GOVERNMENT OF THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC HEARING

+ + +

Wednesday, July 22, 1998

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The Board met in Hearing Room 220 South, 441 Fourth 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

JOHN G. PARSONS, Zoning Commissioner

STAFF PRESENT:

SHERI M. PRUITT-WILLIAMS, Interim Director

TRACEY WITTEN ROSE, Secretary to the Board

BEVERLEY A. BAILEY, Staff

APPEARANCES:

On behalf of Jack Milton Fields:
RICHARD B. NETTLER, ESQ.
Robins, Kaplan, Miller & Ciresi, LLP
Suite 1200
1801 K Street, N.W.
Washington, D.C. 20006
(202) 775-0725

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P R O C E E D I N G S

(9:55 a.m.)

MS. WITTEN ROSE: The first case on the agenda is 16370, the application of Gerald Cassidy.

MS. KING: I'm sorry.

MS. WITTEN ROSE: Have you got the preliminary statement?

CHAIRPERSON CROSS REID: Right. All right.

Good morning, ladies and gentlemen.

I am Sheila Cross Reid, Chairperson of the Board of Zoning Adjustment for the District of Columbia. Joining me today are Betty King and John Parsons.

Copies of today's agenda are available to you on the table at the rear of the hearing room.

There is to be no smoking, eating, or drinking in the hearing room.

All persons planning to testify either in support or in position are to fill out two witness cards. These cards are located on each end of the witness tables.

Upon coming forward to speak to the Board, please give both cards to the reporter who is sitting on my right.

Notice of today's hearing was given by,

one, posting the subject property; two, publication in the D.C. Register; and, three, varied other means.

The order of procedure for a special exception in variance cases will proceed as follows:

One, preliminary matters;

Two, statement and witnesses of the applicant;

Three, government reports, including the Office of Planning, Department of Public Works, or others;

Four, the Advisory Neighborhood Commissions;

Five, parties and persons in support;

Six, parties and persons in opposition;

Seven, closing remarks by the applicant.

Cross examination of witnesses is only permitted for parties in the case.

The Board will adhere to this schedule as strictly as possible. Those presenting testimony should be brief and non-repetitive.

If you have a prepared statement, you should give copies to staff and orally summarize the highlights. Please give us your statements before summarizing.

The record will be closed at the conclusion of each case, except for any materials

specifically requested by the Board. The staff will specify at the end of the hearing exactly what is to be expected.

Addressing 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 a case will or should be heard today, such as request for postponement, continuance, or withdrawal, or whether proper and adequate notice of the hearing has been given.

If you are not prepared to proceed, now is the time to raise such a matter.

Does the staff have any preliminary matters?

MS. WITTEN ROSE: No, Madame Chair.

CHAIRPERSON CROSS REID: Does anyone here have any preliminary matters?

(No response.)

CHAIRPERSON CROSS REID: If not, please proceed with the first case.

MS. WITTEN ROSE: The first case on the agenda is 16370, the application of Gerald Cassidy on behalf of Jack Milton Fields, pursuant to 11 DCMR

3108.1, for a special exception under Section 203.10 for a home occupation permit to conduct a consulting strategic planning business in a CAP/R-4 District at premises 434 New Jersey Avenue, S.W., Square 694, Lot 811.

Will all persons planning to testify on this application please rise to take the oath? Please raise your right hand.

(Whereupon, the witnesses were sworn.)

MS. WITTEN ROSE: Would the applicant please come forward?

MR. BURN: Madame Chairperson.

CHAIRPERSON CROSS REID: You must speak into the mic, and give your name and your address.

MS. KING: There's one right there by the podium.

MR. BURN: Madame Chairperson, my name is Peter Burn. I reside at 641 E Street, S.E. I am a member of the Capitol Restoration Society and of the Zoning Committee of the society.

A letter of authorization for my appearing on behalf of the society has been submitted to the Board, and I would request at this time that the Restoration Society and civic association interested in this area, that their members be recognized as a party.

CHAIRPERSON CROSS REID: Unless any of

the other Board members have any objection, I would recognize you, your organization, as a party in this particular case.

MS. KING: No objection.

MR. PARSONS: No objection.

CHAIRPERSON CROSS REID: Thank you.

Good morning.

MR. NETTLER: Good morning, members of the Board. My name is Richard Nettler. I'm here on behalf of the applicant, who is seeking special exception for a home occupation which employs more than the individuals that are permitted as a matter of right.

What I want to do is very briefly make a statement and then turn it over to our just two witnesses, Mr. Fields, former Congressman from Texas, and Ellen McCarthy, who is our urban planner and who will testify as well.

I want to address a couple of issues. One, I think that you may, if you haven't read some of the letters in opposition or some of the statements in opposition, there are additional concerns that are raised, but one of the, I think, primary misunderstandings about this matter is that Mr. Fields, who now owns the property, who bought it from Mr. Cassidy at the time the application was submitted, was the contract purchaser, lives at the

premises and has a home occupation permit as a matter of right for his business, and that will not change by whatever happens today.

So to the extent that there are concerns about there being a business that takes place on the premises, there will be a business that takes place on the premises. The reason we are here today is because in explaining the nature of the business to the Zoning Administrator, which is required to do with any home occupation, we, of course, inform them that Mr. Fields' business employs two additional individuals who are assistants to him.

Those individuals for the most part, and you will hear testimony from Mr. Fields and from Ms. McCarthy regarding that, do not spend the majority of their time on the premises of this house. They spend the majority of their time in doing what Mr. Fields' business is, and that is in working with Congressmen and people who have issues before Congress and consulting on other issues off the premises.

But because the business has those two individuals, two additional individuals, the Zoning Administrator's position was that a special exception should be sought.

Ms. McCarthy will get into this in more depth as to sort of the legislative history, as we

call it, of the zoning regulations dealing with home occupations and what was intended to be or what was the concern of the Zoning Commission in dealing with a number of employees who would be working on the premises, and it is our ultimate position that none of those concerns are implicated by the nature of the business that Mr. Fields operates.

The other issue is an argument that I'm sure you will hear from at least one of the individuals who will be testifying in opposition to this about whether these individuals, who don't spend most of their time on the premises, are what are called co-practitioners under the zoning regulations.

And it's my understanding, from having dealt with this issue before that the Zoning Administrator's office has consistently interpreted the co-practitioner aspect of the regulations to be dealt with in the context of -- I guess it's best using examples because this was the particular concern that the Zoning Commission addressed when the regulations were considered -- was a situation where you have dentists or doctors who have other dentists and doctors who are doing the same business on those premises.

It has not been interpreted to apply where you have assistants and employees who are

essentially your assistants, but not in the same realm as -- whether it's a partner that you might have, as a doctor having a partner or a dentist having a partner, who does that same business, but that has been the Zoning Administrator's interpretation in other similar matters that have come before the Zoning Administrator.

And I believe it has been somewhat consistent with the interpretation of the Board of Zoning Adjustment in prior cases, and I will refer specifically to Application No. 16035, which was a grant of a special exception for the use of a home as a location for business and social events, and the nature of the business that was authorized to be operated there was one which was, I believe, consistent with the interpretation that we're giving to the zoning regulations and how the zoning administrator has employed them to be one, as I said, the co-practitioner aspect dealing with people who are doing the exact same thing in a partnership type of relationship on the premises at the time, and, two, with regard to the special exception that we're seeking again being concerned with what is -- in terms of employees, who are being employees full time on the premises, five days a week, when the business is being operated.

With that I'd like to introduce to the

Board Jack Fields, former Congressman from Texas, and he has a statement that he would like to make to the Board regarding his use and occupancy of the premises.

MR. FIELDS: Madame Chairperson, fellow Board members, my name is Jack Fields. I am the owner of a townhouse at 434 New Jersey, S.E. I am also the owner of the 21st Century Group, which is a small boutique consulting and strategic planning firm primarily dealing in telecommunications issues.

I have lived in this neighborhood for approximately 17 years. I was a member of Congress for 16 years. I was Chairman of the Telecommunications Finance Subcommittee for two of those years.

Prior to purchasing the town home, for a long period of time the townhouse was unoccupied. It as occupied immediately prior to me purchasing it. There were a number of repairs that needed to be done, which I have initiated, which, you know, I think and hope demonstrates that it is my intent to bring value to the neighborhood.

We've had problems internally with leaking pipes. We're in the process of fixing that. We've had carpet that needs to be repaired. We're doing that. We are about to clean out the front yard. There's a dead cedar tree there. We're about

to clean that out and plant flowers and shrubbery which I think will enhance the way the neighborhood looks.

It's our plan in August and September to paint the entire front of the townhouse. We're going to go behind the townhouse in a common alley and clean out debris which to me looks as if it's been there for months, if not years. We plan to clean out the back yard and plant shrubbery.

So I think in every instance we plan to enhance the neighborhood, to be a good neighbor, and I might say bring jobs to the District, which I think is very important.

And I have heard from people in the neighborhood some of the complaints, and some of the complaints revolve around what have become party houses on that particular block. I heard particularly of one instance where there was a large fund raiser where people were bused in. Traffic was blocked. There was a disruption.

We don't have that type of consulting and strategic planning practice. As was stated by counsel, most of our work is done outside. It's our job to be on Capitol Hill representing clients. It's our job to go into meetings. Most of our meetings are in downtown Washington.

We consult and offer advice on how

people relate to the United States Congress. Our business is extremely small. It's a four story townhouse. We will be occupying as a business one of those floors.

Traffic will not be a problem in our case. We will be walking to most of our meetings, again, most of which take place outside of the office. We do not expect any more Federal Express of UPS packages than would be the case if you looked at my business as it's permitted with the one employee.

We have leased two parking spaces, which are actually on another street. We do not plan at this point to put any type of signage on our building.

Our operation, I feel, is extremely low impact to the neighborhood. I do not see that there will be any change whatsoever in the residential character of the neighborhood. I will be living there myself.

And I realize having sat where you sit, I appreciate when people are extremely brief. So I'm going to be very brief today, but I want to close by saying we have played by the rules. Throughout that area there are other people doing virtually the same thing I do. I can't tell you whether they've gone through the process or not. We

have tried to go through the process and do everything correctly.

As you can probably see from your sheet, we've been delayed in several instances. It's been extremely expensive when we've had those particular delays, but I want to stress to you we have not come in under the cover of darkness. We've come faithfully and diligently. It is my opinion and my firm belief and my conviction that we're going to be a good neighbor, and we're going to add high value to that neighborhood.

MR. NETTLER: Mr. Fields, could you do one thing? You had mentioned the fact that other -- there was a concern about party uses on other properties. Could you just describe to the extent that there would be any event at your property what that would entail?

MR. FIELDS: Well, I can have fund raisers at my property now as a citizen. If I have fund raisers, what I would anticipate is three or four people attending the fund raiser with a member of Congress.

The people would be walking from the Capitol building. The people who would be attending would come by cab or they would come by Metro. There's a Metro stop half a block away. There is no parking on the street.

So, again, it would be extremely low impact. My events, what I have anticipated, would be in the afternoon when I think, as a member of Congress, it's most convenient to have someone in, but it would be analogous or comparable to you having a coffee or a tea in your home.

MS. KING: May I ask a question? When you say there's no parking on the street, is parking illegal on the street or there's no available parking on the street?

MR. FIELDS: It appears to me that any time I walk down I haven't seen available parking.

MS. KING: But it's not illegal. I mean it's possible that you could draw up in front of your house and park in front of your house if you wanted to?

MR. FIELDS: There is a spot --

MS. KING: I mean it's not forbidden.

MR. FIELDS: There's one spot that is forbidden that is kind of cater-cornered to the right, but, no, ma'am, if there was --

MS. KING: I mean --

MR. FIELDS: -- if there was space available, you could, but I haven't seen the space available.

MS. KING: And no off-street parking on your property?

MR. FIELDS: No, ma'am, there isn't.

MS. KING: Okay. Thank you.

CHAIRPERSON CROSS REID: Mr. Parsons, do you have questions?

MR. PARSONS: No, thank you.

Okay. Congressman Fields, you actually live in the premises?

MR. FIELDS: Yes, ma'am, I do.

CHAIRPERSON CROSS REID: In the submissions that you proffered to the Board, there was mention of there not being more than eight persons on the premises in a given hour.

MR. FIELDS: Madame Chairperson, I cannot hear you. I'm sorry.

CHAIRPERSON CROSS REID: Okay. Let me just read from it. It says that -- is there a mic on? Can you now hear me?

MR. FIELDS: Yes, ma'am.

CHAIRPERSON CROSS REID: In your submission, there was an indication that, and I quote, "no noise will be generated outside the dwelling. No vehicles will be used in the practice of the home occupation. No more than eight clients or customers will be on the premises within any one hour time period."

Can you speak to that? Are you saying that throughout the day or do you mean are you

saying this is exceptional?

MR. FIELDS: I cannot anticipate where there would be eight people in the building. If you are talking about employees and people attending a fund raising event --

CHAIRPERSON CROSS REID: No, no. This specifically says clients or customers.

MR. NETTLER: That's a reference to the zoning regulations, which has a particular standard for the numbers of people that you can have. I think in terms of Mr. Fields' business, Congressman Fields' business, former Congressman Fields' business -- excuse me -- it is as he described. In terms of if you took an average or if you took the situation incorporating events into that, there would be no expectancy of having any more than that number of people during that time period, but it is not expected that that is a normal occurrence.

As he said, most of the people are not -- the meetings are not on the premises. They're generally off the premises. People, as well as himself --

CHAIRPERSON CROSS REID: So basically in this he is so stating that he would be in compliance at all times.

MR. NETTLER: That's right.

CHAIRPERSON CROSS REID: What is the

maximum amount, number of people that you anticipate being on the premises at one given time, other than for a tea or a special kind of event, but on a general, regular basis, what's the average?

MR. FIELDS: On a regular -- Madame Chairperson, on a regular basis, it would be me and my employees, but again, to understand the nature of our business, early in the morning we're on the Hill because that's really where our business is conducted or we're downtown meeting with firms in their conference rooms, offering strategic advice or consulting on their relationships with members of Congress.

I don't anticipate having meetings with clients in my particular town home. That's just not the way our business is operated.

I will be doing some fund raising, which I'm allowed to do as a citizen, but again, we are a boutique firm. I have a small number of clients. I focus primarily on telecommunications issues,a nd if we were to do an event, they would be with the clients I have, which are several in number. So it would be a very small number, again, something very analogous to if you had several of your friends come by for coffee or tea.

CHAIRPERSON CROSS REID: Well, I guess then it would go to the frequency in which that was

being --

MR. FIELDS: It would be very infrequent.

CHAIRPERSON CROSS REID: Approximately once a month, every couple of months?

MR. FIELDS: I've got one this month, as an example, one event.

CHAIRPERSON CROSS REID: When you have fund raisers, do you actually have the fund raising event there on the premises?

MR. FIELDS: Yes, ma'am.

CHAIRPERSON CROSS REID: Well, there are two ways of looking at it.

MR. FIELDS: Well, the way that this one --

CHAIRPERSON CROSS REID: The fund raisers -- excuse me one second. If it's a fund raiser where you have persons who are just making calls to generate funds, that's one thing, but an actual fund raiser where you have people coming to the premises for that particular event, do you --

MR. FIELDS: I'll be glad to share with you. This event is in the afternoon, mid-afternoon. We anticipate three people attending besides myself, and it's for one hour. To my knowledge, no one is driving to the event. People are taking cabs or Metro.

I'm not sure it will even be noticed by anyone in the neighborhood, but, again, the point is as a resident of that area, I can do that at this point. That really has nothing to do with what we're talking about today. It's a permitted activity.

CHAIRPERSON CROSS REID: Ms. King?

MS. KING: Is this your principal residence?

MR. FIELDS: When I'm in D.C., yes, ma'am.

MS. KING: You're not a --

MR. FIELDS: I'm a resident of Texas.

MS. KING: You're not a domiciliary of the District?

MR. FIELDS: No, ma'am. I am here virtually when Congress is in session.

MS. KING: Okay. Thank you.

MR. PARSONS: Mr. Fields, I guess you're aware there's significant opposition to what you're proposing here today. There's a particular letter from a Mr. Adler, dated July 6th, which brings nine points of opposition to us, and it prompts a number of questions, and I wondered if Ms. McCarthy was going to respond to these questions --

MR. NETTLER: Yes, Ms. McCarthy --

MR. PARSONS: -- and I wouldn't have to

bother you with it.

MR. NETTLER: She is.

MR. FIELDS: I'll tell you I'll be glad to respond to the ones that I can respond to.

Let me make a couple of comments. You know, first of all, in Texas we take the attitude of trying to be a good neighbor. We have thus far met only two people on our block. The people who are in the room today have never come by and even shook my hand and said, "We'd like to know what you're doing."

We went to the first meeting of the advisory group and were able to give a statement. When we went to the full advisory group, we were put at the tail end of the meeting. There was a vote taken in opposition to us. When we asked to speak, we were told, "You can't speak."

Now, I'm going to have to be very, very candid with you. It kind of bothers me that no one has even come and asked me, "What are you doing?"

Now, if I were these people, in fairness to them, if I understand the nature of the fund raising event that's been held by other people, I might also be a little skeptical, and I might also, you know, wonder how someone is going to conduct their business, but I think I would at least come and ask someone.

Also, let me say that I was a history major at Baylor University. I got my undergrad. and my law degree there. So I take very seriously the historic significance of this neighborhood and the United States Capitol.

MR. PARSONS: Thank you.

MR. NETTLER: Ms. McCarthy will address those issues.

CHAIRPERSON CROSS REID: Did you say that you were not allowed to speak at the ANC meeting?

MR. FIELDS: My staff person was not.

MR. NETTLER: I was not. Neither of us was allowed. We were permitted to go before the ANC's Planning and Zoning Committee, which was made up of some non-members of the ANC and some members of the ANC. We made a presentation. We understood that the matter was going to be taken up then by the Advisory Neighborhood Commission with a recommendation from the Planning and Zoning Committee, and we also understood that we would be able to make a statement at the full ANC meeting.

