great help to the people in some of these communities where it's very difficult for them to establish themselves. If we are empowered to grant the waiver of this fee, I personally favor it.

MS. KING: Madam Chair, is your interpretation that we are empowered to grant this waiver?

MS. REID: When this has happened before when there's been a request, it typically had to be predicated upon Section 3381.4 that says, "The Board may authorize refund of all or a portion of the filing fee if it finds that the application was incorrectly filed at the direction of the Zoning Regulation Division, Department of Consumer and Regulatory Affairs."

In other words, if there was a mistake that's made by the government, then we have the authority to reduce the fees. Since I have been sitting for three years, I do not remember ever a time when we reduced the fees except for on the foreign mission case once when it was a mistake that was based on something that the government had done erroneously. I don't know if we have the authority to be able to do that if there was not a mistake made.

MR. GILREATH: Isn't there a provision they read last time where it said community groups of the National Capital Planning

Commission don't have to pay these fees?

MS. REID: Mr. Parsons, as our most elder statesman here today.

MR. PARSONS: I'm striking out twice.

MS. ROSE: Section 33.84 says "The following appellants shall not be required to pay a fee." Under C it says "Citizens association or association created for civic purposes and not for profit. The National Capital Planning Commission and the Advisory Neighborhood Commission." These are appellants and this is an application.

MR. GILREATH: So we're not authorized. Do you have any experience whereby we can grant this?

MS. ROSE: Not in my experience, and it would need to be based on the regulations or a court case. We have civic associations that file appeals on the applications all the time and if one is granted a waiver or a reduction in the fee --

MS. REID: It sets a precedent.

MS. ROSE: Then it would set a precedent for not requiring fees from any of them.

MR. GILREATH: We really don't have the authority to grant the waiver.

MS. ROSE: Not in an application.

MS. REID: It's not in our purview to do so unless there is evidence that there has been some error or some type of mistake on the part of the government. Other than that, we don't have the authority to do so. But we can take a vote just for the record.

MR. GILREATH: Can we say if we were empowered --

MS. REID: Excuse me. We don't even have to take a vote, do we, Ms. Rose, because it's not something within our purview.

MS. ROSE: He has made a request so you could either by consensus or vote to deny the request based on the regulations. The request is still before you.

MS. KING: I think by consensus we agreed that we don't feel that we have the authority or the power to do this in this case or that if we did it in this case that we would be setting a dangerous precedent which would be very damaging to the BZA. So I think as much as we applaud what the CAG is doing, that we regret that we don't feel that we can do anything at this time and that we could do that by consensus if nobody disagrees.

MS. REID: I wish that we could. I wish that we were able to do something, certainly in this instance where there is such a worthwhile endeavor. We definitely feel that we would like to do more but, nonetheless, we don't have the authority to do so.

MR. GORDON: I certainly respect that consideration.

MS. REID: Okay.

MR. GORDON: Thank you very much.

MS. REID: You're quite welcome. You'll have your order in about two weeks, Mr. Gordon.

MR. GORDON: Thank you.

MS. KING: Congratulations on your excellent work.

MS. REID: Our next case, please.

MR. HART: Case 16403, application of the President and Directors of Gonzaga College High School pursuant to 11 DCMR 3108.1, for a special exception under Section 206 to construct an addition, upgrade and renovate existing campus buildings and school ground sin R-4 and C-2-A Districts at premises 19 I Street, N.W., Square 622, Lot 839.

Persons planning to testify, please stand for the oath.

(Whereupon, the witness was sworn.)

MS. KING: I must reveal that I've known Mr. Long for 20 years, but that will not prejudice me in his favor.

MR. LONG: I would think 30.

MS. REID: You know half the people that come in here.

MS. KING: That's true.

MR. FEOLA: Madam Chairperson, for the record, my name is Phil Feola with the law firm of -- Hedrick and Lane on behalf of the applicant, Gonzaga College High School. The first thing I'd like to do is apologize and I'm not sure where our witnesses are even as we speak and hopefully we can get rid of a few preliminary things and our architects will be here to make the presentation. I beg your indulgence because in 20 years of doing this, almost as long as Mr. Parsons has been sitting up there, this has never happened. I do apologize.

As a preliminary matter, I want to turn in the affidavit of posting.

MS. ROSE: It's just an affidavit of maintenance so the affidavit has been submitted in due course.

MS. REID: Okay.

MR. FEOLA: The second preliminary thing, Madam Chair, is we have proposed to have three expert witnesses, Mr. William Geier of Geier, Renfrow, Brown Architects, Mr. Brian Stephenson of Stephenson Good Landscape Architects and Osborne George of the -- O.R. George & Associates. Their résumés are part of the pre-hearing submission but I have extra copies here available for the Board and I'd like to suggest that they be recognized as experts in their respective fields, Mr. Geier as an architect, Mr. Stephenson as a landscape architect, Mr. George as a transportation consultant.

MS. KING: We have that in our packet.

MS. REID: No objection.

MS. KING: No objection.

MS. REID: They just happen not to be here at the moment. Right?

