GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT
PUBLIC HEARING
WEDNESDAY
MAY 6, 1998

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

PRESENT:

SHEILA CROSS REID, Chairperson
MAURICE FOUSHEE, Board member
BETTY KING, Board Member

STAFF PRESENT:

TRACEY WITTEN ROSE, Office of Zoning
SHERRY PRUITT-WILLIAMS, Office of Zoning
PAUL HART, Office of Zoning
JOHN NYARKU, Office of Zoning
ALBERTO BASTIDO, Office of Planning

APPEARANCES:

ON BEHALF OF THE APPLICANT, CAPITOL HILL, L.L.C.:

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I N D E X

BZA NO.	WITNESS
16339	Karan Buster - pg. 6 (proponent)
16329	Leonard McCants - pg. 16 (proponent) Robert Holland - pg. 20 (proponent) Robert Weitzman - pg. 23 (proponent)
16321	Cynthia Giordano - pg. 38 (proponent) Richard Nettler - pg. 41 (opposition) Gottlieb Simon - pg. 45 (opposition) Sharon Ambrose - pg. 47 (opposition)
16288	Larry Hughes - pg. 59 (proponent)
16339	Karan Buster - pg. 63 (proponent)

P-R-O-C-E-E-D-I-N-G-S

9:38 a.m.

CHAIRPERSON REID: Good morning, ladies and gentlemen. I am Sheila Cross Reid, Chairperson of this Board of Zoning Adjustment for the District of Columbia. Joining me today are Maurice Foushee and Betty King. Copies of today's agenda are available to you on a 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 opposition 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 to my right.

Notice of today's hearing was given by posting the subject property, publication in the D.C. Register, and various other means. The procedure for special exception and variances cases will proceed as follows: preliminary matters first; then statement and witness of the applicant; government reports, including the Office of Planning, Department of Public Works or others; the Advisory Neighborhood Commissions; parties and persons in support; parties and persons in opposition and closing remarks by the applicant.

Cross examination of witnesses is only permitted for parties in the case. The Board will adhere to the 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 expected.

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

At this time, the Board will consider any preliminary matters. Preliminary matters are those which relate to whether a case will or should be heard today, such as a request for postponement, continuance, or withdrawal, or whether proper and adequate notice of the hearing has been given. If you are not prepared to proceed, now is the time to raise such a matter. Does the staff have any preliminary matters?

MS. ROSE: Yes, Madam Chair. With regard to Case #16339, the application of Jerome Lindsey on behalf of Kaleb L.L.C., the affidavit opposing indicates that the property was posted on April 28 as opposed to April 21 as required by the Board's rules. Is the applicant present? Would you please come forward? You can have a seat at the table. Would you give your name and home address for the record?

MS. BUSTER: My name is Karan Buster. My address is 110 Abraham Street, N.W., Washington, D.C.

MS. ROSE: The affidavit opposing that you submitted, do you know when the property was posted? It was to be

posted 15 days before the hearing?

MS. BUSTER: I posted it -- I need a calendar, but it was on a Monday.

MS. ROSE: On a Monday?

MS. BUSTER: We picked them up on Friday.

MS. ROSE: I have a calendar here.

MS. BUSTER: Do you want me to approach you?

MS. ROSE: Sure.

MS. BUSTER: It was posted on the 20th.

MS. ROSE: Okay.

MS. BUSTER: It was posted on the 20th because I picked them up on the 17th.

MS. ROSE: Okay. And is it your testimony that the affidavit is filled out incorrectly? It says that on 4/20, which was the 20th of April, the notices were --

MS. BUSTER: Yes, it is. That was the day that the last pictures were taken and it was notarized.

MS. ROSE: Is that sufficient for the Board?

CHAIRPERSON REID: I am sorry, did you all hear? We could not hear exactly what you all were -- the conclusion you came to. So if you would please --

MS. ROSE: She is indicating that the affidavit of posting was filled out incorrectly by indicating that the property was posted on the 28th of April as opposed to the 20th of April, which would have been timely. The 20th of April would have been timely.

CHAIRPERSON REID: So your position is that you --

MS. BUSTER: That was the day I had it notarized, the 28th.

CHAIRPERSON REID: You had it notarized on the 28th?

MS. ROSE: She just filled it out incorrectly.

CHAIRPERSON REID: Oh, I see.