The Planning and Zoning Committee representative made a presentation to the full ANC which, in our view, contained a number of misconceptions, misperceptions about what the nature of the business was.

We asked for an opportunity to speak and were told by the ANC that we would not be given that opportunity and that --

CHAIRPERSON CROSS REID: And that was that.

MR. NETTLER: And that was that. We were not allowed even to correct the misperceptions.

CHAIRPERSON CROSS REID: Isn't that strange?

MR. NETTLER: I wouldn't want to characterize it. As you know, I represent a number of ANCs around the city. It was the first time I've ever been involved in that type of a situation.

CHAIRPERSON CROSS REID: Interesting. All right, Mr. Nettler, you can proceed.

MR. NETTLER: Excuse me?

CHAIRPERSON CROSS REID: You can proceed.

MR. NETTLER: Yes, Ms. McCarthy is our next witness.

MR. PARSONS: Mr. Nettler, while she's getting ready, that's a very curious report you just gave us about the ANC. Was it late in the evening? Were they losing a quorum?

MR. NETTLER: No. We were told that you were misinformed about having an opportunity to make a presentation; that you simply would not have an

opportunity to make a presentation regardless.

MR. PARSONS: Were any other members of the public able to speak on this issue?

MR. NETTLER: There was nobody else from the public who was there to speak on the issue.

MR. PARSONS: Thank you.

MR. NETTLER: If you don't mind, if I could stand, I have a very bad back today. It's getting worse.

MS. McCARTHY: Good morning.

For the record, my name is Ellen McCarthy, and I'm the Director of Land Use and Planning Services for Robins, Kaplan, Miller & Ciresi. I have a Master's degree in city planning from Harvard University and 25 years of experience in planning and zoning.

Today what I'd like to do is focus on the planning issues involved in this case, some context on home occupation zoning, and a brief description of the site, and then particular focus on the lack of adverse consequences from the proposed use.

MR. NETTLER: We would, of course, ask that Ms. McCarthy be accepted as an expert in urban planning, which she has been before.

CHAIRPERSON CROSS REID: Having appeared before us numerous times, she certainly would be

accepted as an expert witness.

MS. McCARTHY: The site is a row house attached on the south side only, and I think to talk about the neighborhood a little bit, let me go to the map.

I apologize for the scale. The Robins, Kaplan map making staff has not kicked into gear yet. So I had to borrow Mr. Pasano's map, but the site we are talking about is on New Jersey Avenue between D and E Streets. It is approximately in the middle of the block on the east side of the street.

Immediately north of that is the Capitol South Metro Station, the parking lot, the congressional office buildings. To the south of the site is a Congressional Annex, the power plant. South Capitol Street is over to the west, and the next street to the east, First Street, the entire east side of that street is basically commercial in character, as is a building here on the corner of First and D and down here on New Jersey Avenue right at the corner of New Jersey and E Street. Beneficial Insurance Company has a three-story office building there, and this is a townhouse which has been converted into an office use on First Street, and then Tortilla Coast and other restaurants and retail establishments around here.

MS. KING: Ellen, can you point out

where the two leased parking spaces are located?

MS. McCARTHY: The two leased parking spaces are on First Street right around --

MS. KING: Okay.

CHAIRPERSON CROSS REID: How close is that to the subject site?

MS. McCARTHY: Oh, just basically on the back side of the site and down about what, three or four houses, four or five houses?

CHAIRPERSON CROSS REID: Okay.

MS. McCARTHY: Is it accessible to the alley?

MR. FIELDS: Yes, ma'am.

MS. KING: And those two parking spaces are formally reserved 24 hours a day for your use; is that correct?

MR. FIELDS: Yes, ma'am, and that would be the -- if it's okay to address, that would be the way that the employees would be entering, is through the back, which is actually a walled back yard. It has a back fence with a gate. So there would not even be entrance from the front.

MS. McCARTHY: Actually I probably shouldn't have sat down so soon.

Well, the site is zoned basically Capitol Interest District, R-4, and is designated moderate density residential in the generalized land

use map of the Comprehensive Plan.

The townhouse is four stories, three of which are approximately 770 square feet in area. The ground floor is slightly larger because there is a glassed in breakfast nook, and there was an error in our original application. We had been told by somebody in the real estate office that it was 5,000 square feet when I was applying for the original home occupation permit, which Mr. Alder did point out correctly was an error, but our calculation of the 25 percent was based on occupying one floor out of that, out of the four stores in the townhouse, which is the standard, the zoning standard. So the zoning standard does not depend on the total square footage. It depends on the percentage of the house which is being used for the home occupation.

Mr. Alder and others have suggested that the office use is likely to expand to other places in the house and is not really a legitimate residential use. So I thought probably the best way to show you that that is not the case is to give you an idea of what the interior of the house does look like at this point in time.

This is the townhouse itself.

MS. WITTEN ROSE: Excuse me. Are these already in the record?

MS. McCARTHY: No, but I have an extra

copy for the record.

MS. WITTEN ROSE: We will need a waiver for them.

MS. KING: I suggest we allow a waiver. I think this is germane.

MR. NETTLER: Well, and just for the record, since Mr. Fields just recently purchased it and moved into it and we could not have provided these photos before he had moved in, these are --

CHAIRPERSON CROSS REID: Okay.

MR. NETTLER: -- following his moving into the premises.

CHAIRPERSON CROSS REID: Okay. So then we would waive the record to receive these pictures at this time.

MS. McCARTHY: And as I mentioned, next to the house is a driveway which actually belongs to the house, the row house next to it.

CHAIRPERSON CROSS REID: Well, the house is the gray house or the tan house?

MS. McCARTHY: The house is the gray house over here.

MS. KING: This is attached on the other side?

MS. McCARTHY: It's attached on the other side, but it's free standing --

CHAIRPERSON CROSS REID: It's a semi-

detached.

MS. McCARTHY: Yes.

Now, within the house, on the first floor is a kitchen and a den-TV room. The day that I was there, the wall-to-wall carpeting was being installed in the den-TV room. So there are many boxes in the kitchen, but you can see it's a legitimate residential, you know, regular, full sized kitchen, and you can see a bit through the window the glassed in breakfast nook out back. You can see the ribs of the glassing, but I couldn't -- because of the blockage in front of the door, I couldn't get to the door to take a picture of that.

On the second floor is a large living-dining area, which basically takes up the entire floor, and I believe is there a bathroom on that floor as well?

MR. FIELDS: Yes.

MS. McCARTHY: On the third floor is where the office space is proposed to be, and there are two rooms and a very large closet on that floor. This is the front office space.

MS. KING: That's on the third floor?

MS. McCARTHY: On the third floor, but it's a typical Capitol Hill row house where when you walk into the house, the stairway is immediately in front of you so you can easily just proceed up the

stairway and you're not walking through any other living spaces in order to get to the office space.

The advantage of having it, in terms of the residential character, the advantage of having it here, I believe, on this floor is, as you can see, there's quite a large window there where the living-dining area is. So if there were an office location in there, it would be far more evident to the street. Up here where the windows are much smaller and where they're hidden by the tree, it makes it -- it's not at all apparent, particularly since there's no sign, that there's actually an office going on in that location.

This is the back room where the other part of the office is.

MS. KING: Is that a member of the staff?

MS. McCARTHY: Yes, that is a member of the staff.

(Laughter.)

MS. McCARTHY: And -- or at least the legs of a member of the staff -- and the large closet which is, as you can see, large and so has room for all of the office equipment, the fax machine on one wall and the copying machine on the other side of that closet, and then they fit right into the door and can be closed so that it even

shuts away that aspect of the office use.

On the top floor is the bedroom in the back and an exercise room/sitting room combination in the front, and just to give you an idea of some of the kind of work that Mr. Fields was talking about, there is a need for some painting and some patching of plastering in the front, and there's some substantial water damage on the interior that will need to be repaired.

CHAIRPERSON CROSS REID: Ms. McCarthy.

MS. McCARTHY: I'm sorry.

CHAIRPERSON CROSS REID: Did I understand you to say that the portion of the house that will be used for office space for his home office is contained in that one room that you showed me?

MS. McCARTHY: No, two, two.

CHAIRPERSON CROSS REID: I'm sorry. The two rooms on that floor?

MS. McCARTHY: Right.

CHAIRPERSON CROSS REID: The rest of the house is used for residence?

MS. McCARTHY: Right.

CHAIRPERSON CROSS REID: Then the question becomes when there is an occasion to have these teas or a couple of people around for whatever, would you not be using the downstairs

quarters?

MS. McCARTHY: I assume just like anybody who's having a party at their house, that they would use the living room and dining area.

CHAIRPERSON CROSS REID: So that would sometimes be used for part of the business use?

MS. McCARTHY: For functions that are business related functions, yes.

CHAIRPERSON CROSS REID: On occasion.

MS. McCARTHY: On occasion.

CHAIRPERSON CROSS REID: Okay.

MS. McCARTHY: But you know --

MR. FIELDS: I think it's -- excuse me.

MS. McCARTHY: The Internal Revenue Service, as I know well from my years as a home office occupant, does not permit you to classify as a home office anything which is not strictly used only for the purpose of a home office.

CHAIRPERSON CROSS REID: Whether you do or not.

MS. McCARTHY: Right.

MR. FIELDS: If I might just interject, Madame Chairperson --

CHAIRPERSON CROSS REID: Un-huh.

MR. FIELDS: -- that use, when I have the fund raising events, again, is something that I am allowed to do just as a citizen; really has

nothing to do with the two additional employees that we're talking about today.

CHAIRPERSON CROSS REID: Okay.

MS. McCARTHY: Okay. In terms of the zoning context, as I mentioned before, this is an R-4 zone, which in addition to residential uses, includes as you know hospitals, sanitariums, clinics, museums, private clubs, fraternity or sorority houses, public school, or child development center for up to 15 children.

Clearly, in terms of the residential character of this block, any of these matter of right uses would have a far more adverse impact on than the proposed addition of two employees, which is basically all that we are here to discuss today.

The site is also included within the boundaries of the Capitol District overlay -- Capitol Interest Overlay District, which was established to, quote, promote and protect public health, safety, and general welfare of the U.S. Capitol precinct and the area adjacent to this jurisdiction, and I believe our proposed use is one which serves the Capitol, while minimizing the number of vehicular trips since virtually all trips to and from the Capitol precinct will be on foot.

As to the criteria for a special exception that you're very aware of, harmony with

the zone plan and zone maps and not likely to adversely impact the use of neighboring property, but in particular, in this case, in home occupations Section 203.10 of the regulations permits the Board to approve a home occupation even if it requires modifications of certain conditions, as long as those are consistent with the purposes that are set forth for home occupations, which is basically to permit people to utilize their homes to earn a living as long as it does not cause undue adverse impact to the neighborhood.

We did some extensive research in the legislative history of the home occupation regulations to try to understand the origin of some of the restrictions like the two employees and vehicular trips and the others. Basically back in December of 1986, the Office of Planning submitted recommended text to the Zoning Commission to update controls on home occupations.

Maybe you want to give this historical background, but after four public hearings and hundreds of letters and other written submissions, from what I could tell it must have been from every bed and breakfast operator and bed and breakfast operator interest and every doctor and dentist in Washington, the Commission adopted regulations currently applied to home occupations.

As it noted in the record in the order at the time, it's clear from the record that the opportunity to work at home has become of great importance to persons in a variety of occupations, including, and they mention several including consultants.

The Commission recognized the need to balance the desires of residents to work at home with the need to protect residential neighborhoods, which they accomplished by -- which they basically set forth in the philosophy -- was establish some fairly strict standards, some fairly strict guidelines, and then if there are home occupations which are proposed which need additional flexibility, they could come to the Board and ask for a special exception to be released from one or two conditions that are set on home occupations.

In fact, in Order 557, which adopted the home occupation regs., the Commission stated, "The Commission believes that the special exception provisions offer a reasonable degree of flexibility to those practitioners who would seek greater flexibility than is allowed under the matter of right controls. To the extent that the special exception process will require additional time and cost, that is reasonable for a process which serves to establish reasonable limits in special

circumstances.

Two of the potential harms that the Office of Planning foresaw or indicated were a potential from home occupations were the loss of residential housing stock and adverse external impacts, particularly traffic.

So with regard to the loss of housing stock, the Office of Planning in its December 3rd, 1986, memo said, "The proposed regulations are intended to be quite strict in this regard, including a maximum size limit on the home occupation, no use of non-domestic equipment or machinery," which was later modified, "no separate entrance, and no nonresidential exterior alterations."

And then with regard to adverse external impacts, OP went on to site controls including limits on on-site sales, and it added, "More importantly, we have proposed very strict standards on customer or client visits. The prohibition against retail trade and services found in the proposed text, together with the specific prohibitions against customer visits, is intended to accomplish this."

So those were the basic protections that they had put into place with regard to residential character and adverse impact, and those conditions

we meet. We are not asking for relaxation of either of those conditions.

The legislative history indicates that the limitation on number of employees was also felt to be a protection against undue amounts of traffic coming to the site. There was some notice taken regarding the inconsistency of permitting an unlimited number of residents of the house to work in the enterprise, but only one nonresident.

However, the special exception provisions were seen as a way of dealing with any potential due process issue that occurred around that.

In this particular case, as Mr. Fields has already testified, the amount of vehicular traffic generated by the two additional employees is virtually nil. The assumption made in the zoning regs. is that the number of employees is directly related to the traffic and other adverse impacts dealing with the intensity of use, was established back in 1986, long before laptops, pagers, cell phones, E-mail, and fax machines became a common means of communication, reducing the need for deliveries and face-to-face meetings, and it was established in the face of regulations authorizing home occupations that ranged from bed and breakfast operations to dentists and doctors, all with

substantially higher potential for generating unacceptable levels of vehicular traffic.

In fact, if you look at the uses in Section 203.7, typically they're listed as acceptable home occupation uses. It indicates clearly that employees in the home occupations contemplated by the Zoning Commission at the time typically all worked on site, producing the service or product at the residence, and so it made sense to limit the number of employees because you were limiting the intensity of use at the site, the number of people that were coming to the site.

Those other kinds of uses included tutoring, dressmaking, painting and other fine arts, home crafts, telephone answering service and phone sales, computer programming, typing or word processing service, mail order business, cosmetology, hair stylist or barbering, home office of the scientist, clergyman, inventor, academician, licensed health care professional, doctors and dentists.

Thus, the number of employees in those cases has a direct correlation with the amount of activity generated on site. In the business which Mr. Fields would like to pursue from his home, other than an on-site receptionist who answers the phones, the staff is typically not in the office, spending

most of the time on the Hill or outside at clients' offices.

Therefore, since the two additional staff people will rarely be in the office, it's difficult to imagine that they could be generating any adverse impacts.

The proposed use then will basically be in harmony with the general purpose and intent of the zone plan and maps. Section 203.1 of the zoning regulations, which is the home occupation section, stated, "The purpose of the home occupation provisions shall be to allow home occupations as accessory uses to residential uses, provided that they are compatible with the residential neighborhood in which they are located. The intent is to protect residential areas from adverse impacts of activities associated with home occupations, while permitting residents of the community to use the home as a work place and source of livelihood under specific regulatory conditions."

The analysis of the zoning context earlier makes clear that home occupations are not per se inconsistent with the moderate density residential classification or R-4 classification which exists for this site.

Now, letters have been submitted for the record from Advisory Neighborhood Commission 6B, the

Capitol Hill Restoration Society, and a number of neighbors, and they uniformly mention inconsistency between the proposed home office and the residential character of the neighborhood as one of their major concerns, if not their primary objection to the proposed special exception.

However, as Mr. Nettler mentioned, a close observation, a close review of their submission shows that basically their belief is that granting such a use will erode the residential character of the neighborhood based on the existence of the home occupation on the site and not related to the impact of introducing two additional employees to that home occupation, which is already permitted.

It's important to remember two basic facts: that a home occupation permit for one employee has already been granted, and that the home occupation permit is not transferrable. So Mr. Fields' business with only one employee meets all of the conditions and standards established by the Zoning Commission to assure consistency with the zone plan and maps. If the Board grants a special exception to Mr. Fields to employ two additional persons based on its conclusion that his business operations aren't likely to have a negative impact on the neighborhood, that special exception does not

convey.

Any future purchaser who might wish to have a home occupation would have to return to the Board and demonstrate how its particular operations will avoid harmful consequences.

Thus, granting the special exception for the additional employees does not in any way contribute to the encroachment of commercialization, which has been stated as a major concern of the neighbors.

The last category to look at is that the proposed use will not -- is not likely to adversely affect the use of neighborhood property, neighboring property. The three greatest potentials for adverse impact are probably visual impact, that is, some sort of visual alteration of the residential character of the building or the neighborhood; traffic related impacts, which would include congestion, noise or parking shortages related to vehicles serving the business; and economic impacts, distorting the housing market by establishing an expectation of commercial usage and income in the future.

So first of all, with regard to appearance, the addition of the two employees to the previously approved home occupation is not expected to have any discernable negative impact on the

residential character of 434 New Jersey Avenue. There is no internal or external structural modifications to accommodate the use. They're located on the third floor. They're not visible to the street. They even, as we mentioned, come and go from the parking spaces through the alley and not on New Jersey Avenue.

There will, however, be several improvements to the appearance of the property which should add substantially to the residential character of the neighborhood and the visual attractiveness of the home. As Mr. Fields indicated, doing the landscaping, scraping off the peeling paint, redoing the paint, fixing up the -- cleaning up the alley in the back, all of those will be an improvement to the residential character of the neighborhood.