MR. FEOLA: That's correct. It's going to be hard to prove the case, as Board Member King pointed out, without expert witnesses. And finally, my last preliminary matter and then I guess I'm going to have to dance or something on the table, I'd like to submit two drawings which are substitute drawings for two of the 20 or so that are in the file. These particular -- we found a couple of minor technical mistakes. One thing was labeled existing and it was proposed, and things like that. Very minor. But if the Board is inclined to approve this application, we'd like to have a corrected set sent to the Zoning

Administrator's office so, with your pleasure, I'd like to submit these two drawings. They're both elevations and they replace drawings A.03 and E.02.

I guess I can make my opening remarks.

MS. REID: Mr. Feola, obviously this case does not appear to have any opposition and so, therefore, why don't you basically just present the salient points and then when hopefully your expert witnesses arrive, at the end they can do their part.

MR. FEOLA: Sure.

MS. REID: We have read the information and we stand on the record. Is there any opposition to this case? Please come forward, ma'am. Speak into the mic.

MS. BUSH: We don't have any opposition.

MS. REID: Your name and your address, please.

MS. BUSH: I'm sorry. My name is Julia Bush and I'm 72 K Street, N.W. I have no opposition, but I need -- one of the things when we went to the hearing, we did go to a meeting with Father at the 19 I and he was showing us the plan on it, showing us the building. We have no opposition against them adding to the building or anything, but the only thing was a question that came up was adjacent wall. That wall. That's the only thing that bothered me, where that wall was going.

The other problem would be that the rodents. We have no rodents now. We had a problem with them before but we've gotten rid of them and we're wanting to know would the contractor be responsible for making sure that that problem would be abated? Our

houses set here and our alley comes from I this way and then it comes off of K this way.

MS. REID: Basically, you're not in opposition. You're here just to register a concern, so you're basically in support of it.

MS. BUSH: I'm in support of it if it's going the way that they explained it to us and giving the factor that the contractor would -- the rats.

MS. REID: Sure. And you also will testify? You will testify in support of?

MS. BUSH: Yes. If it's going the way that they explained it.

MS. REID: Okay.

MS. KING: And so your concerns are rat control, and what is your concern with regard to the wall?

MS. BUSH: It was adjacent wall and that part wasn't clear to me that they said they were going to put up adjacent wall into the alley. That wall, if it's going on the one that they have there, center, fine. It's on their property going all the way up. We have no problem.

MS. KING: Okay. So what you want is the wall adjacent to the alley should be on their property.

MS. BUSH: Yes. As long as it doesn't take anything from my alley because we only have that way to go in and that way to come out. We're in support of it otherwise.

MS. KING: Okay.

MS. REID: Okay. Thank you.

MS. BUSH: Thank you.

MS. REID: We'll see that those concerns are addressed.

MAN: We have some real witnesses now, Madam Chair.

MS. KING: Aren't you going to dance for us, too?

MAN: I was almost going to have to, so I'll retreat back as an observer.

MR. FEOLA: To first address both those concerns, if the Board is inclined to approve this application, those are conditions that the school can live with. That is that the wall be placed entirely on its property. The school will take responsibility for the rodent control.

MS. KING: I have that written down here.

MR. FEOLA: One of my witnesses is here and I think he needs to be sworn in.

MS. ROSE: If there's anyone else in the audience who plans to testify in this application, please take the oath at this time.

MR. GILREATH: Please raise your right hand.

(Whereupon, the witness was sworn.)

MR. FEOLA: Thank you. We're here this afternoon, with your indulgence, starting a little late, to request permission for Gonzaga to expand its physical plant under Section 206 of the zoning regulations on its seven acre campus and which it's been for over 100 years on North Capital Street between H and K.

The improvements that are in the application are

necessary for the school to remain the outstanding institution that it is today and we'll show that these improvements will not create any objectionable conditions due to traffic, noise, the number of students, that the proposal contains an ample number of parking spaces significantly in excess of the zoning regulations and that the granting of this application is not inconsistent with the comprehensive plan and in harmony with the zoning regulations. In fact, we think that the improvements that will be made to the campus will make the campus better and make its impact on the surrounding neighborhood better.

We have four witnesses I indicated. Our first is Father Allen Novotny who's President of Gonzaga and, Father, would you make a few comments about the application.

FATHER NOVOTNY: My name is Father Allen Novotny. I'm the President of Gonzaga College High School which was founded in 1821 by my predecessors in the Society of Jesus, Jesuits for short. And although our original location was on F Street next to the old Woodward and Lothrop building, we've been at our present location since 1871.

More importantly, we renewed our commitment to remain there and in the District several times in our history, especially after the urban unrest of the late 1960s when many institutions and businesses fled the District.

Our complex consists of seven buildings of various ages and conditions around the Church of St. Aloysis and the Jesuit residence. Our program educates students from grades 9 through 12. Our program is a college preparatory program and 98 percent of our

students go on to college immediately following graduation.

Our current population is 850 students and they come from all over the metropolitan region. In addition to the geographic diversity that we serve, they also represent a wide ethnic and socioeconomic diversity, given the fact that we offer this year alone $895,000 in financial aid which touches one out of every three of our students.