MS. ROSE: But the property was posted on the 20th of April.

CHAIRPERSON REID: Okay. So you are contending today that you did fill it out -- you did post the property in a timely fashion?

MS. BUSTER: Yes, I did.

MS. KING: Madam Chair, is there anybody here in opposition to this case?

CHAIRPERSON REID: Well, we asked anyone who was affiliated with the case to come forward and this is the only person who came forward.

MS. KING: I see. Because we do have a letter from the ANC asking that we postpone.

CHAIRPERSON REID: Well, the ANC is asking that before we make a decision on the case, they be allowed 30 days to submit a position. That was my understanding.

MS. KING: Don't we have to post -- I mean, when we finish our hearing isn't that it?

CHAIRPERSON REID: Well, we could allow the record to remain open to receive a report by the ANC.

MS. KING: Okay.

CHAIRPERSON REID: And that is my understanding of the request. Is that not correct, staff?

MS. KING: That is the request. We can do it, is that correct?

CHAIRPERSON REID: I think so.

MS. ROSE: I am sorry, several people were talking to me. Can you clarify?

CHAIRPERSON REID: All right. This is in regard to the request that came from the ANC Commissioner for 4B04 on this same case, and they asked that due to the fact that they haven't had a chance to really meet and to prepare their position on this case, they would ask that the record remain open for 30 days to allow them to submit their report.

MS. ROSE: And the question is can they do that? Can they make such a request?

CHAIRPERSON REID: Yes.

MS. ROSE: Well, when I looked in the rules, it just indicated that the Board could waive the rules, which would be the rules that require that the report be in 7 days in advance of the hearing, as long as there is no prejudice to any party. It may be the contention of one of the parties or several that there would be a prejudice to hold the record open for 30 days. I don't know.

CHAIRPERSON REID: Do you have any objection to that request? Are you familiar with the request, ma'am?

MS. BUSTER: Yes.

CHAIRPERSON REID: Okay. Do you have any objection to that request?

MS. BUSTER: No, none.

CHAIRPERSON REID: Okay.

MS. ROSE: That means that the Board wouldn't be deciding the case probably until July.

CHAIRPERSON REID: July? This is April --

MS. KING: No, this is May.

CHAIRPERSON REID: I am sorry, this is May. We are in May. So May, June -- would that be okay with you?

MS. BUSTER: For July? I mean, I would be prejudiced by July, but not by June. It is my understanding that the ANC will meet next Thursday and address the issue.

MS. ROSE: Maybe a shorter time --

CHAIRPERSON REID: Can we -- what?

MS. ROSE: Maybe a shorter time.

CHAIRPERSON REID: A shorter time sounds like a --

MS. BUSTER: I have no objection if it is a shorter time because they said they would make a decision --

CHAIRPERSON REID: Give them 15 days instead of 30? How do you feel about that Board members?

MS. KING: I think that would be fine. It was a question of, you know -- what opened the door for me was this ambiguity about the posting. If the ANC, to which we must give great weight if they have a quorum, et cetera -- you know, the usual stuff --

that if we went ahead with the case and decided the case today and there was a question of the posting that would --

MS. ROSE: But I don't think that --

MS. KING: But if we hear the case today and hold the record open for the ANC to decide after we have gotten the ANC advice, then I wouldn't raise any objection to this question of the posting.

CHAIRPERSON REID: Mr. Foushee?

MR. FOUSHEE: And I concur with that opinion.

MS. ROSE: I the ANC present?

CHAIRPERSON REID: There are no other people here that are affiliated with this case to my knowledge. I have asked that they come forward. Are you the only person?

MS. BUSTER: Yes.

CHAIRPERSON REID: Are the ANC or any other --

MS. ROSE: And it may be that this is the last case on the agenda and that the people who would normally be here are going to wait until a little later to be present. So that might be --

CHAIRPERSON REID: Well, we could just hold off before making a decision for when we call your case. And then we will ask at that time. But as far as the Board is concerned, we don't have a problem with the issue of the posting nor a 15-day period for the ANC to be able to submit their position on this particular case. Okay?

MS. BUSTER: Okay.

CHAIRPERSON REID: All right. Thank you.

MS. BUSTER: Thank you.

CHAIRPERSON REID: Did you have another preliminary matter, I think, in regard to -- there was another preliminary matter?