With regard to traffic, this has been cited by the ANC, CHRS, and the neighbors as a major problem which would result from granting this special exception. However, the additional traffic is expected to be minimal. There will be two additional cars driving to the vicinity. One, however, will be parking at a garage on South Capitol Street in the Fairchild Building and the other on First Street. So neither vehicle is expected to venture onto New Jersey Avenue.

Regarding other types of vehicular traffic, as previously mentioned, 90 percent of the meetings attended by the staff, by the members of the firm are expected to be held outside of the office, and of those which will be held on the premises, there's an expectation that most of the attendees will arrive by Metro or by foot from the Hill, given the proximity of the office to the Hill and to the Metro station.

Of those who will arrive by vehicle, the overwhelming majority will utilize taxicabs. Those few vehicles would be arriving related to the home office itself. If they're coming for meetings, they're coming for meetings with Mr. Fields. The fact that there are two additional employees, in other words, will not cause anymore taxicabs or anymore people to becoming for meetings.

The office is not a heavy user of messengers who would be arriving largely by bicycle anyway or of overnight delivery services. In speaking to the staff, they estimate they get two to three visits from Federal Express or UPS a week. In addition, every two or three weeks, office supplies are delivered.

These levels of traffic do not constitute an adverse impact, particularly since they will occur during the work day when a

substantial number of residents are not at home.

The last traffic related issue is parking. As was stated in the application, Mr. Fields has already leased two off-street parking spaces and a third employee will be parking in a garage in the South Capitol Street area. I have not personally observed a parking shortage on the block. On my three visits to the site, there were on street spaces available each time, but I defer to somebody who's there all the time, and it certainly is true that we would not want to generate additional parking demand for the street because it is close to the Capitol and it is a townhouse neighborhood. So there's going to be a shortage of on street parking spaces, but that is why Mr. Fields already has secured parking, off street parking spaces, for his employees.

Several neighbors have mentioned the party houses, but as you've heard, we're talking about an office that deals with telecommunications policy. It's not like some of the other uses on the block, campaign consultants, entailing frequent large fund raisers for candidates.

The final area of potential adverse impact is economic. CHRS argues in its letter that permitting the proposed use will "exacerbate the commercial pressure on the 400 block of New Jersey

Avenue," and it states that, "If future seller's said asking price is based on a potential for home occupation use beyond that permitted as a matter of right, the residential character of the neighborhood will be increasingly threatened."

Well, first of all, this doesn't convey. So you can't ask for additional money assuming somebody else is going to get permission to go beyond what you could do as a matter of right.

Mr. Alder uses a related argument, and that is that the three year vacancy of the house was a self-inflicted hardship due to an unreasonably high asking price. However, it's instructive to note that Mr. Alder's own Exhibit A, which is a Metropolitan Regional Information Systems, Inc. public record, sort of a multiple listing summary of the house, points out that the previous sales price in 1992 was $425,000, which I understand from the agent to be approximately the same sales price as was involved in this transaction.

A sales price which has remained the same over the course of six years does not lend support to any suggestions that home occupation of this property has resulted in a substantial increase in its value. In fact, the three years of vacancy, rather than being a self-inflicted hardship as Mr. Alder suggested, may be more likely due to the

serious water damage in the interior that was left unrepaired rather than to inflexibility of the seller over price.

Once again, the charge of adverse impact from the proposed additional two employees does not hold up under closer examination.

Granting the request for special exception, in fact, would make a positive contribution to the neighborhood. Permitting Mr. Fields to operate out of these premises makes it economically possible to purchase the property, thus restoring the building to residential use and retaining a 17 year Hill resident.

This property was vacant, as I understand it from the agent, for three years before Mr. Fields purchased it, other than the temporary use when somebody's home was being remodeled and they were renting it while their home was being redone.

The repairs and improvements he has committed to should enhance the attractiveness of the property both in the front, where clients can see, but also in the rear where it is only neighbors who benefit.

Trips to congressional office buildings which previously required Mr. Fields and his staff to take vehicle trips will now be made on foot,

reducing the number of vehicles coming into the overall neighborhood. In a neighborhood where the majority of residents work outside of the home during the daytime, Mr. Fields and his staff constitute eyes on the street, a daytime presence to provide a level of safety and security.

In addition, Mr. Fields has indicated his desire to be a good neighbor by accepting packages or providing keys to open doors for exterminators or service technicians.

In conclusion, home occupation regulations are a delicate balancing act. By setting strict standards regarding the percentage of space that can be used, the number of employees, the number of vehicle trips per day, the number of client visits per hour, signage, sales, et cetera, the regulations attempt to encompass a very wide variety of uses and to preclude adverse impacts from those uses.

The regulations also provide for flexibility through the special exception process so that if it can be demonstrated that exceeding one or two of those standards will not result in adverse impacts in the particular case at hand, relieve can be granted.

The regulations were largely written based on businesses where goods and services were

produced on site by employees working on site. Therefore, there is a correlation between the number of employees and the potential for adverse impact.

However, that's not the case in this situation, and the business is clean, quiet, and fully compatible with the residential setting in which it takes place. The proposed home occupation meets all of the conditions set forth in the zoning regulations, except the number of employees, but the additional employees will not cause any adverse impacts on neighboring property.

Indeed, granting permission to the applicant to operate his business out of the neighborhood once again will provide an additional set of eyes on the street during a period when most residents are away at work.

Thank you.

CHAIRPERSON CROSS REID: Thank you.

MR. NETTLER: Ms. McCarthy, did you have an opportunity to talk with other residents of the neighborhood about the proposed use?

MS. McCARTHY: I did. I went knocking on doors one day to try to talk to people.

MR. NETTLER: Did they provide you with any letters of support or --

MS. McCARTHY: They did, and I sure hope you have them in that file there because when I was

sitting back at my desk, they were not in my file.

CHAIRPERSON CROSS REID: Did you submit any letters of support?

MS. McCARTHY: They were sent to --

MR. NETTLER: Here's one.

MS. McCARTHY: Oh, okay.

MR. NETTLER: Actually they were part of the administrative record in -- I think you know the history of why this case is being heard today. They were part of the administrative record in the other matter, and I think I do have copies, and I will submit them here.

CHAIRPERSON CROSS REID: Thank you, Mr. Nettler.

Does that conclude your presentation?

MR. NETTLER: That does.

CHAIRPERSON CROSS REID: All right. Cross examination.

MS. KING: Excuse me. I have a question.

CHAIRPERSON CROSS REID: I'm sorry.

MS. KING: You all have said that Mr. Fields is not going to have any kind of signage on the building, but should he decide to have a tasteful, little brass plaque or something, does he have to get a permit to do that or not?

MS. McCARTHY: The home occupation

regulations allow you to do a sign up to 144 square inches.

MS. KING: What size is that?

MS. McCARTHY: Twelve by 12.

MS. KING: But he has stated that he has no intention of doing that. He still would be within his right regardless of what we decided to do that.

MR. NETTLER: That's correct.

MS. KING: Okay. Thank you.

CHAIRPERSON CROSS REID: Mr. Parsons?

MR. PARSONS: I was confused by something Mr. Nettler just said to the Board about knowledge of why this is being heard today. Do I need to know something?

CHAIRPERSON CROSS REID: You mean the appeal?

MR. NETTLER: Yes, it was misadvertised as an appeal.

CHAIRPERSON CROSS REID: As an appeal that had to be readvertised as a special exception.

MR. PARSONS: I wonder if you could address Mr. Adler's point about the parking spaces that have been leased that currently are used by others.

MR. NETTLER: I don't think she heard you when she walked up to give the --

MS. McCARTHY: No, I heard it. I know that two parking spaces were leased. I don't think that we did an investigation to find out who was in those spaces before we leased them and whether they were used.

MR. PARSONS: So you're not aware that he forced somebody else out on the street?

MR. FIELDS: No. These, as far as we know, were the spaces that were being used by the family that was renting the townhouse for that short period of time.

MS. McCARTHY: And it is a neighborhood with residential permit parking. So if anybody is forced out of those spaces onto the street, they can only park there for two hours without a residential permit sticker.

MR. FIELDS: So the direct response to your question, I am not aware that we forced anybody out of those spaces.

MR. PARSONS: What are the terms of this lease? Month to month, one year?

MR. FIELDS: We are in the process of getting a formal agreement. When we purchased this place, the townhouse, it was part of the agreement that the spaces that were being rented by the person occupying the residence at that time, that we would be able to rent those spaces, and we've been in

contact with the owner of the spaces, and we have begun the process.

We've actually paid the first month, and so we're waiting for a formal agreement.

MR. PARSONS: So you'd anticipate a year long lease or --

MR. FIELDS: I assume it would be. We were told a long as we want it. I don't know what form we will actually see it when it comes. I assume it's going to be at least a 12 month. It's our anticipation that we will use those spaces from this point forward.

MR. PARSONS: Well, if we were condition this on that premise, that you would have leased space, you can see the difficult in enforcement of something like that over a period of time.

MR. FIELDS: The alternative for us if there ever became a problem there, a block down there is a public parking lot that's operated by the Capitol, and we would lease space there. This happens to be convenient.

MR. PARSONS: The two consultants, I guess you'd call them, assistants, what term are we going to use?

MR. FIELDS: Assistants.

MR. PARSONS: Assistants?

MR. FIELDS: Right.

MR. PARSONS: I think somewhere it said consultants.

MS. McCARTHY: It only said consultants because they were employees of the consulting firm. So that's what they called them on the application because I didn't have a breakdown of -- at that point in time, I was dealing only with Cassidy & Associates and not with Mr. Fields.

MR. FIELDS: Let me -- because I think I know the point you may be driving at. In each agreement I have with a client, each agreement specifically requires my personal services, as well as the company, but the point I'm trying to drive is that my relationship, my previous experience in Congress is central to each contract that we have. We wouldn't have the contract if it weren't for my personal involvement with my clients.

MR. PARSONS: So these assistants won't be former members of Congress who chaired other committees?

MR. FIELDS: No.

MR. PARSONS: I don't know how we pass an order that provides for that, and that's the difficulty of trying to condition what you're proposing to us today and monitoring that.

MR. NETTLER: Well, and also, if I could in response to that, going back to my opening

statement, that's inherent in the nature of the issue that confronted the Zoning Administrator in which you had not a home occupation in which the two additional people were essentially doing their services on the premises. It was two additional people who are employees of a business that was being operated by Mr. Fields.

And as Mr. Fields said, it was our intent to be as -- not only to deal with the zoning regulations application in the literal sense, but in the intent in terms of one being as open as possible, obviously, but in terms of recognizing that the zoning regulations don't break down a business between the business that's operated on the premises even if they had somebody who was never on the premises. It just deals with employees.

And it could be argued, and we're not doing so at this point, but it could be argued that because they're not full-time employees on the premises, that they don't necessarily come within the purview of a need for special exception, but it was our view that we want to go forward in discussing this with the Zoning Administrator in this capacity, and we're doing so.

MR. PARSONS: Mr. Fields, you said you'd be here while Congress was in session.

MR. FIELDS: Yes.

MR. PARSONS: Will your assistants be occupying the property for office purposes while you're absent?

MR. FIELDS: They will, and also let me -- that it doesn't create a misconception, when Congress goes out sine die the first week of October, I will still be returning in October, November, and December. I may not be, you know, at the residence as much as I am when Congress is in session.

MR. PARSONS: But how about your assistants? I mean is there going to be an ongoing office use while you are absent is my question.

You talked about or Ms. McCarthy talked about --

MR. NETTLER: Just listen to the question.

MR. FIELDS: I'm sorry.

MR. PARSONS: McCarthy talked about the advantage to you having a presence during the day here. You take in packages for the neighbors. You let the exterminators in next door, that kind of thing. So if that's part of your case, I'm trying to determine whether this is a 12 month operation or more like a nine month operation.

MR. FIELDS: No, they will be there, and that is a fact that the two people that have come

back to talk with us, we've offered what I think a good neighbor should offer, and that is if there is a problem with someone's alarm system, you know, we've asked for numbers to call people and have said -- our one neighbor who came by recently took a trip to Florida. We said, "If you want to leave your number where we can call you if there's a problem, we'll be glad to do so."

So we do plan to offer what I think good neighbors should offer in a neighborhood.

Also, keep in mind that the neighborhood has been my residential area for 17-plus years. I mean, I feel vested in the area.

MR. PARSONS: You know, I get a little lost on your tour.

MS. McCARTHY: Okay.

MR. PARSONS: Can you describe the third floor a little better as to what kind of office space is really available here? I mean, is it three or four separate offices or more? Is it like a typical congressional office with five people where there should be one?

MR. FIELDS: You've got two bedrooms that I would say are average to maybe even larger than average size bedrooms. In the bedroom facing in the back we have two desks. In the other bedroom we have two desks. So we have three desks in the

two bedrooms, and it's not crowded. It's a pleasant work place.

MS. McCARTHY: Mr. Alder's letter mentioned that 770 square feet he thought was too small to be considered reasonably for office space, and so he was suggesting that that meant clearly they were going to be encroaching in the residential sections of the house.

I think the actual explanation is you don't need more than 770 square feet when people are not working at their desk when they're really out in the field or up on the Hill or out in meetings.

MR. PARSONS: So there's three desks and four people; is that right?

MR. FIELDS: I've got myself. Up in my area, I've got a small little desk where I have my laptop for convenience. I'll bring my laptop down to the third floor when I need to get things printed or copies.

I mean we are really a small boutique operation.

MR. PARSONS: So you personally then would not have an office?

MR. FIELDS: I don't really need an office.

MR. PARSONS: I understand.

MR. FIELDS: Because my time is spent --

if I'm not on Capitol Hill or if I'm not in someone's office, I'm not adding value to my client base.

MR. PARSONS: So there's no contemplated designation of your upstairs quarters to be an office?

MR. FIELDS: Not at all.

MS. McCARTHY: It would cut into the gym space.

MR. PARSONS: Sorry?

MS. McCARTHY: It would cut into the gym space.

MR. PARSONS: Seemingly, although a laptop on a treadmill, I guess.

(Laughter.)

MR. PARSONS: Who knows?

Ms. McCarthy, you, I think, were trying to persuade us that there's commercial activity in the neighborhood, and would you agree that this street, however, is residential in character?

MS. McCARTHY: Right. In fact, in my written testimony I said that. Although it's a mixed neighborhood in terms of the overall character around it, the street is predominantly residential. There's that one office building on the corner that was grandfathered in, but the rest of it is residential, which is why we think a residential use

with a home office that's quiet and respects the residential character of the neighborhood is really important for preserving that residential character.

MR. PARSONS: Have you researched how many home occupancy permits there may be on this street, on this block?

MS. McCARTHY: I have not researched the number of permits. I did, as I mentioned, go knocking door to door early on to ask for support or to explain to people what we were proposing to do, and in the course of that, those visits up and down the street, I found two other businesses, people that were home that, you know, talked to me.

And at the Capitol Restoration Society meeting when I spoke to Mr. Alder, he said he was aware of four total businesses, but I did not then go back to the Zoning Administrator to see which of those were legal and which were illegal.

MR. PARSONS: Mr. Fields, will you pay income taxes in the District of Columbia or in Texas?

MR. FIELDS: Texas.

MR. PARSONS: And your employees, however, would be paying income taxes to the District of Columbia?

MR. FIELDS: They'd be paying taxes where they live, and I think all of them live in

Northern Virginia.

MR. PARSONS: Oh, you've retained these people already? You have employees?

MR. FIELDS: I do have employees.

MR. PARSONS: And where are they working at the moment?

MR. FIELDS: They're working at our -- our townhouse.

MR. NETTLER: There's a -- Mr. Fields used to sublease space downtown before purchasing this property, down on K Street on what, 15th and --

MR. FIELDS: 1301 K Street.

MR. NETTLER: 1301 K.

MR. PARSONS: So you're up and running now. I thought you were up and running with the employees within your current permit, but you're up and running, and you've got four people working there.

MR. NETTLER: Well, let me just finish. So he had subleased -- he had been subleasing that space. He then entered into a contract to purchase this house for moving not only himself into the house to live there, but to move the employees as their business from that premises that he was subleasing to this area as well.

And so I guess over the last month, which is after I guess the -- you closed on what

date?

MR. FIELDS: First of July.

MR. NETTLER: -- 1st of July, it has essentially been people there who have moved over from K Street, setting up the premises and actually spending the majority of their time, as I said, off the premises on the Hill to the extent that Congress has been in session.

MR. PARSONS: So then if we disapprove this application, you either have to fire somebody or find alternative space for them?

MR. FIELDS: If you were to disapprove this, it would be economically burdensome on me.

Again, I want to try to emphasize to you we have done everything by the book or at least we feel like we have. We haven't come in and tried to hide assets, hide people. We didn't come in under the cover of darkness. We tried to do the right thing that we're supposed to do here in the District.

MR. PARSONS: Thank you.

MR. NETTLER: Well, the hearing was -- again, the hearing was scheduled on this matter for May 20th. It was -- it was before the purchase of the property was supposed to take place. Because of the fact that it was not noticed properly, that was changed, and we asked for an expedited -- to have it

scheduled on an expedited basis. It actually was supposed to be last week, I believe, rather than this week because of the schedule.

If you were to deny the special exception, the consequence would be that the business would still operate because it has a home occupation permit. Mr. Fields would essentially have to lease space for two employees who don't use the space somewhere else, but it wouldn't preclude him from operating the business on these premises.

MR. PARSONS: Okay. Thank you.

That's all I have.

CHAIRPERSON CROSS REID: Ms. King?

MS. KING: No questions.

CHAIRPERSON CROSS REID: All right. Cross examination. Is the ANC represented here?

MR. SIMON: Yes, ma'am.

CHAIRPERSON CROSS REID: Would you like to cross examine the applicant?

MR. SIMON: Yes, ma'am.

CHAIRPERSON CROSS REID: What you may want to do, please, Ms. McCarthy, is take the map down so that we could have visual.

MR. SIMON: Good morning. My name is Gottlieb Simon, and I'm the Executive Director of Advisory Neighborhood Commission 6B.