Our faculty and staff consists of 105 individuals including clerical and support staff. Our educational philosophy is based on the spiritual vision of St. Ignatius Loyola, the founder of the Jesuits, who urges followers to find God in all things. It's a very world affirming philosophy and we teach our students to find the divine in the beauty of literature and art, in the wonders of science, and in the hopes and aspiration of God's people. We educate our students to be what we call men for others. That is, to place their gifts and talents at the service of the wider community.

The objectives of the project that we present today, as I mentioned, our buildings are of various ages and various conditions. We have decades worth of deferred maintenance that have been built up. We have to address the infrastructure of our buildings. We have much work to do behind walls, above ceilings, and below floors in terms of our heating/mechanical systems, air handling, lighting, plumbing, etcetera, and we also want to make our buildings handicapped accessible.

The main aim of the improvements that we suggest is to serve our academic program by producing facilities that are

commensurate with our fine academic program and to accommodate the number of students that we now have. The bottom line is we want to make it possible for us to remain where we are for another 175 years.

Our renovations will make it possible for us to have up to 900 students, although we have no intention at this point to increase our student body by another 50 students but just to be sure that we didn't have to come back to you in the immediate future, we have allowed for that in our planning. Our faculty and staff numbers would remain essentially the same as they are now.

Gonzaga has always tried to be a good neighbor and we have done that by making our facilities available to local neighborhood organizations. For example, we have allowed our auditorium to be used by the Option Public Charter School for their graduations. They're located at the Children's Museum around the corner. They've also used our athletic facilities for their phys. ed. program. The Capital Police do their morning workouts on our track. We've allowed our gym to be used for local fund raising such as the Home Court Program between Georgetown Law students and members of Congress which raises money for the homeless.

We have for years provided free facilities and office space for the Higher Achievement Program which is an after hours enrichment program for District Children and we have provided meeting spaces for groups such as the Perry School Project and the North Capital Neighborhood Development Organization.

All that is on a formal basis. On an informal basis, we

also provide some open space for neighborhood people and for office workers during the work day. We're also in service to the community by the community service programs in which our students are involved. They begin right there on the campus with the McKenna Center, a soup kitchen and homeless shelter located under St. Aloysis Church that provides shelter for the homeless and food for the hungry. Also the McKenna's Wagon Program which takes food out into the neighborhood for people who can't come in, Food for Friends which visits and takes aid to homebound AIDS patients, a Special Olympics Program for the handicapped, tutoring at the -- Corda housing complex nearby and visiting the elderly at the J.B. Johnson Nursing Center next door.

Services aren't limited to our students. Our faculty have also been involved in providing résumé writing tips for the homeless at the McKenna Center as well as art therapy and they have volunteered to spend the night on occasion to be with the homeless men down there during those months of operation.

I think that what we have done for the community is reflected in the letters of support, copies of which you've been provided with, from local organizations. Our plans have been submitted to and unanimously approved by the local Advisory Neighborhood Council and finally, we have held information sessions for our residential neighbors and have received expressions of support from them. For these and the reasons stated in our proposal, I hope you'll look favorably on our proposal.

MS. REID: Questions?

MS. KING: Father, your traffic consultant has made a couple of recommendations. one is that the school should reward preferential parking spaces to vehicles that come with three or more occupants and also that you should encourage no stopping or standing restrictions on North Capital Street during peak hours. Are you amenable to following those recommendations of your traffic consultant?

FATHER NOVOTNY: Yes, we are and, as a matter of fact, we have started to discourage that kind of drop off on North Capital Street and we believe that the renovation of the interior space which is now a parking lot and more of a cul de sac will encourage people not to stop on North Capital Street but to use that drop off in front of the -- Center.

In terms of the preferential parking, that's certainly something that we will do. As a matter of fact, most of our students' use of cars already have three to four people in them because the numbers that you may have seen include the faculty driving which tends to be on a single person basis.

MS. KING: Thank you.

MR. FEOLA: Madam Chair, the rest of us are gathering. Our architect and landscape architect are here and I apologize, they'll have to be sworn.

MS. REID: Yes.

MR. GILREATH: Please raise your right hand.

(Whereupon, the witnesses were sworn.)

MR. FEOLA: Thank you, Madam Chair. Our next

witness is Mr. Brian Stephenson. Mr. Stephenson, care to explain the site plan and the landscape improvements.

MS. KING: Mr. Stephenson, there's a portable mic over there if you want to take it and turn it on.

MR. STEPHENSON: Thank you very much. My name is Brian Stephenson. I'm a landscape architect. I live at 3520 Quesada Street here in the District. I would like to make a brief presentation regarding the site and landscape plan associated with this project. As you are aware, Gonzaga College High School is located at 19 I Street in the area north of Capital Hill. The school property is bounded, as you can see on this plan, by North Capital Street to the east, by Street to the north and by H Street to the south. The school is in an urban neighborhood of mixed land uses.

East of the property is primarily commercial office space along the North Capital Street corridor. North of the property is lower density public and private housing. West of the project is higher density housing as well as a large surface parking lot now used by the Government Printing Office and south of the property is commercial office space and other surface parking as well.