MS. ROSE: We don't have another preliminary matter, Madam Chair.

CHAIRPERSON REID: For case #16321.

MS. ROSE: Yes. We received that this morning. It is a request for a continuance.

CHAIRPERSON REID: For this particular case, should we not address this at this particular time?

MS. ROSE: Yes, Madam Chair.

CHAIRPERSON REID: Okay. Is there anyone affiliated with case #16321 present, and if so, could you please come forward?

MS. KING: Is it the applicant or the --

CHAIRPERSON REID: Are you the applicant?

UNIDENTIFIED SPEAKER: Our attorney is not here yet. She is supposed to be here. I assume that she is caught in traffic.

CHAIRPERSON REID: Okay.

UNIDENTIFIED SPEAKER: She is not here yet.

CHAIRPERSON REID: Okay. We have a request for a continuance of this particular case, but we can't act on it until your representative is present.

UNIDENTIFIED SPEAKER: She should be here any

minute. Okay. Then please indulge us for a few minutes and allow the attorney to arrive and then we can address this particular issue.

MS. KELLY: Mr. Nettler is counsel for the parties in opposition and he is not here either.

CHAIRPERSON REID: Is he coming?

MS. KELLY: Yes. He is coming.

CHAIRPERSON REID: Okay. All right. Then we will just put this -- we will table this for a bit until these people arrive and then we will address it. Madam Secretary, would you like to call the first case?

MS. ROSE: The first case of the morning is 16315, the application of Laverne A. Lacy pursuant to 11 DCMR 3107.2 for a variance under paragraph 2001.3(c), to allow an addition to an existing non-conforming structure, a variance from the maximum allowable lot occupancy requirements, Subsection 403.2, a variance from the minimum rear yard setback requirement, Subsection 404.1, and a variance from the minimum width of an open court requirement, Subsection 406.1 for a deck addition to a single family dwelling in an R-3 district at premises 5025 4th Street, N.W., Square 3302, Lot 33. Would all persons planning to testify in this application please rise to take the oath? It appears that no one is present.

CHAIRPERSON REID: There is no one here that is affiliated with Case #16315, Laverne A. Lacy, today? I guess not.

MS. ROSE: We can hold it off and try to contact the applicant and recall it later.

CHAIRPERSON REID: Okay. Why don't we do that.

All right. Let's go to case number two.

MS. ROSE: The next case is case #16288 of Ira Clements pursuant to 11 DCMR 3107.2 for variances to allow an addition to an existing non-conforming structure that does not now meet the lot width and lot area requirements and exceeds the lot occupancy allowances and will create a new non-conforming rear yard, paragraphs 2001.3(a), (b), and (c), and a variance from the maximum allowable lot occupancy requirement, Subsection 403.2, and a variance from the minimum rear yard requirement, Subsection 404.1 for a deck addition to a row dwelling in an R-3 district at premises 4904 4th Street, N.W., Square 3252, Lot 112. Would all persons planning to testify in this application please rise to take the oath?

CHAIRPERSON REID: No one is here for this case either? All right, let's call it again. 16288, Ira Clements? Is there anyone here that is affiliated with this case? The applicant? Okay. We will try to do the same thing as we did in this first case and try to contact the applicant.

MS. ROSE: Yes.

CHAIRPERSON REID: Okay. Let's move on to number 3, please.

MS. ROSE: I think this next case is the one where Mr. O'Donnell or Mr. Nettler is present.

CHAIRPERSON REID: Okay. Boy, we are batting 100 today, aren't we. Then let's move on to the fourth case of the day then.

MS. ROSE: Okay. Case #16329, the application of Robert Holland, et. al., pursuant to 113108.1 for a special exception under Section 214 to re-establish and continue to use an accessory parking lot in an R-2/C-1 district at premises 3820-26 McKinley Street, N.W., Square 1859, Lots 49, 50, 51, and part of 92. Would all persons planning to testify in this application please rise to take the oath?

(WITNESSES SWORN.)

MS. ROSE: You may be seated.

MR. McCANTS: Good morning, Madam Chairman and members of the Board. My name is Leonard McCants. I am the attorney for the applicant in this case. With me today are Mr. Robert Weitzman, who is the operator of a parking lot, and Mr. Robert M. Holland, who represents the owner and is one of the owners of the parking lot.

CHAIRPERSON REID: Okay. You may proceed.