MS. KING: Mr. Simon, can we have your

home address, please?

MR. SIMON: Yes, 201 Eye Street, S.W.

Good morning, Mr. Fields. I just have a couple of questions that I'd like to ask you.

MR. FIELDS: Okay.

MR. SIMON: You indicated that you had become vested in the area since your years of service in the Congress. Where are you currently registered to vote, sir?

MR. FIELDS: I'm registered in Texas.

MR. SIMON: In Texas, and does that imply also then that you would have a Texas driver's license?

MR. FIELDS: I do have a Texas driver's license.

MR. SIMON: You indicated that your representatives had been at the ANC meeting. You were not able to attend?

MR. FIELDS: I was not.

MR. SIMON: Were you in town or were you in Texas?

MR. FIELDS: I was in Texas.

MR. SIMON: I have no further questions.

CHAIRPERSON CROSS REID: Thank you.

MR. NETTLER: Could you explain why you -- excuse me. You were intending to go to that meeting, the planning and zoning meeting, weren't

you?

MR. FIELDS: The reason I was not at the meeting, my daughter, who was two years old, had had some extreme bouts of vomiting, and so I left unannounced, left clients in a lurch and flew to Texas for a two year old having to do an upper GI scared me, and so I went to be with my family.

MR. NETTLER: Thank you.

CHAIRPERSON CROSS REID: Thank you.

MR. BYRNE: For the record, I'm Peter Byrne, and I'm here as a representative of the Capitol Hill Restoration Society, and I, too --

MS. KING: May we have your home address, please?

MR. BYRNE: Yes, ma'am. 641 E Street, S.E.

Just to clarify for the record, Mr. Fields, the total number of employees who would be working at the building other than yourself are how many?

MR. FIELDS: Three.

MR. BYRNE: This is not -- this is a point of some significance. I just point out to the Board because Section 210(c) --

MS. WITTEN ROSE: Excuse me, sir. This is only time for cross examination. You will be able to do that in your testimony later.

MR. BYRNE: All right. Thank you.

Mr. Fields, 21st Century Group, Inc., is a corporation, correct?

MR. FIELDS: It is.

MR. BYRNE: Where is it incorporated?

MR. FIELDS: D.C.

MR. BYRNE: It's in D.C. Why were the Articles of Incorporation not filed with the application?

MR. NETTLER: I obviously can answer that. The application was not filed on behalf of the corporation. It was filed originally on behalf of the existing owner at the time, which was Mr. Cassidy, under a contract to sell the property to Mr. Fields, and if you would like, I have the Articles of Incorporation here. I can certainly submit them to you, if you would, but they are not the applicant. The applicant is Mr. Fields, who lives there.

MR. BYRNE: Well, the application --

CHAIRPERSON CROSS REID: All right. Now, again --

MR. BYRNE: Yes, ma'am.

CHAIRPERSON CROSS REID: -- you have to contain your comments to testimony for here today.

MR. BYRNE: Since I haven't had a chance to see the Articles of Incorporation, may I ask how

many officers and directors there are in the corporation?

MR. FIELDS: There's myself and some of my employees.

MR. BYRNE: How many of your employees?

MR. FIELDS: One.

MR. BYRNE: So there is --

MR. FIELDS: I believe. Is that correct? One.

MR. BYRNE: So those are the officers of the corporation?

MR. FIELDS: And also my wife.

MR. BYRNE: And your wife.

MR. FIELDS: Right.

MR. BYRNE: Is an officer and director?

MR. FIELDS: That's right.

MR. BYRNE: Will 434 New Jersey Avenue be the principal place of business of the corporation?

MR. FIELDS: Yes.

MR. BYRNE: Mr. Parsons asked before when you are in -- when you are not residing at the property because you're at your home in Texas. I thought I heard you say that your employees will continue to be working at 434.

MR. FIELDS: That's right.

MR. BYRNE: That's correct?

MR. FIELDS: And I think the neighborhood would want people there.

MR. BYRNE: That's all the questions I have.

CHAIRPERSON CROSS REID: Thank you.

MR. NETTLER: May I redirect on response to the questions?

With regard to those employees working there, do you mean by that that you have your receptionist-secretary who would still be there on a full-time basis and the other individuals would continue to be working with congressional staffs --

MR. FIELDS: That's right.

MR. NETTLER: -- notwithstanding the fact that Congress is out of session on the Hill and with clients at meeting places in other places in the city?

MR. FIELDS: That's correct.

MR. NETTLER: So the one person would be there on a continuing basis in the house when you're not there is your secretary-receptionist?

MR. FIELDS: That's right.

CHAIRPERSON CROSS REID: Okay. Thank you.

Okay. Government reports. I don't think we have any other reports other than -- no, we didn't have one from OP. So the ANC representative,

come forward please and give your report or testify.

MR. SIMON: Good morning. I will basically just summarize the points made --

CHAIRPERSON CROSS REID: Okay. Give your name and the ANC and your address just for the record so that --

MR. SIMON: Certainly. My name, again, is Gottlieb Simon. I'm the Executive Director of Advisory Neighborhood Commission 6B, and I reside at 201 Eye Street, S.E.

The Commission opposes this application because it threatens the residential character and, I should say, nature of New Jersey Avenue. I haven't seen the photographs that were given to the Commission a little while ago. However, I believe that those photographs must reveal to you that this block of New Jersey Avenue is probably a gem of a residential block. It is a solidly residential appearing and residential use block and is obviously under extraordinary risk to continue that if this kind of activity is given full sanction and legitimacy.

The applicant is seeking approval for a home occupation permit that would allow him to have three employees, two additional, but there would be a total of three employees on the site.

The Commission's fundamental perspective

is an operation that is able to maintain three employees is an operation that should be able to afford commercial rent in areas close to Capitol Hill which are already designated for that purpose. I believe that the 200 and 300 blocks, for instance, of Pennsylvania Avenue reveal that there is rentable space in those locations.

The purpose, as indicated earlier to you, was to enable someone to live and also work at the same place. This goes far beyond allowing that particular operation to occur.

And I would point out that the other aspect, as I tried to highlight in my questions to the applicant before, is that in Section 203.2, which is the very next part of the zoning regulations after the general intent is articulated, it says, "For purposes of this section, a home occupation is a business, profession or other economic activity conducted full time or part time in a dwelling unit which serves as the principal residence of the practitioner of the home occupation."

And I point out it doesn't quality for that by saying the principal residence while in town.

The Commission is concerned that this activity will enhance, as you have heard, traffic

problems and will in various ways undermine what is intended to be a residential area.

The quality of that area, I think, is high already and will certainly be under extreme threat.

CHAIRPERSON CROSS REID: You said the quality? I'm sorry. I didn't hear what you said.

MR. SIMON: The quality of the area.

CHAIRPERSON CROSS REID: Quality.

MR. SIMON: You have some pictures which should reveal to you the -- again, I haven't seen those pictures, but if they show you the full extent of the 400 block of New Jersey Avenue, you'll see that it's a highly desirable area.

We understand that it would be economically beneficial to the applicant to be able to house his employees at the location where he also has a place to live when he happens to be in town. The applicant up until this time has testified to the ANC that he had an office on K Street, and we can appreciate that it would be economic to have one place rather than two places.

We submit, however, that that economic desire is not the purpose of the zoning code.

Let me just try to summarize overall the basic thought here. I point out to you that I have a pad of paper in front of me, and at some point as

I tear off one sheet at a time I will make a substantial dent in this particular pad, and you will have a hard time saying whether or not I fully exhausted the pad or I made a substantial dent in the pad or not.

Mr. Field may or may not be able to have the low impact kind of operation that he proffers to you this morning. We've already heard that there are some problems in the proffer in which he indicated that he has been following letter and intent of the law, but in fact, is already operating without a permit at that location.

But in any event, he may be able to provide the low impact operation that he intends, but it's going to have a heating effect on the rest of the block, not a chilling effect the way government operations frequently do, but it will have a heating effect, and it will provide incentive to others on the block to move away from residential purpose and practice to making their properties available for extended home occupation.

And then you're going to say, well, this particular operation, does it add just one sheet or two sheets or three sheets or how much does it take before the balance has finally been tipped?

We think we have to defend the balance where it is now.

Thank you very much.

CHAIRPERSON CROSS REID: Thank you for your testimony.

Further --

MS. KING: Cross examination?

CHAIRPERSON CROSS REID: I'm sorry. Mr. Nettler, would you like to?

MR. NETTLER: Yes, if the Board doesn't have any, I have some cross examination.

CHAIRPERSON CROSS REID: Okay. Just a moment.

Mr. Nettler, please indulge Mr. Parsons.

MR. NETTLER: Oh, yes.

CHAIRPERSON CROSS REID: I would like to ask him.

MR. PARSONS: Mr. Simon, I realize you don't speak for the Board. You're their Executive Director, but were you in attendance at this meeting that's been reported to us earlier?

MR. SIMON: Yes, I was.

MR. PARSONS: Can you give the Board's side of the story that we heard earlier about the refusal by the Board to allow the applicant's representative to make a statement?

MR. SIMON: Well, I can tell you that the ANC generally operates through its committee system, and at its Planning and Zoning Committee

meeting applicants are given an opportunity, and if you've noticed our reports, sometimes those meetings last for quite late, for several hours, and rather than subject the full Commission to a total rerunning of those issues, the Commission tries to operate on the basis of findings from its committees, and applicants don't get two bites at the same apple.

And ordinarily then when there are some applicants who are present at a meeting, are available then to clarify issues that may come up to the Commission, but ordinarily it is not a practice of the Commission to provide applicants with an opportunity to present a full second presentation.

MR. PARSONS: Well, I find that very strange when you're opposing something. I can see where you're supporting it that you don't want to run on with that kind of thing.

How many members of the Commission -- I see there are currently 12 serve on this Planning and Zoning Committee. Is that the correct title?

MR. SIMON: There, I believe, are or at least in attendance at that meeting, I believe there were either three or four Commissioners who were in attendance at that meeting, and the report of the committee is distributed to the Commission in advance of the meeting, and then the chair of the

committee will review the report, and the Commission will then decide whether or not to support that or support it with amendments or not to support it.

MR. PARSONS: So the committee is composed then of less than half of the ANC members?

MR. SIMON: Correct.

MR. PARSONS: And how many committees are there?

MR. SIMON: The Commission has a Planning and Zoning Committee. It has a (pause) --

MR. PARSONS: The reason I'm asking is I would presume that the largest issue in your community is planning and zoning.

MR. SIMON: Yes, it is a major issue. We also currently have a traffic task force which has generated a lot of interest as well.

MR. PARSONS: All right. You tore off some sheets of paper.

MR. SIMON: Yes.

MR. PARSONS: Do you know how many sheets of paper have already been torn off on this block, that is, how many home occupancy --

MR. SIMON: This is the --

MR. PARSONS: -- operations there are in this block?

MR. SIMON: This is the first application that has come to the Commission in the

last several years that I'm aware of.

MR. PARSONS: Do you know how many there are as a matter of right then?

MR. SIMON: As a matter of right?

MR. PARSONS: On this block --

MR. SIMON: Well --

MR. PARSONS: -- how many home occupancy permits have been issued?

MR. SIMON: Oh, no, I don't know how many have been issued, no.

MR. PARSONS: So you don't --

MR. SIMON: All I can tell you --

MR. PARSONS: -- know how many pieces of paper have already been torn off.

MR. SIMON: That is correct.

MR. PARSONS: Because you spoke of a balance here.

MR. SIMON: That's correct.

MR. PARSONS: And I'm trying to assess what you mean by "balance" --

MR. SIMON: I know that --

MR. PARSONS: -- in this block.

MR. SIMON: I know that in the last four years, there has not been an application for a home occupancy permit that has been presented for our review.

MR. PARSONS: Well, I'm trying to

determine what you mean by the term "balance."

MR. SIMON: Well, I mean that approving a home office, and I might point out that this particular address is squarely in the middle of the block. It just brings to mind an image of block busting.

But this operation, if approved, will be low intensity, and then the next one two doors down the block will come and say, you know, "We'll just have one more Fed. Ex. delivery per morning than Mr. Fields does, and we'll just have one more activity there," and --

MR. PARSONS: So I guess you believe that the current situation is in balance. Is that what you mean?

MR. SIMON: The current situation -- we want to preserve the current situation. We don't want to lose any further residential use on that block because --

MR. PARSONS: All right. Thank you.

CHAIRPERSON CROSS REID: Mr. Nettler.

MR. NETTLER: Thank you. Just a few questions.

About the ANC meeting, do you recall me asking you before that meeting for -- and when you told me what the Planning and Zoning Committee decision had been -- asking whether I would have an

opportunity to make a presentation before the ANC? Do you recall me asking that question?

MR. SIMON: I recall your inquiring about our procedure, and I recall encouraging your availability at the meeting.

MR. NETTLER: Encouraging my availability at the meeting, and encouraging my availability, was that -- was that for the purpose of me seeing the Commissioners adopt the Planning and Zoning Committee's report without my being able to make a presentation or was there some other purpose?

MR. SIMON: The other purpose being so that in the event that Commissioners had questions that hadn't come up in the Planning and Zoning Committee meeting, you would be able to answer those questions.

MR. NETTLER: Okay, and do you recall me saying to the ANC that the report that had just been read to the Commissioners when I was sitting there had contained some inaccuracies that I wanted to correct so that they could at least vote on an accurate picture of what was being proposed? Do you recall me saying that?

MR. SIMON: I remember the issue of the special exception versus the appeal.

MR. NETTLER: No, do you remember me

talking about accuracies and inaccuracies in general?

MR. SIMON: Yes, and I thought it was in terms of the report's characterization of the application as an appeal.

MR. NETTLER: But the ANC did not give me an opportunity to correct any of those inaccuracies or to offer my position regarding that?

MR. SIMON: You did not -- that's correct, and I might add that I haven't heard from you with regard to any inaccuracies since either.

MR. NETTLER: You were tearing off the paper about what you portrayed as the possible consequence of this use, this special exception, being granted. You're aware, I assume, that every house on that block, in fact every residence on Capitol Hill in your ANC could have a home occupancy permit, are you not?

MR. SIMON: Certainly.

MR. NETTLER: So every single residence there could have a consulting business or any other business that would --

MR. SIMON: Each --

MR. NETTLER: -- supposedly result in your tearing off a paper from that?

MR. SIMON: Each one wanting to tear off additional employees beyond those that they would

have as a matter of right would have to come to this body for permission.

MR. NETTLER: So the real issue is not that there could be a business on that block. The real issue to you is that the business could -- every one of those businesses could seek a special exception from some aspect of the zoning regulations. Is that what the real issue is?

MR. SIMON: The real issue is whether or not that will be a genuine living community or whether or not it will be a sham with a facade of residential beautification on the outside, but in fact, it will be a commercial operation inside.

MR. NETTLER: Okay, and you are certainly aware that even if this special exception is denied, there is a home occupation permit that's already been issued for the use, the consulting use, that's been established there?

MR. SIMON: Not personally aware.

MR. NETTLER: And you're not aware of anyone having appealed to the Board of Zoning Adjustment that approval that was granted for the home occupation use that Mr. Fields has established?

MR. SIMON: Well, what I just replied to before was that in the last four years, the ANC has not received any similar issue, any --

MR. NETTLER: So the answer is, no,

you're not aware of anyone having appealed, someone who might oppose this use having appealed this use?

MR. SIMON: If I'm understanding your question, that's right. I'm not.

MR. NETTLER: Okay. Thank you.

CHAIRPERSON CROSS REID: Okay. All right. We'll go now to persons and parties in support of the application. Please come forward.

MR. NETTLER: We have -- Ms. McCarthy did submit those letters and petitions.

CHAIRPERSON CROSS REID: Yes, we do have them for the record.

MS. KING: Could I see them? Do we have them?

CHAIRPERSON CROSS REID: Oh, you didn't get a --

MS. KING: No, I think there was a sole copy.

CHAIRPERSON CROSS REID: Oh.

MS. KING: I'd just like to take a look at them.

CHAIRPERSON CROSS REID: Okay. Some copies will be made for both Ms. --

MS. BAILEY: I can make some copies.

MS. KING: Oh, don't waste --

CHAIRPERSON CROSS REID: Not at this time. Before deliberation.

MS. WITTEN ROSE: There are copies, I think, of seven of the eight letters, I believe.

CHAIRPERSON CROSS REID: I think there was one or duplicates of a few of them, but we need to have complete sets for all three of us.

And you haven't read over them?

MS. KING: I don't need a set. I just want to --

CHAIRPERSON CROSS REID: In the interim, are there persons present for this application present? If so, come forward.

MS. KING: Oh, there is a set of duplicates here.

CHAIRPERSON CROSS REID: No? Persons or parties in -- just let me note for the record that there have been submitted several letters of support for the record.

MS. KING: And one petition.

CHAIRPERSON CROSS REID: And one petition.

All right. Persons and parties in opposition to this application, please come forward.

MR. CORMACK: Do you want us --

CHAIRPERSON CROSS REID: Yes, please, and give your witness cards to the reporter.

MR. CORMACK: May I speak?

CHAIRPERSON CROSS REID: You may

proceed.

MR. CORMACK: Let me introduce myself. I'm Pete Cormack. I live at 416 New Jersey Avenue, S.E., and that's in Square 694 just up the street from the subject house.

My wife is also present here. We have been residents at New Jersey Avenue for 22 and 18 years, respectively. My wife bought the house in a residential neighborhood with the intention to walk to work on the Capitol. That she did.

Now, to show that I know something about the block, I am essentially the block or the beat representative. We used to have Beat 4. Now it's PSA 108. I deliver the flyers. I kind of know what's going on in the block.

We're also the people that organize the annual New Jersey 400 block block party. So I kind of know what's going on there.