The existing site essentially is bounded -- I'll trace my finger around the site for you. The existing site essentially is divided by the former I Street in the middle into two separate components. There's a building area north of the former I Street and a recreational area south. The building area is a collection of various buildings, mostly dating from the 19th and early part of the 20th century, and it includes St. Aloysis Church located right here

which is a historic structure.

The buildings are clustered around an interior paved courtyard which is currently used for parking and the pick up and drop off function for the school in the morning and afternoon. The buildings around this courtyard, these two buildings are primarily academic classroom buildings and the buildings to the southwest of the courtyard are primarily student life and support buildings. They contain chapel, library, food service facility and offices.

The recreational area south of I Street has the large turf athletic field and running track with some bleacher seating and currently in this area here exist five tennis courts bordering on H Street.

MS. KING: Excuse me. Where is the wall -- before you arrived, a lady in back asked about a wall that was going to be added that was next to an alley.

MR. STEPHENSON: Yes. That would be in this area right here.

MS. KING: And it's anticipated that that wall will be entirely on the Gonzaga property, not impinging in any way on the existing alley.

MR. STEPHENSON: That is correct.

MS. KING: Thank you.

MR. STEPHENSON: The proposed plan consists of sort of four general kinds of work. One would be renovations of and additions to the existing buildings. The second is minor site and landscape improvements associated with those renovations and

additions. The third is the development of a new parking lot on the southern portion of the site to replace the existing tennis courts and the fourth is the development of a new student quadrangle in the courtyard area of the project to replace the existing parking. And I'd like to run those four components right now.

Firstly, regarding the renovations of and additions to the building. Mr. Geier, the project architect whose presentation will follow mine, will explain that program in detail. But I would like to point out on the plan and then I'll tip up the model here so that you can see it, on the model the darker colors of cardboard indicate to the additions to building and essentially from a site planning perspective, you'll see that the additions to the buildings are all occurring internal to the site. They're either facing into the courtyard area here or they're infill from existing buildings as well.

The site landscape improvements adjacent to those buildings consist of minor pavement and landscape repair that'll be generated by the construction of those facilities. But it also includes an upgrade of the front lawn area adjacent to the academic buildings along North Capital Street and along K Street. In these areas, unnecessary pavement will be removed. The existing field will be repaired and new lawn and shade trees will be installed to improve the public appearance of the campus on this corner of the site. The existing landscape and fencing bordering the athletic field along North Capital Street will remain as it is now.

The proposed plan includes the development of a new parking lot on the south side of the site adjacent to H Street. This

parking lot has 92 spaces. The size of the spaces and the drive aisles is in conformance with zoning requirements. The frontage along H Street where this parking lot abuts will have a seven foot high ornamental metal fence similar to the existing fence along North Capital Street. The space behind the sidewalk, there will be a six foot minimum landscape strip that will have lawn and a 42 inch high hedge planted along the frontage and the empty tree boxes that exist along H Street, we'll be planting new street trees in those areas.

This elevation on this board here shows the appearance of that parking lot from H Street showing both the existing and the new street trees, the continuous ornamental metal fence, the 42 inch high hedge. The interior of the parking lot will have approximately eight percent landscape space. This exceeds the zoning requirement. And this space will be planted with shrub material and shade trees. The parking lot will be lit with cut off style luminaries on 25 foot poles providing an average illumination of about four foot candles in the parking lot.

This section here shows a section across the parking lot. This is H Street. The street tree, the sidewalk area. There's the hedge, the ornamental metal fence, and then this is the shrub material and the shade trees in the parking lot. This shows the proposed new light fixture. A cut off style light fixture is designed so that the light is sharply controlled so that it falls very strictly within the bounds of the parking lot.

Perhaps the most significant change proposed by this plan is the development of a new student quadrangle in the courtyard

area of the project. I have a detail plan here that shows some specific detail of that area, these being the academic buildings, these being the student support buildings. By removing all but convenience, ADA parking and the pick up and drop off function from this courtyard, the school will gain a landscaped outdoor pedestrian circulation and gathering space that will improve the quality of life on the campus.

Currently, at many times during the day, up to the full student body is traveling across this parking lot wandering between cars, getting between buildings. The design of this new space will provide direct pedestrian access and circulation to the entrances to the academic building, from the entrances from the student life area and it'll also provide outdoor gathering places, both in landscape, paved landscape plaza areas where seating will be on benches as well as less formally in lawn areas under shade trees. The quadrangle will be lit with ornamental light fixtures on 12 foot ornamental poles.

At the north end of the project, the site will be screened with an eight foot high masonry wall as well as with evergreen trees along that edge. A new trash compactor will be located in an area where currently existing open dumpsters are. This trash compactor will also be screened with an eight foot high masonry wall and metal gates on this east side. The quadrangle design will also provide ADA access via ramp to the entrance to the student life areas and via grade to the entrance to the academic building.

In summary, the proposed site plan shows building additions that are internal to the campus, improves the perimeter and appearance of the campus with landscape improvements along North

Capital Street and K Street, landscape improvements along H Street, new landscape improvements in the alley and provides a new campus quadrangle space that we think will significantly improve the campus experience for students and staff.

That concludes my formal presentation. I'd be happy to answer any questions you might have.

MS. KING: I have no questions, Madam Chairman.

MS. REID: I don't have questions.

MR. PARSONS: I do. One is a technical matter. I have this exhibit. I don't know what number it is but it was in the record. I just want to understand. Do you own the property fronting along H Street? I mean this diagram -- maybe it's a drafting error but it would indicate you don't own the entire area that is shown for parking or now is in tennis use.

MR. FEOLA: I don't know what drawing you're looking at, Mr. Parsons, but if it doesn't show it as ownership of Gonzaga it is wrong. Gonzaga does own what is now the tennis courts and what is proposed to be the new parking surface and actually the office building on the corner of North Capital and H Street which it leases to a private entity.

MR. PARSONS: That's what I thought. I remember that PD. Okay. I want to congratulate all of you. It's just fabulous what you're doing. I don't know what's going to happen to the tennis program, but that's not my problem. I just want to push a little harder and see if there's any way to get rid of these 10 parking spaces in this new quadrangle. I can imagine the answer is no.

MS. KING: For visitors and ADA, is it not?

MR. STEPHENSON: That is correct.

MR. PARSONS: It is but how much nicer it might be if it was a true quadrangle without the intrusion of the motor vehicle.

MS. KING: Am I not mistaken that there's a considerable topographical drop off between the quadrangle area, the playing fields -- I mean isn't there a slope there?

MR. STEPHENSON: Yes.

MS. KING: I mean it's considerable, John, so that in terms of complying with ADA, I'm not sure that they could run those people down to the lower parking lot and still be in compliance with the Act.

MR. PARSONS: I was hoping that might be accommodated between the two buildings before you got into the quadrangle. If you could answer the question, I assume the answer is no, we've looked at it and so forth, but I just can't let this go by without asking.

MR. STEPHENSON: Sure. There are a couple of issues here. One is the need for convenience and ADA parking in the areas where we actually are providing ADA access. I had mentioned to you earlier that the campus is really a collection of buildings that have accrued over 150 years and circulation within the buildings themselves is somewhat difficult, especially with any access from outside that quadrangle. So with the new construction occurring internal here, that becomes an opportunity to make that access and then at least the ADA parking would remain near that in order to

comply.

MR. PARSONS: As I understand it from the drawing, that's only two parking spaces.

MR. STEPHENSON: That is correct. There are other ADA spaces located throughout the parking along the former I Street and the driveway to go specifically into some other areas of the building that can't be accessed in that area as well. But the other answer to this, the school actually does need a certain amount of convenience parking. There's a pick up and drop off function that will occur through here so the elimination of vehicles is not something that's part of the program for that quadrangle and you'll hear later in the traffic presentation why having that pick up and drop off occur in that area. It's important.

But during the day, these gates here are actually closed when the pick up and drop off is not occurring, so there's a certain amount of delivery of visitors that are still coming in here in obviously lighter volumes during the day and there needs to be a place in there for them to park.

MR. FEOLA: Mr. Stephenson, if I might follow up on Board Member King's question. Do you recall what the grade change is from the entrance on North Capital Street to the drop off area to the foot of the Carmidy Gym?

MR. STEPHENSON: I don't have an exact figure for you but it's approximately a full floor grade of building.

MR. FEOLA: Ten feet, 12 feet?

MR. STEPHENSON: At least.

MR. FEOLA: Thank you.

Our next witness is Mr. Bill Geier, the architect who will briefly go through the building program and then our last witness will be Osborne George traffic consultant.

MR. GEIER: Good afternoon. With Father Novotny having focused on the history and need of Gonzaga and Mr. Stephenson talking about the neighborhood site and landscaping issues, I'd like to spend a few moments talking about the building and primarily --

MS. REID: Give your name and your address, please.

MR. GEIER: My name is Bill Geier. I reside at 5109 Manning Place, N.W., Washington.

So I would like to discuss the buildings, and there are three issues I'd like to cover briefly. First of all, the building design and the related construction phasing. Secondly, HPRB review and thirdly, the zoning requirements.

As Father Novotny pointed out, the facility is aging. With the exception of the Carmody Gymnasium built in the late 1970s, all the buildings on campus are between 70 and 130 years old and they're in a sad state of disrepair. So Gonzaga, after much deliberation, has decided to undertake a major upgrade, and what we're basically doing is the required repairs, major interior renovations and exterior renovations, and some significant additions to the buildings.

These are photographs of the existing conditions, and

there are renderings of the proposed conditions. You can readily see the difference. These are taken roughly from the same view in the courtyard. You would be standing up near the Carmany Gymnasium and looking back towards this Arrupe Cantwell Building. So these views are taken from approximately that location looking in that direction. From here back towards there.

The second view is taken from approximately here looking towards this facility which is the central plant, the new central heating and air conditioning plant. And I'd like to point out in this model that the darker colored cardboard represents the new work.

The general scope of renovations on the interior is to add additional classrooms, so there's major gutting of interior partitions to accommodate new classrooms and an addition built at the back of the Cantwell Building which is this to accommodate those classrooms as well as modern science facilities. We're upgrading all the building systems, the heating and air conditioning systems, to provide for creature comforts and more efficient use of energy. We're upgrading the electrical and the telecommunications systems to allow Gonzaga to continue its mission using modern teaching technologies. We're upgrading life safety systems with new sprinklers, adding required exit stairs and fire alarm systems as well.