The side of New Jersey that we're talking on, from 400 to 454, has no, repeat, no businesses on that side. The businesses that are under question here are across the street. They are one grandfathered house, 419, and I believe 421 also. Mr. Rosenblatt has one.

This is an entire block of residential places with two exceptions.

The Beneficial Building, by the way, in

one corner, I might add, has an address on E Street, not on New Jersey Avenue.

Block 694, which we are, has only one commercial, and that's over in the upper corner which was mentioned.

The point of this is we live on the block. We know the block. The purposes of this business is now, I'm coming to hear, is to that a person and his family live there and are going to have a little business. It is all business with a modicum of residence.

He is a Texan. The people that are going to come there are Virginians. It does not seem logical to me that you buy a house, and I think it's wonderful that he's going to fix it up and I think it's wonderful that all of this is happening in the rules and regulations, but the fact remains this is a business. It's going to be business.

Virginians coming there will have no particular feeling for this. That's just their place of business.

We live in a residential block. We have small kids on the block even now. The whole block, I can list you any one of the numbers you want and I can tell you who lives there. A lot of people are renters. We've got a couple of shaky places right now. As a matter of fact, the places that are being

leased for the automobiles is under some suspect.

The point being we old timers on the block welcome new members if they want to live there and become parts of the community, but it just doesn't seem right to have people create a business and then use the rules and regulations to sort of suggest that they are going to be wonderful neighbors. Probably is going to be a wonderful neighbor, but he's really not part of the block and part of D.C. It's a business.

Thank you.

CHAIRPERSON CROSS REID: Thank you.

Yes, sir. Would you like to give your testimony?

MR. NELSON: Yes. I'm Larry Nelson. I live at 440 New Jersey Avenue, S.E., which is just a few doors down from this particular location.

Myself and my wife have lived there off and on since 1979. We moved there because it was a residential area. We like the residential neighborhood.

It has been mentioned that there's a suspect house there that perhaps is a little bit -- and that was the one that the parking spaces were rented from. That's -- those parking spaces have been occupied since that building was bought by four cars continually. Two of the cars back out halfway

across the sidewalk every day except the weekends. The weekends, no problem. There's nobody in the house.

We're afraid that's going to continue.

The alley way which they have been talking about is not a common alley way. It's a common in the sense that it's there. It used to be owned by the city. It's now owned by the owners that live on First Street and New Jersey Avenue.

I own about a third of that alley way back to his house. That's where they come through. There is an ingress/egress access for that, getting in there and out of there, but that's for residential. It's a residential area.

Now I have traffic through my alley way as a business. I don't think I appreciate that.

I do appreciate the fact that Mr. Fields has come toward the body here, the zoning body, and done through the rules. I really don't appreciate the people who don't do that.

And I intend to stay there as long as I am able. I perhaps am one of the old guys, too. I enjoy living there, and one of these days I'm going to retire, and I'd like to live there in peace and feel like it's a residential neighborhood.

Thank you.

CHAIRPERSON CROSS REID: Ms. King, any

questions?

MS. KING: No questions.

CHAIRPERSON CROSS REID: Mr. Parsons?

Just one quick question.

MR. NELSON: Yes.

CHAIRPERSON CROSS REID: You stated that you now have traffic from the business coming through your --

MR. NELSON: Alley.

CHAIRPERSON CROSS REID: -- alley. You are referring specifically to the traffic generated by Mr. Fields?

MR. NELSON: It's walking traffic, walking traffic. The alley way goes under -- I have a carriage house on First Street, which is part of my property. The alley way goes under the carriage house. The carriage house is attached to the house next door on the top side. In other words, I guess you'd call it the second floor, and underneath that is a walkway between the house on the next -- next to the carriage house and the floor of the carriage house second floor.

CHAIRPERSON CROSS REID: Are you saying then that there is sufficient amount of traffic, additional traffic, as a result of Mr. Fields' operation to basically cause a nuisance?

MR. NELSON: I would say I wouldn't say

it would cause a nuisance necessarily. It does cause traffic. He himself said that these people didn't work in the house all the time. They were going back and forth to Congress or other places. They park there, and they obviously go there to deliver things or to get things.

CHAIRPERSON CROSS REID: Let me rephrase it then. Are you saying then that if not a nuisance, that you are negatively impacted as a result of the traffic?

The traffic within itself, unless you qualify the traffic --

MR. NELSON: Traffic.

CHAIRPERSON CROSS REID: Do you see what I'm saying? We need to understand --

MR. NELSON: Yes.

CHAIRPERSON CROSS REID: -- the degree of traffic that causes you some concern.

MR. NELSON: It does cause me some concern because there has been graffiti written on the back of some of those places there. There has been graffiti written on my carriage house.

CHAIRPERSON CROSS REID: But does that have anything to do with Mr. Fields' operation?

MR. NELSON: Let me continue. This graffiti is an indication that there's mischief afoot here, if you'd like, and so we have to keep a

watch on what goes on in that alley.

CHAIRPERSON CROSS REID: Ms. King?

MS. KING: No, no comment.

CHAIRPERSON CROSS REID: But again, does the graffiti, to your knowledge, does that graffiti that you're speaking of have anything to do with the case here today?

MR. NELSON: Yes, it does.

MS. KING: Why?

MR. NELSON: From the fact that if there are people back there doing that, then one has to keep an eye on that alley way, and the more traffic that you hear or see going through that alley way, the more you're going to have to keep an eye on it.

It bothers me. Okay? It raises my concern.

CHAIRPERSON CROSS REID: Well, this is what we want to hear, particularly those folks who come to us and present testimony to inform us as to what, if any, adverse impact or what effect that the particular application being granted will have on them.

MS. KING: However, sir, you are not suggesting that Mr. Fields' --

MR. NELSON: No.

MS. KING: -- employees are responsible for the graffiti --

MR. NELSON: I am not.

MS. KING: -- in your alley.

MR. NELSON: I am not.

MS. KING: Thank you.

MR. NELSON: All I'm saying is that it raises my concern when there are people back there.

CHAIRPERSON CROSS REID: Understood.

Mr. Nettler, would you like to cross examine?

MR. NETTLER: No.

CHAIRPERSON CROSS REID: Okay. Mr. Parsons, you said no other questions?

MR. PARSONS: Well, I guess I did want to ask Mr. Cormack a question.

MR. CORMACK: Yes.

MR. PARSONS: You talked about your 400 block club. Is that an organization of any kind or just kind of an informal --

MR. CORMACK: There used to be in times past an organization that was more formal. There has not been one in about 12 years. It's just that ourselves and a couple of our neighbors kind of host a block party, and a fair number of people come, but not everyone.

And the other thing is, again, I'm just sort of the unofficial person that delivers the PSA bulletin and kind of, you know, makes sure that

that's available and so forth.

I guess I might add just one thing, and that is I am retired now, and I spend a lot of time during the day. So there's nobody that knows the parking problems there any more than I do, and fortunately no one has suggested that the parking -- there are no parking problems. There are massive parking problems, but in all due respect, only slightly be exacerbated by this -- by this exception.

MR. PARSONS: We have a situation here where we have one of your neighbors who supported and opposed the application.

CHAIRPERSON CROSS REID: Who was that?

MS. KING: Who was that?

MR. PARSONS: Who's that? Mr. Jason Hanna, who has signed a letter to us, possibly solicited by your wife -- I'm not sure -- in opposition, but has also signed a petition in favor of the application, and I'm not asking you what his views may or may not be, but apparently you must have, or your wife, canvassed the neighborhood to elicit opposition.

MR. CORMACK: That's not entire true, canvassed the neighborhood.

MR. PARSONS: I don't mean the neighborhood. The block.

MR. CORMACK: The block, and as far as the Hanna situation, I'm a little confused. You know, they're the ones that have a little kid on the block and stuff. I would not think that they would particularly love to have a business there, but I really can't speak for them completely, other than the fact that maybe later they saw the light.

The idea that -- see, originally we had this letter proposed by Ms. McCarthy here that -- one of the cute kinds of things that you do in this world is you put out a recommended letter for approval, and then all people have to do is sort of sign it, you know. It's easy to get those, and maybe that's one of them. I don't know.

MR. PARSONS: Thank you.

CHAIRPERSON CROSS REID: What was that name, for the record?

MR. PARSONS: Jason Hanna.

CHAIRPERSON CROSS REID: Thank you. Thank you very much.

Closing remarks by the applicant?

MS. KING: No, no, no. Historical Society.

CHAIRPERSON CROSS REID: Oh, I'm sorry. I didn't realize that you were going to speak.

MR. BYRNE: Yes, thank you.

Once again, I'm Peter Byrne, 641 E

Street, S.E., and I'm here representing the Capitol Hill Restoration Society.

The Society recognizes that the granting of special exceptions for home occupancy beyond what's permitted as a matter of right is a question of balance, and it's very appropriate for the Board to look at the effect on the neighbors.

The neighbors have articulated their concerns. Mr. Alder has given a very extensive commentary on their concerns. We have just referred to them to some extent in comments that we filed, and I won't go over that now.

But there are -- the inquiry into whether the scope of the home occupation is too great is not one that is left to the Board without any guidance by the regulations. There are at least three standards in the regulations that give guidance that are relevant to this case, and in the Society's view, they suggest that this is an application which needs to be denied.

First of all, Mr. Fields clearly testified that he would have three employees working at the site other than himself. As Section 203.10(c) says, that even with a special exception a resident may have no more than two employees. It's as clear as day, and I submit, respectfully, that the Board would not have authority to grant a

special exception in this case. Mr. Fields would have to seek a variance to have more than two employees working at his site.

The second sort of piece of guidance or criteria that are found in the regulations is that the home occupation should be at the principal residence, should be the principal residence of the occupant.

I think Mr. Fields has been very candid in saying that his principal residence is in Texas. Not only does he vote and pay taxes there and have his driver's license there, but as he indicated, his spouse and his child are in Texas, and when there's a difficult with them -- and I sympathize with Mr. Fields not being able to come to the ANC meeting and going home when his daughter was sick. I, of course, would do the same thing -- but it points out the significance of the fact and his lack of connection and ongoing relationship with the neighborhood that his home is in Texas.

And it strikes me very odd that the regulations would be construed in a way that would give citizens of Texas greater leeway in having offices in residential areas than it does to citizens of the District of Columbia.

The third piece of guidance is the criteria that's found in Section 203.4(a) that the

home occupation should be, the words are, "clearly secondary to the residential use."

As Mr. Fields indicated, this is a part-time residence and a full-time office. He will be residing here and working here when Congress is in session. His employees will be here continuously, driving from Northern Virginia in order to work in the office.

Now, there's nothing wrong with that, but it really is beyond the scope of what one should permit in a question of balancing for a home occupation. It's really not a home occupation. It is an office in which Mr. Fields has a residence, and we submit that the Board needs to draw a line at that point.

CHAIRPERSON CROSS REID: I think that -- just let me -- Madame Director, maybe some input from you on that, on this -- but I think an issue that you raised in regard to the Board not having authority in this case because of the fact that you feel that there's a variance needed, I think that if, in fact, there are more than two of the criteria that are met, then a variance becomes needed, but in this instance everything, all of the other criteria have been met except one, which then requires a special exception.

Is that the read on that?

MS. PRUITT-WILLIAMS: That's what we are going through right now. That is my understanding.

CHAIRPERSON CROSS REID: Okay. Mr. Nettler, cross examine?

MR. NETTLER: I don't have any cross examination. Well, just one question.

Has the Capitol Hill Restoration Society challenged the home occupation permit that was issued for one employee for these premises?

MR. BYRNE: It was never brought to our attention at that point.

MR. NETTLER: Excuse me?

MR. BYRNE: It was never brought to our attention at that point. We only were -- we only were -- we only became aware of the case when it came before the Board.

MR. NETTLER: But were you privy to conversations that the member of Capitol Hill Restoration Society had with me at the time that the application was sought?

MR. BYRNE: No.

MR. NETTLER: So you don't know whether an individuals who brought this up to the Capitol Hill Restoration Society were aware of the --

MR. BYRNE: Oh, I know that they're aware of it, yes.

MR. NETTLER: Okay, but they didn't take

any action with regard to that, only with regard to this special exception?

MR. BYRNE: Correct.

CHAIRPERSON CROSS REID: Okay. Thank you.

That completes your -- did you have a question? That completes yours, and then we move now to the closing remarks by the applicant.

MR. NETTLER: We don't have any additional testimony to offer. But I do have to offer are just a few, very, very few closing comments which I would like to -- would rather expand upon them in the proposed findings of fact and conclusion of law that you may ask for.

But let me just state, as I said in our prehearing statement, and I touched upon in our opening statement, with regard to both the variance issue and with regard to the principal residence issue and actually with regard to the issue of whether the use is clearly secondary, let me take the last two first.

The Zoning Administrator has already made a determination regarding those two issues when the Zoning Administrator, with knowledge of all of the facts that you've heard here today, determined to issue the home occupation permit earlier this year for one employee.

Nobody ever challenged that issue, and that really is not relevant to what the issue is before you today, which is special exception for two employees, and I think and believe obviously the Zoning -- I would ask you to accept as well the Zoning Administrator's interpretation when it approved that first home occupation permit is consistent with how the Zoning Administrator has interpreted those principles, those provisions before.

Particularly in regard to the principal residence provision, there is nothing in the zoning regulations that defines what a principal residence is, and therefore, you're essentially asked to look to the Webster's Dictionary under the zoning regulations for those definitions, and in some way I think that Ms. McCarthy's testimony regarding the legislative history of the home occupations permit is consistent with how the Zoning Administrator interpreted those in regard to the initial home occupation permit that was granted.

With regard to the variance issue, again, it's our position that, I think, consistent with what you said, that in seeking exception from one condition, one, we are properly before you on a special exception basis; two, the Zoning Administrator had determined that it should be --

any relief should be sought solely through a special exception basis and nobody has appealed that or challenged that; and, three, that it makes sense.

It makes sense because, again, the manner in which it was presented to the Zoning Administrator consistent with what was presented here in terms of how the use is occupied, how the premises are utilized -- excuse me -- is consistent with the Zoning Administrator's determination that it should be sought by special exception.

Even so, even if you were to determine that a variance was necessary for him to have two additional individuals, we clearly are entitled to special exception for one, and if you think about how the -- what's being operated here, what the business is, while even that conclusion may have a -- even if there was a basis for that conclusion, it doesn't make sense. It doesn't make sense when you look at what the Zoning Commission was intending to deal with in terms of how the home occupations were utilized on the premises of a particular residence.

And we would ask you to accept obviously the Zoning Administrator's determination that this is a special exception situation, and we would submit proposed findings of fact and conclusions of law which I think will address this in greater depth, as well as a reference to a number of

decisions by this Board which have, I think, concluded in the same fashion as we presented this case.

CHAIRPERSON CROSS REID: Okay. Any other questions? Mr. Parsons, Ms. King?

Okay, Mr. Nettler. I think that this case will then be decided at our next meeting, at our next regular meeting, which will be in September, the September calendar.

MS. KING: Is it not possible for us to make a determination now? Are we expecting any other information?

CHAIRPERSON CROSS REID: Not unless you request it.

MS. KING: I think the case is clear.

CHAIRPERSON CROSS REID: With so much opposition, I think that we --

MR. PARSONS: I think I'd rather wait for Mr. Nettler's findings.

CHAIRPERSON CROSS REID: Findings of fact.

MS. KING: Okay.

CHAIRPERSON CROSS REID: You will submit a draft order for us, and also the ANC, I would appreciate it if you would, as well, submit a draft order, and we will deliberate this on the next hearing date, September the 2nd, is it?

MS. PRUITT-WILLIAMS: Excuse me. Before you get there, Madame Chair, you also want to offer the opportunity --

CHAIRPERSON CROSS REID: To the Capitol Hill Restoration Society. Would you like to? You're welcome to submit a draft order.

MS. PRUITT-WILLIAMS: And findings of fact.

CHAIRPERSON CROSS REID: And findings of fact.

MR. BYRNE: Thank you, Madame Chairperson.

CHAIRPERSON CROSS REID: You're very welcome.

MS. WITTEN ROSE: Then the record is closed, except for the proposed findings of fact and conclusions of law that will be due on August the 25th, and the Board will consider a decision in this case on the 2nd of September at 9:30.

CHAIRPERSON CROSS REID: Okay. Thank you very much.

(Pause in proceedings.)

MS. WITTEN ROSE: The next application would be 16344, application of Patricia A. McDade, pursuant to 11 DCMR 3108.1, for a special exception under Subsection 205.1 to establish a child development center for 30 children, ages infant to

12 years, and seven staff on the first floor of an existing structure in an R-5-A District at the premises at 554 Malcolm X Avenue, S.E., Square 5985, Lot 813.

Would all persons planning to testify in this application please rise to take the oath? Please raise your right hand.

(Whereupon, the witnesses were duly sworn.)

MS. WITTEN ROSE: You may be seated.

Would the applicant please come forward?

CHAIRPERSON CROSS REID: Let me get an idea as to the amount of time for this particular case. Are there persons and parties in opposition to this case here today?

(Show of hands.)

CHAIRPERSON CROSS REID: One? One person? Okay.

MS. KING: In opposition?

MR. LOCKRIDGE: Yes, I'm in opposition.

CHAIRPERSON CROSS REID: Okay, all right. Thank you.

Proceed, please.

MS. McDADE: My name is Patricia McDade.

CHAIRPERSON CROSS REID: Excuse me, Ms. McDade. We're not able to pick you up on the mic. Pull your mic forward and speak directly into the

mic and give your name and your address, please.

PARTICIPANT: You have to push a button so that the green light comes on.

MS. McDADE: Oh, okay. My name is Patricia McDade. I live at 554 Malcolm X Avenue. I have a four-unit apartment building, and I live upstairs above my apartment building. Downstairs I have a day care center that I have been the owner of for approximately seven years and a half.