And, as Brian Stephenson had pointed out, we're providing access to all the buildings under the ADA in four different locations around campus. So we're providing four new accessible points.

Regarding the exterior design, we've taken our cue

from the major buildings on campus as viewed from the public spaces, the Arrupe Cantwell and St. Aloysis Church, and tried to key on some of the major architectural characteristics of those such as using similar brick materials in the courtyard spaces, the arched window tops, use of stone trim, size and scale of windows and lastly, the roofs will all be of similar material which will be a neutral matte finish warm gray material.

The central plant is a significant part of this development and it occurs here in the model. I can show you probably better on this existing photograph. This is the location of the new central plant. Right now, it's occupied by a half sunken, one story boiler building. This is our new central plant designed with compatible materials and immediately adjacent to St. Aloysis Church. What it does for the campus is allow consolidation of mechanical equipment, mainly roof top equipment, so that the required roof top mechanical equipment will be significantly decreased in size and, therefore, of less important public view.

Any questions on the design?

MS. KING: What portion of the Gonzaga campus comes under Historic Preservation Review Board review?

MR. GEIER: Just St. Aloysis Church.

MS. KING: Just the church?

MR. GEIER: Right. Just the church.

MS. KING: I would note that the staff has recommended that approval be given by the HPRB. Thank you.

MR. GEIER: I'll talk for a moment about construction

phasing. The areas outlined in red are construction phase one. We'll be beginning middle of April with construction of the parking lot on the tennis courts, moving into the central plant and related roof top equipment and eventually into the interior renovation and exterior addition to Arrupe and Cantwell Halls, so the project begins this April and, given the academic calendar, as most educational facilities have need, we have to work around the student schedules, classroom schedules. So the bulk of the heavy construction work will be done during student breaks, mainly the summer break, and phase one of the project wrapping up in June of the year 2000 and then moving immediately into construction phases two and three.

Regarding HPRB, as Ms. King has already pointed out, at their October 22nd meeting the project was approved based on the staff's recommendation that it's consistent with preservation law.

Zoning requirements. We've met all the zoning regulations. The lot occupancy, roof equipment and enclosure setbacks. I believe we're in compliance with all zoning regulations, and I would like to reiterate the point that Brian made that I think it's evident from this model, looking at the colored areas, that the bulk of the work which is required to accommodate Gonzaga's goals occurs well within the heart of the campus and really changes very little the public appearance as seen from the main streets.

I'd be happy to answer any questions.

MS. KING: No questions.

MR. PARSONS: None.

MS. REID: I have none.

MR. FEOLA: Our final witness, Madam Chair, is Osborne George of O.R. George Associates.

MR. GEORGE: Good afternoon and season's greetings, Madam Chairperson, and members of the Board. I'm Osborne George. My address is 1738 Elton Road in Silver Spring, Maryland. 20903 is the zip code.

At the request of the applicant, our firm, under my direction, looked at the existing traffic access and parking situation serving the Gonzaga Campus which has been described earlier. The purpose of our evaluation was to respond to the requirements of the zoning regulations which stipulate that the proposal under the special exception before you should not result in objectionable traffic and parking conditions.

We had significant input into the design, the layout, and so we feel comfortable in saying that the proposal should not result in objectionable conditions and, not only so, we feel that they should significantly improve the existing conditions. Within just a few minutes, I think I can you why we came to that conclusion.

MS. REID: You have to be sworn in. You came later.

MR. GILREATH: Would you raise your right hand.

(Whereupon, the witness was sworn.)

MR. GEORGE: The exhibit before you shows the external roadway network through which the site is accessed. I know you've heard a lot about the internal layout of the campus. I'd just like to just quickly highlight. To the right here is North Capital Street which runs north/south. H Street is at the bottom of the site. K Street is the

boundary to the north and on the west side I Street, the existing I Street ends in a cul de sac just west of the central campus.

There are three points of access to the campus, two off K Street. One is controlled by a traffic light at the right of way of the former I Street alignment and there's a second access between the Cantwell Hall and the St. Aloysis Church. There's a driveway, a one way driveway, running through the campus with parking along both sides and parking along this driveway which is one way south connecting the site to H Street on the south.

As part of our evaluation, we undertook 20 movement counts and evaluated the operations of the existing intersections. Our study shows that the two access points currently operate quite favorably. The site is served by an exclusive green arrow for traffic approaching the site from the south. The intersection of North Capital and H Street currently during the peak of the street system operates marginally below the city standards of level of service D. However, as you will hear, soon, because of the hours of operation of the site, there's little impact during the peak hours.

As far as the regional access, you would note that the site is favorably served with access from roughly seven different approaches. We've been informed by the school administration that their population or their student population comes from a very diverse geographic region with approximately 25 percent from within the District, 35 percent from Northern Virginia and approximately 40 percent from Maryland. Based on our field observations and based on an extensive survey which we conducted of the employees, we show

the distribution, the approach of traffic to the site heavily oriented to the north, from the north, from the south, tied to access through the 395 expressway to the south and some from the west.