I would like to expand so that I can receive more children. The reason for this expansion is because I started out doing infants, and as the infants become older and toddlers up until they are preschoolers, their parents don't want to take the children out. They feel secure there, and they love the care that I'm giving their children.

Now that my day care is full of preschoolers, and in my community there's the Covenant House. There's a Catholic Home for Young Mothers, and a shelter for young mothers, and I get a lot of children needing infant care, and I'm not able to provide the service for them because I'm such a small day care center.

So if I'm granted to open up, I can provide more services for the shelters that's in my areas.

And there's plenty of parking where I live at because some of the bus drivers drive their cars, and they park them on the street, and some of the residents around the area, they don't have cars, and most of the time on one side of the street is empty.

CHAIRPERSON CROSS REID: Are you done?

MS. McDADE: yes.

CHAIRPERSON CROSS REID: Okay. Ms. McDade, right?

MS. McDADE: Yes.

CHAIRPERSON CROSS REID: What you need to do is to -- are you familiar with the regulations, Regulation 205 that pertains to child care --

MS. McDADE: Yes, yes.

CHAIRPERSON CROSS REID: Okay. Did you prepare for us how you are able to comply with the criterion under that section?

MS. McDADE: Yes, I did. I brought it up here already and gave it to you.

CHAIRPERSON CROSS REID: All right. Well, would you like to go through that for us? That's basically to have reflected in the record that you did come in and meet your requirements for the special exception, what you're requesting.

MS. McDADE: Okay.

CHAIRPERSON CROSS REID: Do you have a copy yourself?

MS. McDADE: Yes, I think I can find a copy. Can you tell me exactly what you're asking me?

CHAIRPERSON CROSS REID: Okay. The relief that you're seeking is a special exception. Okay? And that is to take the Regulation 205, which sets forth the criteria under which you must comply to be able to receive the relief that you're asking for. So what you're here today -- your purpose of being here today is to demonstrate that you do comply with the specifications that are set forth in Section 205.

MS. McDADE: Five. That is with the parking?

CHAIRPERSON CROSS REID: Everything.

MS. McDADE: Okay. With the parking, I think it kind of --

CHAIRPERSON CROSS REID: Do you have a copy of it?

Okay. Well, then why don't you look at this, Ms. McDade?

Have her to look at the regulations, and then she can for the record go over each one and tell us how she complies with it. Okay?

Thank you.

And you can start with 205.2. You're going to be okay. It's just the procedure. We just want to make sure that you are in compliance with the regulation and you can make your case.

MS. McDADE: There is no congestion of traffic. It's -- it's not -- no one is going to do no double parking.

CHAIRPERSON CROSS REID: Okay. Let me help you. Let me help you walk through this. Okay? We'll help you with the procedure because it's obviously the first time you've done this and you're not familiar with it.

MS. McDADE: No.

CHAIRPERSON CROSS REID: Okay. 205.2 just asks is the center capable of meeting all of the licensing requirements. Yes or no?

MS. McDADE: Yes, it is.

MS. KING: In fact, Madame Chairman, we have a letter from the Department of Human Services saying that they have a Level 1 agreement, that the Loving Care Child Development Center has a Level 1 agreement with the DHS child care subsidy program.

MS. McDADE: That is true.

CHAIRPERSON CROSS REID: So you have that?

MS. McDADE: Yes.

CHAIRPERSON CROSS REID: Okay. 205.3,

the center shall be located and designed to create no objectionable traffic condition and no unsafe condition for picking up and dropping off children.

MS. McDADE: Everything is safe in picking up children. There's no problem.

CHAIRPERSON CROSS REID: Okay. Do you have a provision for -- how are the children dropped off and picked up?

MS. McDADE: The children is dropped off by the parents. They bring them to the door.

CHAIRPERSON CROSS REID: Do you have a staff member who --

MS. McDADE: Yes, and given to a staff member, and when they are picked up, they are picked up by the parents or either they sign a form if they're not the parents to pick the kids up.

MS. KING: Is Portland Street a major thoroughfare?

MS. McDADE: Yes.

MS. KING: Heavily traveled?

MS. McDADE: yes.

MS. KING: And so do they park in front of your building and take the children inside or do they park in the alley next door?

MS. McDADE: The majority of my clients, they are in the neighborhood, and if I have some, there is plenty of parking where the parents can

park in front of the door, on the side or across the street to bring their kids to me, but the majority of my clients are the neighborhood people.

MS. KING: And so they walk to your establishment?

MS. McDADE: They walk to my establishment.

MS. KING: Okay.

CHAIRPERSON CROSS REID: Okay. Now, I want to be clear. You did say there was a staff member who assists in the drop-off and pick-up?

MS. McDADE: At all times, yes.

CHAIRPERSON CROSS REID: Okay.

MS. McDADE: The doors stay locked. So they have to ring the door bell to get in.

CHAIRPERSON CROSS REID: Okay.

MS. McDADE: Because of the community that the day care is in, you know. So --

CHAIRPERSON CROSS REID: What about the community?

MS. McDADE: It's -- it's not in the best of the community. It's kind of --

CHAIRPERSON CROSS REID: You have some issues in the community?

MS. McDADE: No, what I'm saying is that it's -- I keep the door locked so no one will come in from off the street. You know, you just can't

walk in and walk out.

CHAIRPERSON CROSS REID: Okay. Security.

MS. McDADE: Security, yes, for security.

CHAIRPERSON CROSS REID: Well, in regard to the drop-off and pick-up, you said they have to come to the door. I'm speaking more of a staff member who is at the door --

MS. McDADE: Okay.

CHAIRPERSON CROSS REID: -- rather than having the children being dropped off at the curb and having to come up to the door. Do you have someone during the times that they would be arriving to meet them and see that they are safe in getting in and out of the property?

MS. McDADE: Yes, at all times.

CHAIRPERSON CROSS REID: Okay.

MS. McDADE: Yes.

CHAIRPERSON CROSS REID: To finish up with that, sufficient off-street parking spaces to meet reasonable needs of teachers, other employees, and visitors. How many employees do you have?

MS. McDADE: Right now I have three employees, but I would like to have seven.

CHAIRPERSON CROSS REID: What do you -- what's your request? What are you requesting?

MS. McDADE: I'm requesting for 30 kids and seven employees.

CHAIRPERSON CROSS REID: Seven. Okay.

MS. KING: And that would require two --

CHAIRPERSON CROSS REID: You need two off-street parking spaces on your premises. Are you providing those? Is that what you're asking --

MS. McDADE: I've got a waiver from them.

CHAIRPERSON CROSS REID: You've got a what?

MS. McDADE: I'm trying to get a special waiver so I don't have to have two on-site parking.

CHAIRPERSON CROSS REID: You don't have?

MS. McDADE: I don't have it.

CHAIRPERSON CROSS REID: You have no on-site parking?

MS. McDADE: No.

CHAIRPERSON CROSS REID: All right, and based on what? What did you offer as the reason that you should get a waiver from the parking provision?

MS. McDADE: Because there's plenty of neighborhood parking. There's plenty of street parking where the day care center is located. There is one block of parking where no one is parking at all, and then in front of the day care center there

is about two cars or three cars that parks on that side of the street. It's like a block and a half of free parking, on the street parking.

MS. KING: Portland is the street that's now called Malcolm X; is that not correct?

MS. McDADE: Yes, that is.

MS. KING: There is on the opposite side of the street ample parking at all times.

MS. McDADE: Ample, yes.

MS. KING: I'm very familiar with the area.

MS. McDADE: That is so true.

CHAIRPERSON CROSS REID: And do some of the employees walk to work?

MS. McDADE: Yes. I have two employees that live in the neighborhood.

CHAIRPERSON CROSS REID: Okay. The center shall include any outdoor play space provided -- the center, including any outdoor play space provided, shall be located and designed so that there will be no objectionable impacts to adjacent or nearby properties due to noise or activity or visual or other objectionable conditions.

What about the play area?

MS. McDADE: The play area is I have a six foot fence, chain fence around there. I have two large spaces for the kids to play in, and I will

take them out. The smaller kids, the preschoolers and the infants will be outside for about a half an hour, and then I will let the older kids go outside for about a half an hour to an hour.

CHAIRPERSON CROSS REID: Is this what you indicated in the pictures, the play area?

MS. McDADE: Yes. I brought better pictures.

CHAIRPERSON CROSS REID: Yeah, well, they are in the file. This is just a copy.

MS. McDADE: Yes.

CHAIRPERSON CROSS REID: But the pictures are the play area?

MS. McDADE: Yes.

CHAIRPERSON CROSS REID: And how large is that space, approximately?

MS. McDADE: Oh, (pause) --

CHAIRPERSON CROSS REID: Is like the size of an average back yard? That's what it looks to be in the picture.

MS. McDADE: Two.

CHAIRPERSON CROSS REID: Two what?

MS. KING: Two back yards.

MS. McDADE: Two back yards. It's two different sides to the --

CHAIRPERSON CROSS REID: The play area?

MS. McDADE: -- to the play area.

MS. PRUITT-WILLIAMS: Madame Chair.

CHAIRPERSON CROSS REID: Yes.

MS. PRUITT-WILLIAMS: I would direct you to a drawing that's part of your application. The site plan has dimensions on the play area which is 40 feet by 22 feet.

CHAIRPERSON CROSS REID: Oh, okay, right.

MS. McDADE: Thank you.

CHAIRPERSON CROSS REID: Forty by 20?

MS. PRUITT-WILLIAMS: Twenty-two.

CHAIRPERSON CROSS REID: Forty by 22. Oh, okay. I see it.

Is there any --

MS. PRUITT-WILLIAMS: It just says a sufficient area. It doesn't give any --

CHAIRPERSON CROSS REID: No? Just based on our -- up to our discretion, if we deem that to be adequate?

How many kids?

MS. McDADE: Thirty.

CHAIRPERSON CROSS REID: All right. How many children would be in this area at any given time?

MS. McDADE: At any give time probably 12.

CHAIRPERSON CROSS REID: Is this area

large enough for 12 children to play?

MR. PARSONS: It's about half the size of this room, I think.

CHAIRPERSON CROSS REID: Okay. Ms. King?

MS. KING: Yeah, I may be leaping ahead. You're going to have how many -- how many students are there all day while you're open? Thirty?

MS. McDADE: No. I will have some before and after care.

MS. KING: Well, how many students will be there during school hours, not before and after?

MS. McDADE: Approximately 20.

MS. KING: Okay. So there will be 20 students there who are preschoolers or nursery school age?

MS. McDADE: yes.

MS. KING: And then you will -- the graduates of your nursery school program will continue to come to you before they go to school and after --

MS. McDADE: And after.

MS. KING: -- they come home from school?

MS. McDADE: Yes, yes.

MS. KING: Okay. The Board may require -- 205.6, the Board may require special treatment in

the way of design, screening of buildings, planing and parking areas, signage and other requirements as it shall deem necessary to protect adjacent and nearby properties.

I see that you do have a fence --

MS. McDADE: Yes, it's --

CHAIRPERSON CROSS REID: -- for the play area, and go ahead.

MS. McDADE: It's a chain link fence. It's not a wood fence.

MS. KING: Is the play area -- does that abut the alley or does that abut the property next door? I mean is it next to the alley?

MS. McDADE: It's next to the alley.

MS. KING: Okay.

CHAIRPERSON CROSS REID: 205.7(a), off-street play area shall be located so as not to result in endangerment to the individuals in attendance at the center and traveling between the play area and the center itself.

The play area is immediately in the rear of the center?

MS. McDADE: It's in the rear of -- it's in the --

CHAIRPERSON CROSS REID: You walk out of the door, and you're in the play area?

MS. McDADE: Yes.

CHAIRPERSON CROSS REID: Okay. The back, the rear door?

MS. McDADE: Yes.

CHAIRPERSON CROSS REID: 205.8, the Board may approve more than one child development center in a square within 1,000 feet of another child development center only when the Board finds that the cumulative effect of these facilities will not have an adverse impact on the neighborhood due to the traffic, noise, operations or other similar factors.

Are you aware of any other child care centers in that neighborhood or community?

MS. McDADE: Yes, there is another day care center in the back of me. It's on Newcombe Street.

CHAIRPERSON CROSS REID: Okay.

MS. KING: Have you had any complaints or has that day care center had any complaints about noise or about impact on the community?

MS. McDADE: No, not as I know of. They have play areas in the front of Newcombe, not in the back of Newcombe. It's in the front of Newcombe.

CHAIRPERSON CROSS REID: 205.9, this is basically an in-house kind of thing, that the application has to be submitted to other D.C. government offices, and we did receive one from

Human Services, and I don't think one came from Public Works or the Office of Planning did not receive a report.

And the last one is 205.10. The D.C. Department of Human Services shall request advice as to whether the proposed applicant can meet all licensing requirements and applicable laws of the District, and Ms. King had read for the record that, yes, we did receive that letter and it does.

MS. McDADE: Excuse me. I didn't understand that one.

CHAIRPERSON CROSS REID: The last requirement was that it be a letter sent, a referral, to the Department of Human Services, and they would advise us as to whether the center that you're proposing can meet all licensing requirements, and as set forth in the applicable laws of the District, and I was saying that Ms. King earlier on had read into the record that, yes, we have received such a letter.

MS. McDADE: Yes.

CHAIRPERSON CROSS REID: And they did say that you were complying with license requirements.

MS. McDADE: Yes.

MS. KING: What are your hours of operation going to be?

MS. McDADE: From 7:00 a.m. to 6:00 p.m.

CHAIRPERSON CROSS REID: Okay, 7:00 a.m. to 6:00 p.m. Monday through Friday?

MS. McDADE: Yes.

CHAIRPERSON CROSS REID: Okay.

MS. KING: And no activity on Saturdays and Sundays?

MS. McDADE: No.

CHAIRPERSON CROSS REID: And 30 children?

MS. McDADE: Yes.

CHAIRPERSON CROSS REID: With what is it five or six staff people?

MS. KING: Seven.

MS. McDADE: Seven.

CHAIRPERSON CROSS REID: Seven staff people. Are you going to be serving any lunch or snacks or food on the premises?

MS. McDADE: I serve breakfast, lunch, and a snack. I have a fireproof hood where if a fire on my -- if a fire is on the stove, it will automatically pull down the pull-down station to alert everyone, and it also have a built in fire extinguisher.

CHAIRPERSON CROSS REID: That has been approved.

MS. McDADE: That has been approved.

CHAIRPERSON CROSS REID: Okay, but I wondered about the trash that comes about as a result of your serving the food. Do you use paper products, paper plates?

MS. McDADE: I pay -- I pay trash to pick up. I have trash pick-up, and I have paper plates and paper cups.

CHAIRPERSON CROSS REID: Okay. How often do you have a trash pick-up?

MS. McDADE: They pick up every Monday, but if I need -- you know, that's for now, but if I see that I needed more, I could have it picked up twice a week.

CHAIRPERSON CROSS REID: And what about do you have a dumpster in the back to accommodate this trash which you generate?

MS. McDADE: I have two.

CHAIRPERSON CROSS REID: Two dumpsters. Okay. To your knowledge, Ms. McDade, have you had any complaints regarding adverse impact, meaning neighbors or people in the community or people about your property who were complaining about noise, traffic, parking, trash or any of those things?

MS. McDADE: To my knowledge, I have no had any complaints with any of the neighbors in the neighborhood but giving me a compliment of how I'm taking care of the children in the neighborhood. I

have no had any negative complaints about the day care center itself or parking.

Before I started out as a day care center, there was one resident was complaining about parking because when I first moved there, I think she used to park in front of my building, and when I moved there my son and I used to park in front of my building. She couldn't get her same parking space. So she used to complain about that, and we had words then.

But since I've been a day care center, she haven't said anything to me because we had already had a feud before I start working as a day care center.

CHAIRPERSON CROSS REID: And again, tell me the ages of the children.

MS. McDADE: The ages of the children would be from infant to 12 years old. The reason I'm saying up to 12, not necessarily I'm going to have the 12 year old, but I don't want to stop any mother that has a child that's six, and then she has a nine or ten year old. She might want to bring them to me. So I'm saying up to 12.

CHAIRPERSON CROSS REID: So it would be before and after care for the older children?

MS. McDADE: Before and after care, yes. That's only in the summertime when school is out.

CHAIRPERSON CROSS REID: Except for in the summertime. Then you have them all day, the older kids?

MS. McDADE: Most of them are going to go to camp. So after camp they will come.

CHAIRPERSON CROSS REID: Okay. After summer camp?

MS. McDADE: Yeah, they would go to summer camp. They wouldn't come to me until after 12 when they get out of summer camp or three.

CHAIRPERSON CROSS REID: Okay. Ms. King, do you have any other questions?

MS. KING: No. It sounds to me like an excellent program.

CHAIRPERSON CROSS REID: Mr. Parsons?

MR. PARSONS: No.

CHAIRPERSON CROSS REID: Okay. All right. We'll move now to ANC or government reports. We've already indicated that there was a letter from Human Services in which they gave their support of this application.

There are no other government reports. ANC, I think that there was a letter from the ANC that basically took no position on this particular application. It said that there was --

MS. KING: They made no recommendation.

CHAIRPERSON CROSS REID: Oh, a quorum

was not present. Maybe that was the reason why.

MS. KING: Well, they did meet twice, and at both meetings the Commissioners made no recommendations, but they did note that Ms. McDade had several letters of petitions of support from neighbors and residents using her services.

CHAIRPERSON CROSS REID: Okay. All right, and the persons and parties in support of the application?

(No response.)

CHAIRPERSON CROSS REID: Seeing none, persons and parties in opposition, please come forward.

Ms. McDade, you can take a seat, and he'll come up and you'll come back up.

Okay, sir.

MR. LOCKRIDGE: Are you ready?

CHAIRPERSON CROSS REID: Yes.

MR. LOCKRIDGE: My name is Calvin Lockridge, and I am the ANC 8C03 that represents the area where the day care is being proposed.

It's quite right the ANC did not take any position because they have not been able to have a quorum, but I'm here as the individual ANC member of that area, and I'm here to speak that some opposition from the neighbors, the property owners in the area.

Wherein that Ms. McDade may not be aware of some of the criticism, I'd like to address their concerns and mine.

Basically there is not adequate parking on Malcolm X. It's a four line main thoroughway that goes directly into Bolling and into 295. So you do have two lanes going one way and two coming the other way, and during the morning hours and evening hours, you have the people coming out of Maryland, and out of Bolling Air Force going up and down.

So one car parked on the far side forces the traffic to have to stop and back up and come into the other.

But we have basically ten objections: inadequate indoor space. The facility presently is to accommodate 11 children and staff, and the proposed site is to take the other part of the bottom floor to accommodate 30, and I question -- we raise the question how can one side, which is the same size as the other one, be allowed to accommodate 11, and now we're asking the same size not to accommodate ten more children or 11 more children, but we ask them to accommodate up to 30.

So we question by using the development facility child that the District use, which is DCMR 29, whether there's adequate space to accommodate

the 30 children.

It speaks also, number two, to the number of flush toilets that one must have and et cetera, and we have not been made aware of or could not ascertain as to whether there would be adequate because if we're talking about four flush toilets, that would not accommodate 30 students and seven staff members.

I propose that the traffic is unsafe. Pardon me?

MS. KING: Why not?

CHAIRPERSON CROSS REID: I think that the Board is a little confused, Mr. Lockridge, because those are licensing issues that are handled through DCRA to make sure that the issue of the adequate toilets or space --

MR. LOCKRIDGE: Yes, we understand that.

CHAIRPERSON CROSS REID: -- or before issuing a license.

MR. LOCKRIDGE: Yes, I understand that. We understand that, but we are questioning the facility as to whether it will accommodate that, the number that she is proposing.

CHAIRPERSON CROSS REID: Well, if, in fact, she's issued a license, would it not be an assumption that it does?

MR. LOCKRIDGE: Have she been issued a

license to accommodate 30? I don't think that she has been issued a license to accommodate 30.

CHAIRPERSON CROSS REID: Ms. King?

MR. LOCKRIDGE: She has been issued a license to accommodate 11.

MS. KING: Mr. Lockridge, we have a letter signed by Geraldine Williams, who is the Director of the Department of Human Services, which has authority over this, saying, and I quote in part, "DHS has reviewed the application to increase the capacity of the existing child development center to 30 children, aged infant to 12 years, and employing seven staff persons. Loving Care Child Development Center has a Level I agreement with the DHS child care subsidy program. This center provides greatly needed quality infant care services to its community. With the increased demand for child care services as a result of welfare reform and two parent working households, the Department is recommending approval of the facility's request."

MR. LOCKRIDGE: Yes.

MS. KING: Now, they're the people who establish the standards.

MR. LOCKRIDGE: Yes. Can I ask a question? Do they issue the license? They are not the ones that issue the license.

MS. KING: Well, any order that we give

will be predicated on her receiving a license.

MR. LOCKRIDGE: I understand that.

MS. KING: Okay?

MR. LOCKRIDGE: I understand.

MS. KING: So anything that we do can be overruled by the licensing authority. If she doesn't have a license, no matter what we say she can't open. So what you need to debate before this Board is the zoning and land use issues, not the licensing issues.

MR. LOCKRIDGE: Okay. Can I move on?

MS. KING: Sure.

MR. LOCKRIDGE: I understand that. I understand. I understand clearly what you're saying.

We question the parking facilities and whether there's adequate facilities to park. Number one, in that area where she's located, there's five buildings. Three of the buildings have four apartments.

So the space as you come down Martin Luther King, there's already cars parked, and the lane that -- so to drop off the children, either they will have to drop them off by double parking or pulling into the alley, and we question whether that is adequate facilities and accepted for doing that because the measurement across Martin Luther King,

if you park coming up Martin Luther King, as I said before, if one car stops or if a truck is left there after or during the rush hour, that means that the two lanes coming up, coming off of 295, when the two lanes come up, wherever that car stop, you've got to stop and pull over.

I drive that every day. Am I making sense? Do you understand what I'm saying? See, it's only four lanes, and you're coming off of 295, two lanes coming off from 295 turning at Bolling, two lanes coming out of Bolling.

So you start up --

MS. KING: And is there not parking as well as the two --

MR. LOCKRIDGE: There's no parking.

MS. KING: -- moving traffic lanes?

MR. LOCKRIDGE: No parking on this side. There's not supposed to be any parking. There are two lanes there.

MS. KING: But further down towards Bolling, is there not parking on that side of the street?

MR. LOCKRIDGE: On the side where her day care center, yes.

MS. KING: And on the other side of the street, no parking at any time any day anywhere?

MR. LOCKRIDGE: No. No, it's no parking

on that side.

MS. KING: Well, she can speak to that.

CHAIRPERSON CROSS REID: Okay.

MS. PRUITT-WILLIAMS: Excuse me. For clarification, are you concerned about parking for the employees or people who are dropping off their kids?

MR. LOCKRIDGE: I'm concerned of the morning rush hour when they double park.

MS. PRUITT-WILLIAMS: Because the relief is for employee parking only.

MR. LOCKRIDGE: I beg your pardon?

MS. PRUITT-WILLIAMS: The relief is for -- the zoning relief is for a variance from the required amount of parking for employees. So you need to address that directly.

CHAIRPERSON CROSS REID: But I think that he was speaking to the pick-up and drop-off.

MS. PRUITT-WILLIAMS: Which is a different issue. That's my point. He needs to address --

MR. LOCKRIDGE: Under the section that we can address is traffic, unsafe drop-off and pick-up. Is that right, Ms. Williams?

CHAIRPERSON CROSS REID: Sure.

MR. LOCKRIDGE: And that's what I'm addressing.

CHAIRPERSON CROSS REID: Okay.

MR. LOCKRIDGE: I'm not addressing the adequate parking. I'll address that after. That's number four.

CHAIRPERSON CROSS REID: Okay.

MR. LOCKRIDGE: But I'm addressing the traffic, the unsafe dropping off --

CHAIRPERSON CROSS REID: Okay.

MR. LOCKRIDGE: -- and the pick-up of the children.

CHAIRPERSON CROSS REID: That's your concern.

MR. LOCKRIDGE: Yeah, that's my concern.

CHAIRPERSON CROSS REID: Okay.

MR. LOCKRIDGE: And I'm concerned because it's a major thoroughfare, and you're double parking, and the bus is stopping there. The bus stop is right there, too. So many of the people that wants to pick up somebody, and I ain't talking about the day care center, will block the bus stop.

CHAIRPERSON CROSS REID: Okay.

MR. LOCKRIDGE: And so that's my concern because usually the apartment owners and so forth cars are still there during that hour. So if you've only got one lane coming down, that means if somebody double parks, you've got to whip around to go into the other lane to go down, and the Maryland

traffic is using Malcolm X now to hit 295 because they can't come because of the block.

The adequate parking, I propose that there is not adequate parking if we're talking about staff, and still I propose there's not adequate parking.

I beg the difference with the outdoor play space. She states that it's 40 by 20. We kind of measured it, and it was 15 by 36, and the development book for day care said there must be 60 square feet for per child or per infant. So if we multiply 15 by 36, we get 540 square feet, which really only serves about nine children.

So we beg the difference and ask the group to please make some determination as to whether there's adequate outdoor play space and so forth.

Yes, she may not have -- maybe she has not heard the people complaining and so forth, but I did meet with five of the homeowners who has been complaining about the noise and et cetera, noise in the area and so forth.

CHAIRPERSON CROSS REID: Noise? Can you speak a little bit more to that?

MR. LOCKRIDGE: Pardon?

CHAIRPERSON CROSS REID: That point, noise? What --

MR. LOCKRIDGE: Well, see, we have some community facilities in that area, too.

CHAIRPERSON CROSS REID: No, no, as it pertains to this particular case.

MR. LOCKRIDGE: No, I'm not speak to the fact. I said they were concerned about whether there would be additional noise.

CHAIRPERSON CROSS REID: Oh, I see. They were concerned about it, but --

MR. LOCKRIDGE: Concerned about whether there would be --

CHAIRPERSON CROSS REID: -- it had not been established.

MR. LOCKRIDGE: -- additional noise if we now open up to 30-something children.

CHAIRPERSON CROSS REID: I see.

MR. LOCKRIDGE: Un-huh, but they were not -- I wasn't referring -- I didn't mean to refer that they were referring about the day care being noisy at this time, no. That's not --

MS. KING: The people, have they given you letters or any kind of indication to pass on to us of their concerns?

MR. LOCKRIDGE: I have the written report. I have it.

MS. KING: Signed by them?

MR. LOCKRIDGE: No, I don't have it

signed by them.

CHAIRPERSON CROSS REID: The written report, is it your ANC --

MS. KING: His report.

CHAIRPERSON CROSS REID: It's your report, but you don't --

MR. LOCKRIDGE: Yes, in conjunction with them, yes.

CHAIRPERSON CROSS REID: Okay, but you don't -- do you have -- in your report, have they signed your report?

MR. LOCKRIDGE: No.

CHAIRPERSON CROSS REID: To basically attest to the fact that they were in agreement with you in the submission of this report?

MR. LOCKRIDGE: No. Do you want me to get that, have them send letters or send a petition or sign?

CHAIRPERSON CROSS REID: Not at this point.

MR. LOCKRIDGE: Okay.

CHAIRPERSON CROSS REID: We'll just go with what you have.

MR. LOCKRIDGE: Right. Representing that area, adequate day care already exists. The Newcombe is less than 500 feet from her day care center. You come down Martin Luther King, and

Newcombe go this way, and her day care center is on Martin Luther King, which throws her directly at the back of Newcombe Street.

And newcombe Street service 29 children and 24 children, and I think that -- and I have to agree that when she expanded to the 24, I was an ANC member, and we did not object and so forth, but now somehow we wish that we had because of the parking and the dropping off and et cetera, and we have had complaints.

And I'd be the first to say that, no, we did not complain about the existing because we was concerned about economic development and so forth, and it's very painful for me to be here today because the lady is trying to making a living. I understand that, but as the ANC representative and when you have neighbors that are concerned and raising questions, you have to represent them, and that's why I'm here.

CHAIRPERSON CROSS REID: Did you at any point prior to the meeting today meet or talk to Ms. McDade to discuss the issues that you have to see how they could be --

MR. LOCKRIDGE: Ms. Reid, could I -- Ms. Reid --

CHAIRPERSON CROSS REID: Let me finish the question.

-- how they could be perhaps mitigated?

MR. LOCKRIDGE: Ms. Reid, let me say this. When we left this last meeting the last time, I spoke to her about the other concerns and so forth, and it truly was my intention and so forth -- you made it very clear. I tried to ask would the -- tried to make it clear, and I went to the office to say that the ANC is so disrupted, it does not give certain individual members timely notices and so forth.

Do you know I did not know this hearing? I came down here yesterday because when I got notice on Sunday that it was supposed to be yesterday. So I came down here yesterday morning because I just got the notice on Sunday and tried to put together a report.

CHAIRPERSON CROSS REID: So you didn't -- you have not had a chance to talk to her?

MR. LOCKRIDGE: No, I haven't.

CHAIRPERSON CROSS REID: Or work out anything?

MR. LOCKRIDGE: Or work out the confusion and et cetera?

CHAIRPERSON CROSS REID: Un-huh.

MR. LOCKRIDGE: No, I haven't.

CHAIRPERSON CROSS REID: To see if there is any resolution to the mitigation of the negative

impact as you see it.

MR. LOCKRIDGE: I thought that we could if I had an opportunity to talk to the other five members, four members, and so forth. I think they may come to some conclusion and so forth.

CHAIRPERSON CROSS REID: Well, could you today, based on your expertise and your experience in the community, offer what you would consider to be a mitigation or some solutions to help to diffuse the --

MR. LOCKRIDGE: I'd be pleased to go and talk to them. I would talk with them.

CHAIRPERSON CROSS REID: Well, in regard to the issues that you have raised for the drop-off and pick-up and the --

MR. LOCKRIDGE: I don't think you can resolve those issues. I don't think you can resolve those issues. That issue is something that's going to remain, and I raise it for the safety of the children. I raise it in the safety of other things.

CHAIRPERSON CROSS REID: And we appreciate that.

MR. LOCKRIDGE: That is really -- that's serious, and part of my pain, due to the fact that I don't think that -- I think that there needs to be another level of help as far as this entrepreneur is concerned that would lend more to what we are trying

to do. I mean, I'm very sympathetic to that and feel that here's an entrepreneur that may not have the kind of level of education, et cetera, and so forth that some of us may have or think we have, and I don't see that expertise coming forward. I don't see anyone helping or working with her, and I think that there's a need.

And I just ask this group to be cautioned that you don't set up a hazardous situation because I am very concerned.

I'm also concerned about her making a dollar and concerned about her expanding. I'm concerned about that and concerned about whether she do it and et cetera, but there are some questions when we talk about adequate -- the facility being large enough and whether -- and the drop-off points. I'm concerned about that from a community point of view.

MS. KING: But you have not taken an opportunity to have any discussion with Ms. McDade about your concerns that clearly did not arise in the last 24 or 48 hours?

MR. LOCKRIDGE: No, I haven't.

MS. KING: I mean, you haven't suddenly become concerned since Monday. I mean prior to that --

MR. LOCKRIDGE: Oh, I was here before.

MS. KING: I understand that, but you have not taken an opportunity to discuss with her any way of curing the problems that you and these other five people, whoever they are, have perceived.

MR. LOCKRIDGE: See, my understanding or I thought that the next meeting was going to be in September. That's what I thought.

MS. KING: But I mean does the day care center not operate all the time? And if there are problems --

MR. LOCKRIDGE: Well, the present day care center, I don't see any problem with it. No one is raising any problem about the present day care center.

MS. KING: So --

MR. LOCKRIDGE: The problem from the neighbors is their concern of expanding to 30. No one has come to me about any complaint about her day care center and how it's being operated as of today.

MS. KING: No traffic problems, no --

MR. LOCKRIDGE: Other than --

MS. KING: -- noise problems, anything like that?

MR. LOCKRIDGE: Other than the fact that there is some concern about the double parking when the children are dropped off. That's the only thing that has come up, and I have gone there myself to

watch, and I have not seen that happen, but some of the neighbors said that it is.

CHAIRPERSON CROSS REID: You've not seen what?

MS. KING: Any double parking.

MR. LOCKRIDGE: I have not seen the double parking of the present existing situation.

CHAIRPERSON CROSS REID: Oh, okay. So you're saying that someone has said that this was occurring, but you're not --

MR. LOCKRIDGE: Yes, yes, yes.

CHAIRPERSON CROSS REID: All right. Okay.

MR. LOCKRIDGE: Yeah, yeah, and I have gone there. Yes, I have, but I haven't made myself available to Ms. McDade because I have been sick in the hospital. I had surgery, too.

CHAIRPERSON CROSS REID: Okay.

MR. LOCKRIDGE: But I'm willing to do that, and that's our concern. That's where we're concerned.

CHAIRPERSON CROSS REID: Well, as the ANC, even though it may be somewhat disrupted at this point, and having the concerns that you do and also the compassion that you appear to have, then perhaps a reference to the CDC that has the jurisdiction over that area would be something

helpful to Ms. McDade in correcting some of the problems that you have proffered here today.

I don't know which one it is, if it's East of the River.

MR. LOCKRIDGE: Yes, yes. We are east of the river.

CHAIRPERSON CROSS REID: Yeah, which one has that area to help entrepreneurs who may need some assistance in the implementation of their business.

MR. LOCKRIDGE: Yes. I'll bring it to East of the River CDC.

CHAIRPERSON CROSS REID: Okay.

MR. LOCKRIDGE: East of the River is the name of it, East of the River CDC, and that is a good suggestion.

CHAIRPERSON CROSS REID: Okay. All right. Does that conclude your testimony?

MR. LOCKRIDGE: Yes, that's conclude.

CHAIRPERSON CROSS REID: Okay.

MR. LOCKRIDGE: And let me just make it clear and so forth that what I got from the neighbors that I spoke with, and it was only -- Ms. Hill was one of them. She knows that. We're not hiding that factor -- but it was for other neighbors who own property that I talked with, and their concern more is the expansion, to expand --

CHAIRPERSON CROSS REID: Sure.

MR. LOCKRIDGE: -- rather than the present situation. They are accustomed to living with the present situation.

They did raise the question that there is some double parking. However, as I've said, I've dropped through there in the morning and I've dropped through there in the evening trying to see for myself, but I do come that way, and I do know about one car parked on this side stops the whole traffic coming out of Bolling and so forth.

CHAIRPERSON CROSS REID: Okay. Thank you.

MR. LOCKRIDGE: Yes.

MR. PARSONS: Mr. Lockridge, do you sense there's any compromise in the neighborhood that maybe an expansion to 15 or 20 from the current 11 might be something that they'd consider?

MR. LOCKRIDGE: My personal -- my personal feeling, if you ask me my personal feeling, what would I like to see, I don't have no problem with the expansion to wherever it's comfortable and amenable to the community because I'm concerned about the entrepreneur. Let me make that very clear.

MR. PARSONS: Sure.

MR. LOCKRIDGE: A woman trying to make a

living, trying to increase and so forth, I support that personally, and I do say that, however, we have to be concerned about safety.

So the expansion should be and we should make sure regardless of what they are saying, make sure that that expansion is to the level wherein there's quality day care service given and not non-quality. That's my concern.

So, yes, I am. I do feel that we ought to try to work that out to that level, yes.

MR. PARSONS: Thank you.

CHAIRPERSON CROSS REID: Ms. King?

MS. KING: No questions.