The site is served by 182 parking spaces currently. There are some within the central quadrangle area which, as you've heard, will be shifted.

As far as the future situation -- before I go on to the future, I must point out that a very important aspect of this is the fact that the hours of oppidan of the school is between 8:15 a.m. and 2:30 in the afternoon. Also, they show that the peak hour of the adjacent roadway network occurs between 8 and 9 a.m. and in the afternoon roughly between 5 and 6 p.m. So as you can see, with these hours of operation, the site has very little impact on the road network during the peak of the adjacent streets.

MS. KING: Excuse me. You said that the rush hour was 8 to 9 in the morning and that they're there at 8:15.

MR. GEORGE: The school begins at 8:15 and our study shows that roughly 90 percent of the vehicles accessing the campus do so before 8:00. A small number between 8 and 8:15.

MS. KING: I understand. Thank you.

MS. REID: What about after 2:30? Is there after care program?

MS. KING: Athletic program after 2:30?

MR. GEORGE: Yes. The bulk of the students leave the campus between 2:30 and 4:00 and, as you can appreciate, they leave in a much more dispersed or diffused fashion than they would

arrive in the morning. There's after school programs, athletic programs, study groups, club activities and so on which I go on, I imagine, well into perhaps the evening.

MS. REID: That diffuses the traffic.

MR. GEORGE: Exactly.

MS. REID: And the parking situation.

MR. GEORGE: Essentially we're saying that most of the traffic leaves the site prior to the start of the afternoon peak hour.

MS. KING: Do any of the students or staff park off campus?

MR. GEORGE: We have noted from the survey that a small number do park in a private lot to the northwest of the campus.

MS. KING: Not on street parking?

MR. GEORGE: Not on street parking.

MS. KING: Is there residential permit parking -- I mean I the there's not on North Capital Street or I don't believe there -- on K and H and whatever is back there?

MR. GEORGE: No. Certainly not on H Street, not on I Street and I'm pretty sure not so on K Street. Pretty sure not on K Street.

MS. REID: You indicated that there were 183 parking spaces provided on site.

MR. GEORGE: Correct. Yes, ma'am.

MS. KING: There were 206.

MS. REID: Earlier someone testified -- I don't remember who it was -- that there were 206 parking spaces.

MR. GEORGE: Yes. Currently there are 182. With the new plan which I'll show you in just a minute, the number of spaces would be increased.

We also conducted surveys of the modes of transportation and this pie chart in the lower part of the exhibit shows the modes of arrival. This is also in Exhibit D which is part of the applicant's packet. However, I do want to point out that there's a very favorable mode split. The green slice which represents 52 percent of the traffic accesses through operation. In other words, at least two persons per vehicle. There's also a significant public transit usage of approximately 17 percent. The drive alone percentage is roughly 10 which is equal approximately to the administrative/faculty element of the campus.

Our survey shows that as far as the students, many of them do own cars, but the average occupancy is between two and a half and three persons per vehicle which, as you will recognize, is really very favorable. I think part of the reason for this is that the school has a requirement that in order for students to get a parking permit which are issued, they must be part of a carpool. So I think this combination of factors make for a very favorable access situation resulting in very minimal traffic impact on the adjacent road network.

Perhaps the most important factor is the hours of operation which do not coincide with the street peak situation.

As far as the future, there are a couple of changes that the applicant plans which we think will have a significant impact on access. The parking, except for 11 parking spaces in the

quadrangle area which you've heard about, all of the parking would be removed and would be relocated at this lot, the proposed lot adjacent to H Street.

In addition, this driveway which, as you saw from the earlier exhibit would be one way south, would be made two way and we think that has a significant bearing in that at the present time there's considerable redundancy of traffic flow in that all traffic pretty much must use North Capital Street to access the site. In the future, with the access, the new access off H Street, we think this would allow traffic from the south and some from the west to approach via H Street from the west. I think this is favorable because it eliminates a significant amount of traffic from this intersection which is the most severely impacted right now in terms of its overall demand and also along here.

An important consideration is whether this traffic could gain access safely and efficiently through this access point. And we did make observations there. Look at the traffic patterns across H Street, consider the fact that because this is a major street there are considerable gaps in the traffic flowing westbound and so this would allow for traffic to turn into the site very efficiently.

I think another indication of that is that this office building here to the south of the site has well over 200 parking spaces. We made observations of the access patterns into and out of the garage of this building and considering that this happens during the peak period between 8:00 and 9:00, most of it, we think that says that with most of this taking place between 7:00 and 8:00 that we would

have a favorable situation.

With the removal of the parking or the relocation of the parking from the central quadrangle area, we think that this makes for a cleaner ingress and egress situation in the morning as far as drop offs. One concern that we've relayed to the applicant is that everything be done to facilitate this ingress to make it unattractive for anyone to perhaps try to drop off and pick up along North Capital Street. There are signs posted saying no stopping or standing, but we think that it is good if the applicant's plan facilitates and promotes that activity.

With this modified access situation, we think this will result in some shift in traffic and that is reflected. As far as traffic exiting the site, both during the morning and during the afternoon, we think there are additional opportunities in that they could use with this circulation pattern I Street to gain access to K Street or New Jersey Avenue to the west and be distributed from that area.

For all these reasons, Madam Chairperson, we feel that the plan before you represents a very workable one from the perspective of traffic, from the perspective of parking. We think it would represent a significant improvement and, as such, it should not result in any objectionable traffic or parking conditions.

That's the end of my formal presentation. I'd be glad to answer any questions the Board may have.

MS. KING: I have no questions.

MR. PARSONS: No questions.

MS. REID: I have no questions.

MS. KING: May I request a five minute recess before we continue with this case.

MS. REID: Yes. We'll have a five minute recess before we continue.

MS. KING: Thank you.

(Whereupon, off the record for an 11 minute recess at 3:39 p.m.)

MR. FEOLA: I'd just like to thank the Board. We do appreciate its indulgence since we got a little late start, and I apologize on behalf of all of us that we weren't here right at the crack of when we were supposed to and encourage the Board to look favorably upon this application and, if so inclined, to make that decision today.

MS. REID: Okay. You might as well just stay right there. We don't have anyone else here but the people who are with you. For the government reports, we do not have an Office of Planning report for this. Do we have anything from Historic Preservation?

MS. KING: Yes. What we have from Historic Preservation is the recommendation of the staff that the Board approve the concept as consistent with the purpose of the preservation and delegate final approval to staff. The applicant has testified that that in fact did take place.

MS. REID: Okay. It's been done. And the ANC report, Ms. King. They came in in support.

MS. KING: There are a number of letters of support.

H Street CDC, the North Capital Neighborhood Development.

MS. REID: We'll get to that but right now we're talking about ANC.

MS. KING: Well, I just thought I'd read them off as I'm leafing through trying to find the ANC report.

MS. REID: ANC 6B. I think you had mentioned this earlier. Nine to one vote that they approve of the special exception. A forum was present so, therefore, they will be granted the great weight to which they are entitled.

Persons and parties in support of the application.

MS. ROSE: There was another letter.

MS. KING: I'm sorry.

MS. REID: Another ANC?

MS. KING: From 2C.

MS. REID: Okay.

MS. KING: At is regularly scheduled meeting December 2nd, 2C voted four to nothing to support the application. Four members consist of quorum for voting purposes. "The ANC finds that the proposed campus improvements, additions, traffic and parking measures and increased enrollment capacity to 900 students will not have any adverse impacts on the surrounding neighborhood. Rather, the proposal will enhance the aesthetic qualities of the campus and the overall appearance of the neighborhood. We endorse the improvements and urge the Board to approve the application." Therefore, we would give it great weight, I believe.

MS. REID: Yes. Okay. Persons or parties in support

of the application. We have several letters.

MS. KING: Do we want to say who they are?

MS. REID: Well, just mention them.

MS. KING: H Street CDC, North Capitol Neighborhood Development Inc., City Lights School and Children's Museum, Father McKenna Center, Perry School Community Service Center, J.B. Johnson Nursing Center, and one or more private individuals.

MS. REID: Okay. Persons or parties in opposition to the application.

Closing remarks.

MR. FEOLA: I just want to thank you again, Madam Chair, and urge that the Board adopt this and preferably by bench decision so we can meet the schedule that Mr. Geier testified to and start construction in April. Thank you.

MS. KING: I would move approval of this application.

MR. PARSONS: Second.

MS. KING: Thank you, John. The school will have the capacity of 900 students, a maximum faculty and staff component of 110. It will be the responsibility of the school to make sure that there is no adverse impact from vermin on the surrounding neighborhood due to any activities of the school including construction. Any walls surrounding the school shall be totally on the property of Gonzaga School and not infringe on any alleys or public property outside -- or public or private property outside of the school property and that the school will follow the suggestions of the traffic

consultant with regard to preferential parking for high occupancy vehicles and the posting of no stopping or standing restrictions along North Capital Street.

MS. REID: Also that the parking as they indicated. Ample parking.

MS. KING: Ample parking, 206 parking spaces.

MS. REID: I think there's --

MS. KING: That a minimum of 123 parking spaces will be provided.

MS. REID: A minimum of 123 but they have indicated they will provide 206.

MS. KING: We recognize that they're providing 206.

MS. REID: Okay. All in favor.

(Ayes)

MS. REID: Opposed.

MS. ROSE: Staff will record the vote as three to zero with Ms. King, Mr. Parsons and Ms. Reid to grant the application. Mr. Gilreath not present, not voting.

MS. REID: You should have your order in about two weeks.

MR. FEOLA: Thank you very much, Madam Chair, members of the Board.

MS. REID: You want a summary order, I would assume.

MR. FEOLA: Please.

MR. PARSONS: To those of you who arrived late, we

are very disappointed because Mr. Feola in a state of panic offered to dance on the table to entertain us.

MS. REID: Our special Christmas treat.

MS. KING: No. Stu was going to dance on the table.

MR. PARSONS: You walked in at the right time because he was on the chair.

MS. REID: This concludes today's hearing.

(Whereupon, the hearing was completed at 3:57 p.m.)