CHAIRPERSON CROSS REID: Okay, and now we'll have closing remarks by the applicant. Mr. Lockridge, you can go back to your seat --

MR. LOCKRIDGE: Oh, sorry.

CHAIRPERSON CROSS REID: -- and she'll have an opportunity to give her closing remarks.

MS. McDADE: When I was here last, I did give Mr. Lockridge my telephone number and several letters that some of the parents had given to me, and I gave him two petitions that I had taken up in the neighborhood about the day care center.

Now, I'm very concerned about my children being dropped off in cars, but as I said before, the majority of my students come from the

neighborhood. I have had maybe three people that drive since I've been in business seven and a half years, that drive cars, and they always was able to park, and they have never double parked.

Parents that's taking kids out of the cars, they are concerned about children's safety, too. They will down in a parking space or up the street, down the street, and walk the kids to the day care center. I don't see any parents taking their kids out of a car that is double parked because that would be unsafe.

If I see it, I will address the issue to my parents.

I also give parenting classes for safety, how to "safety-rize" (phonetic) their home so that the kids can always be safe. That's one of the main things that I do.

So I don't feel that my kids that's coming to my day care center will be dropped off in an unsafe manner.

And when I was at the ANC meeting, Mr. Lockridge was not there. That is why they could not recommend the approval of the day care center, because no one represented the -- I was not represented at the ANC meeting by Mr. Lockridge. So he couldn't say nothing to me about whether he was for it or against it.

CHAIRPERSON CROSS REID: Ms. King?

MS. KING: Yeah. Describe the parking on Portland or Malcolm X, whichever you call it.

MS. McDADE: Okay. Where there is five apartment buildings, one apartment building is vacant. The other apartment building, there lives a lady. She lives alone with no cars. The apartment building that's next to me, that has one lady that she has a car, and then it's my building.

Across the alley there's another -- Ms. Hill lives. That's the lady that I feud with her.

MS. KING: Excuse me. What I mean is what are the regulations about parking on Portland Street or Malcolm X.

MS. McDADE: Okay.

MS. KING: I mean on your side of the street, there's one lane of parking all the way down?

MS. McDADE: All the way down on my side of the street. If you're going from Martin Luther King down to Bolling Air Force Base --

MS. KING: Yeah.

MS. McDADE: -- on the right-hand side, there's plenty of on the street parking.

MS. KING: And there's --

MS. McDADE: At all times.

MS. KING: Okay.

MS. McDADE: On the left-hand side there's no parking after -- after six -- up until 6:30. You can park up --

MS. KING: Until 6:30 in the evening?

MS. McDADE: Yes.

MS. KING: And from what time in the morning?

MS. McDADE: It -- the sign says no parking (pause) --

MS. KING: Four, thirty to 6:30?

MS. McDADE: No.

MS. KING: Well, whatever, but there is parking on the opposite side of the street --

MS. McDADE: Yes.

MS. KING: -- but it is restricted in some way at some hours of rush hour. Is that it?

MS. McDADE: That's only on half of the street. Further down where it's residential homes, there's parking on both sides the street.

MS. KING: Okay.

MS. McDADE: It's just a small area where the open field parking is that you can't park all day.

MS. KING: Okay. Thank you very much.

CHAIRPERSON CROSS REID: Ms. McDade, I think that the primary concern that's been raised here today by Mr. Lockridge is in regard to the

drop-off and pick-up during rush hour.

MS. McDADE: Yes.

CHAIRPERSON CROSS REID: And you said that -- I thought I hear you say that you, too, were concerned about that, and I think that what we need to address is --

MS. McDADE: What I'm saying is he brought up the issue that people will be double parked, and my concern is that if I see that happen, I will address the issue with the parents, but I don't feel that any parent is going to double park because there's so much parking available they don't need to double park.

CHAIRPERSON CROSS REID: Okay, Ms. McDade. I understand what you're saying. However, I think that we need to be proactive. In other words, we want to address the issue before --

MS. McDADE: It happens, yes.

CHAIRPERSON CROSS REID: Right. So given the fact that there is a perceived problem with the drop-off, what we need to hear from you today is what is your plan to make sure that -- to insure that the children are dropped off and picked up safely before.

MS. McDADE: Okay.

CHAIRPERSON CROSS REID: This is not once you see it happens.

MS. McDADE: Right, before.

CHAIRPERSON CROSS REID: Did you say -- did I understand you to say that in front of --

MS. McDADE: It's -- it's --

CHAIRPERSON CROSS REID: Excuse me. In front of your building --

MS. McDADE: Yes.

CHAIRPERSON CROSS REID: -- there's --

MS. McDADE: It's parking.

CHAIRPERSON CROSS REID: -- there's space to pull up and then an assistant or a staff member will see to it that the child is --

MS. McDADE: Is safely picked up. What I'm saying is you've got --

CHAIRPERSON CROSS REID: There's a lane --

MS. McDADE: -- four apartment buildings in the -- on about, say, a half a block. In a half a block area, there's only one or two cars on that half a block.

CHAIRPERSON CROSS REID: Okay, but is there any parking allowed on that side of the street?

MS. McDADE: Yes. That's what I'm saying.

CHAIRPERSON CROSS REID: Okay.

MS. McDADE: All the way down that

street there is parking.

CHAIRPERSON CROSS REID: Then why do you --

MS. McDADE: There's no restriction on that parking. It's residential parking.

CHAIRPERSON CROSS REID: Why do you think that we had testimony to the contrary just a few minutes ago that there was a problem with being able to pull up into a parking space immediately in front of your building to drop off the children? There was a -- there was double parking --

MS. McDADE: Okay.

CHAIRPERSON CROSS REID: -- that was existing there in the morning or in the evening when the kids were being picked up?

MS. McDADE: Across the alley from me lives a lady named Ms. Hill. Her and I was feuding over parking spaces long before I became a day care center. When I first moved there, I moved there with three -- two sons and myself. All three of us had cars.

She was used to parking directly in front of my door. When my three sons and I had cars, she couldn't no longer get that parking space, which made her have to walk a little bit further. In front of her apartment building is the bus stop. That is across the alley.

So her and I always feuded over the parking spaces. She is the one that is talking about the pull-up parking, there's no place to park, but that is not true. It's plenty of parking.

The bus drivers, they park on that side of the street, the same side of the street that the resident parking is. They park on that side of the street, but it's like it's a block long. They park further up from the apartment building and not directly down in front of the apartment buildings.

It's only one other person on that block that has a car. It's an apartment building that is vacant. So that means that apartment building will not have no drivers.

There's another apartment building next to it where Theresa live. She also don't own a car, and she is not parking.

I have a car. I'm parked there. My son have a car. He's parked there, but one of my sons moved. So there's only two cars there that's parked on the street, sometimes three because the lady next door to me, she parks there. So at any given time on a whole block, there is only three cars parked.

CHAIRPERSON CROSS REID: Okay.

MR. PARSONS: Madame Chairman.

MS. McDADE: And that's the truth.

CHAIRPERSON CROSS REID: Mr. Parsons.

MR. PARSONS: I wonder if it's possible that we could refer this to the Office of Planning. We obviously have two different sets of facts here. We certainly aren't going to go out and survey the situation, but somebody needs to, I think. Otherwise we're acting on two different sets --

CHAIRPERSON CROSS REID: And report back to us.

MR. PARSONS: -- of facts here. That's the only way I can imagine to resolve this.

CHAIRPERSON CROSS REID: To resolve it.

Do you have any comments, Ms. King?

MS. KING: No. I am fairly familiar, but I can't say that I've done any kind of scientific survey of that area. I'm fairly familiar with it because it's so close to a friend's house.

Would it be more appropriate to ask DPW than the Office of Planning or is the Office of Planning the way we get to DPW?

MR. PARSONS: Correct.

MS. KING: Okay.

MR. PARSONS: I don't want to make a federal case out of -- a local case out of this, but I can't imagine how we could vote on this with the two sets of facts we have before us.

CHAIRPERSON CROSS REID: Okay.

MR. PARSONS: Or two sets of --

MS. McDADE: As Mr. Lockridge said hisself (phonetic), he has been down there a couple of times. He never seen no double parking. There isn't no double parking on that parking space.

CHAIRPERSON CROSS REID: Well, maybe we can -- let's see if we can compromise this some kind of way. Ms. McDade, are you under any time considerations as far as getting your license, I mean, getting your school up and running or having the additional kids before school starts in September?

MS. McDADE: Yes, I would like to start renovating and everything, getting everything straight for September, before September get here.

CHAIRPERSON CROSS REID: What I was wondering is if, in fact, we wanted to take a position as of today to dispose of it, but we do so with -- and let me ask the question -- with the condition that the order would not be released -- she would not be able to get her order until she submitted -- we really can't put a time frame on when DPW could give us a report.

MS. PRUITT-WILLIAMS: May I just say for the record a couple of things?

CHAIRPERSON CROSS REID: Un-huh.

MS. PRUITT-WILLIAMS: Whatever your decision today is, it should be based on what you

have before you today.

CHAIRPERSON CROSS REID: Well, that's Mr. Parsons' whole point. We have conflict information today.

MS. PRUITT-WILLIAMS: Right. Well, that's why I would suggest that you should condition it on that.

The second thing is that this project was referred to DPW when it first -- when it was first submitted, the application which was originally scheduled for May 20th. We have yet to hear from them. We can follow up on it. I don't know what the hold-up is, but this has been -- DPW has had the opportunity to respond to this for a good while.

CHAIRPERSON CROSS REID: Well, what then can we do in order to be able to --

MS. KING: You know, I would point out that Mr. Lockridge --

CHAIRPERSON CROSS REID: Ms. King --

MS. KING: I'm not --

CHAIRPERSON CROSS REID: Ms. King.

MS. KING: I'm sorry.

CHAIRPERSON CROSS REID: My question --

MS. KING: You were asking what we could do. I was going to make a suggestion.

CHAIRPERSON CROSS REID: Well, the

question was what under these circumstances would be the best thing, what position we could take. What position could we take that would not cause a hardship on the applicant because of the fact that we have not gotten a report from DPW?

Is there anything that we can do?

MS. PRUITT-WILLIAMS: I mean, the Board makes its own finding of facts. That's where that whole section and an order comes. You have different information, and the Board makes a determination on what they consider as a fact.

MS. McDADE: Can I ask a question? As a resident, am I allowed one parking space in front of my apartment building? Can I designate my parking space?

You know, if I don't park in front of my building, can I put a sign or something there?

MS. KING: No.

MS. McDADE: No?

CHAIRPERSON CROSS REID: That's not something we can answer.

MS. McDADE: That wouldn't be a solution?

CHAIRPERSON CROSS REID: We can't have that designated as a --

MS. McDADE: Because, you know --

MS. KING: No. The residents of

Georgetown and Capitol Hill would love to have a statutory right to a parking space in front of their house.

CHAIRPERSON CROSS REID: Oh, boy, would that not cause a flood?

MS. McDADE: I was saying, you know, this is --

MS. McDADE: Unless you're a diplomat, you don't get it.

MS. McDADE: I was saying that pulling -- my customers that's going to drop off their kids, you know, would have to double park and which is not true, but since I am -- I have a parking space directly in front of my building. I will, you know, give it up so they can pull in and pull out.

MS. BAILEY: Members of the Board, possibly two things. I'm just putting it on the table for consideration.

If one of the concerns is picking up and dumping off of children, maybe a staff person could be posted outside of the building, outside of the center when the children are picked up and dropped of to escort them into the building so parents would not have to park for very long.

And, secondly, perhaps Ms. McDade -- I don't know if it's possible for her to have secure parking spaces off street someplace close to the

site. I don't know if that's a possibility or not, but it could be conditioned so that she would have to secure an off street parking place someplace close to the site, maybe at a church or some other location.

CHAIRPERSON CROSS REID: A parking space for the children to be dropped off?

MS. BAILEY: For the staff, for staff persons.

MS. KING: Oh, I don't think -- I didn't hear Mr. Lockridge suggest that there was any problem about staff parking.

CHAIRPERSON CROSS REID: No.

MS. KING: His concern was about the pick-up and the drop-off and the potential for blocking Malcolm X during the rush hour.

CHAIRPERSON CROSS REID: And Ms. McDade testified to the fact that she did have or would have a staff person who had the responsibility of escorting children from the cars to the front.

MS. BAILEY: But that could be a condition. The point I'm making is that could be a condition in the order.

CHAIRPERSON CROSS REID: To ameliorate that particular problem.

MS. BAILEY: To expedite the process.

MS. McDADE: Yes.

CHAIRPERSON CROSS REID: Well, that would be something that we would take into consideration. Thank you very much, Ms. Bailey.

I would like to see us be able to dispose of this particular case today. What's your pleasure, Board members?

MS. KING: Well, I would -- you know, I understand what Mr. Parsons is saying about conflicting set of information, but I would point out that Mr. Lockridge did say that he had been over there and had not seen any double parking taking place; that there was --

CHAIRPERSON CROSS REID: That it was hearsay.

MS. KING: That it was hearsay.

I mean she seems to get a good chit from DHS, and --

MR. PARSONS: Okay. Then --

MS. KING: -- I think that we can write conditions that she will have --

CHAIRPERSON CROSS REID: Yeah.

MS. KING: -- at least one, maybe we should even say two people on the outside. She's going to have seven employees. That two of them should be outside to make sure that the parents -- that there's no need for double parking, and that the pick-up and drop-off is handled in the most

expeditious possible way, and that that might cover that one problem.

MR. PARSONS: Right.

CHAIRPERSON CROSS REID: Would that be satisfactory with you?

MR. PARSONS: That's fine.

CHAIRPERSON CROSS REID: All right.

MS. KING: And then I would recommend some other conditions.

CHAIRPERSON CROSS REID: Well, first off, let's have a motion.

MS. KING: Oh, okay. I move that we --

MR. PARSONS: I thought that was a motion.

MS. KING: -- that we grant the application with the following conditions.

CHAIRPERSON CROSS REID: I second it.

MS. KING: The hours of operation shall be from 7:00 a.m. to 6:00 p.m., Monday through Friday.

Sheri, somebody is paging you on the phone over here.

The permission shall be granted for Loving Care Day Care Center to have 30 students and seven staff members, ages zero to 12 years.

That we waive the requirement for off-street parking to be provided for the employees

because we believe that there is adequate on-street parking in the neighborhood.

And as I mentioned before, that there will be supervision by shall we say at least two staff people outside at the times when the children are picked up and dropped off to guard against any illegal double parking and to insure the safety of the children.

CHAIRPERSON CROSS REID: And did we say the number of children? Did you say 30 children?

MS. KING: Thirty children, seven staff members.

CHAIRPERSON CROSS REID: Seven staff members. Also the preparation of food on the premises.

MS. KING: Okay. You go ahead.

CHAIRPERSON CROSS REID: Well, that the center will be allowed to provide two meals per day plus a snack.

MS. McDADE: Yes, plus snacks.

CHAIRPERSON CROSS REID: And I would think that the trash pick-up as it is, one per day, and I think in an earlier order we said more if needed. How did we word that exactly?

MS. KING: No, that was -- that was where they only had one dumpster. She said she has two.

CHAIRPERSON CROSS REID: Two dumpsters?

MS. McDADE: Two.

CHAIRPERSON CROSS REID: Two dumpsters, but we talked about the accumulation of trash and debris during the week, that the --

MS. KING: That the day care center shall provide adequate trash removal to avoid any adverse impact on the neighborhood.

MS. McDADE: Yes.

CHAIRPERSON CROSS REID: So if you see that because of the increased amount of kids that you're generating more trash that would cause or attract, you know, undesirable --

MS. McDADE: Yes.

CHAIRPERSON CROSS REID: -- undesirable vermin, then you will increase the pick-up accordingly, trash pick-up accordingly.

Any other conditions?

MS. BAILEY: Yes, ma'am. The length of time, the length of time.

CHAIRPERSON CROSS REID: Term. Ms. King?

MS. KING: Five?

CHAIRPERSON CROSS REID: Five years. For five years.

MS. KING: At the end of which time you'll have to come back and talk to us again.

MS. McDADE: Okay. Thank you.

CHAIRPERSON CROSS REID: Okay. Thank you.

This will be a bench decision, which means that you got your decision today, and a summary order which would be issued --

MS. KING: No, no. We can't do a summary order because there's opposition.

CHAIRPERSON CROSS REID: Well, a party in opposition. Is it just a party?

MS. PRUITT-WILLIAMS: No, it's usually opposition.

CHAIRPERSON CROSS REID: For any opposition? Okay. I'm sorry. I thought it was just a party in opposition.

So we'll have to do a full order, which we hope will be out in about --

MS. PRUITT-WILLIAMS: Two to three weeks.

CHAIRPERSON CROSS REID: Two to three weeks?

MS. PRUITT-WILLIAMS: Yes.

CHAIRPERSON CROSS REID: Full orders now?

MS. PRUITT-WILLIAMS: That's what we're shooting for.

CHAIRPERSON CROSS REID: Okay. In

approximately two to three weeks, which will give you the opportunity to be able to open your day care center or increase your enrollment in time for September.

MS. KING: We hope.

CHAIRPERSON CROSS REID: The mad rush in September when everyone is scurrying around trying to find where they're going to put their children.

MS. McDADE: Their children, right.

CHAIRPERSON CROSS REID: Okay. All in favor?

(Chorus of ayes.)

CHAIRPERSON CROSS REID: All opposed?

(No response.)

MS. WITTEN ROSE: The vote recorded?

MS. PRUITT-WILLIAMS: The staff will record the vote as three to zero, motion made by Ms. King and, I believe, seconded by Ms. Reid; is that correct?

CHAIRPERSON CROSS REID: Yes.

MS. KING: Correct.

CHAIRPERSON CROSS REID: I seconded it.

MS. McDADE: Thank you.

MS. KING: Good luck to you.

CHAIRPERSON CROSS REID: Good luck.

(Whereupon, at 1:03 p.m., the hearing was concluded.)