MR. McCANTS: May I proceed, ma'am?

CHAIRPERSON REID: Sure.

MR. McCANTS: Madam Chairman and members of the Board, just briefly this property is known as 3820-26 McKinley Street, N.W., Square 1859, Lots 49, 50, 51, and part of 92. This property is owned by Mr. Robert Holland, Thomas M. Holland, Mary Charlotte Parr, Margaret Weaver Crow, Donald E. Crupp -- Shupp, Alan Shupp Jerome, Charlotte Winters, George S. and Theresa Woo, Robert S. and Alice Woo, and Anna Sy and Kon Shang Chow. Mr. Holland, as I indicated, serves as the managing agent and the general manager of this property on behalf of all of the owners.

This property, Madam Chairman, has served as an accessory parking lot for commercial establishments which front on the 5400 block of Connecticut Avenue for the past 30 years. The property supports a number of commercial establishments including a CVS drugstore as well as other commercial establishments which Mr. Holland will identify in a few minutes. The most recent special exception for this property was approved by this Board in a summary order in November of 1993. That order was issued on November 26, 1993, granting a special exception for a period of four years. At that time, the Board conditioned the order on certain issues. I would like to point out that each of those conditions have been complied with over the past four years and the applicant today is requesting a continuation and a renewal of the special exception for an additional 5 years.

In the prior order that was approved in November of 1993, the Board gave approval for four years beginning on the effective date of the order and has stated that no trash dumpsters shall be located on the portion of the lot zoned residential. All areas devoted to driveways, accessory lanes, and parking areas shall be maintained with the paving of material form on an all-weather impervious surface. Bumper stops shall be erected and maintained for the protection of all adjoining buildings. No vehicle or any part thereof shall be permitted to project over any lot or building line or on or over the public space. All parts of the lot shall be kept free of refuse, debris, and shall be paved or landscaped. The landscaping shall be maintained in a healthy growing condition and in a neat and

orderly appearance. No other use shall be conducted from or upon the premises and no structure other than an attendant's shelter shall be erected or used upon the premises unless such use or structure is otherwise permitted in the zoning district in which the parking lot is located. All lighting used to illuminate the parking lot or its accessory building shall be so-arranged that all direct rays of such lighting are confined to the surface of the parking. The representative of the owners of the property shall establish and maintain a liaison with the Advisory Neighborhood Commission 3-G to discuss problems that may arise in connection with the operation of the parking lot to insure that it continues to have no objectionable impact on the immediate area.

Madam Chairman and members of the Board, the applicant has met each and every one of those conditions in the prior order, and we ask that the Board, if it wishes to, to impose those same conditions if it grants this order. I might point out that we are here today seeking a reestablishment of that parking lot use. However, because at the time that the order was issued in the last case apparently the Office of Zoning does not have a certificate of occupancy and therefore has requested that we seek reestablishment of the parking lot under the same terms and conditions. At this time, I would like to call on Mr. Robert Holland. Mr. Holland, would you please again identify yourself for the record?

MR. HOLLAND: Madam Chairman, I am Robert Holland.

MR. McCANTS: And, Mr. Holland, how are you

connected with this property?

CHAIRPERSON REID: First give your home address, please.

MR. HOLLAND: My home address is 24271 Waterview Drive, Wharton, Maryland.

MR. McCANTS: And how are you connected with this property, Mr. Holland?

MR. HOLLAND: I am a co-owner, and for all intents and purposes I am the managing owner.

MR. McCANTS: All right, sir. Now Mr. Holland, you have heard my recitation of the conditions of the previous order, have you not?

MR. HOLLAND: That is correct.

MR. McCANTS: Have you as the general manager and owner of this property know for a fact that you have complied with these conditions?

MR. HOLLAND: Yes, sir.

MR. McCANTS: All right. You now, on behalf of the property owners, wish to have the Board grant a new special exception or continue a special exception for another 5 years?

MR. HOLLAND: That is correct.

MR. McCANTS: And why do you want that? What is the purpose of this special exception?

MR. HOLLAND: Well, as you pointed out, this parking lot serves not only a CVS Store but Chevy Chase Liquors, a Chinese restaurant, the Mandarin Palace --

MS. KING: Don't forget Bread and Chocolate.

MR. HOLLAND: And don't forget Bread and Chocolate. Mr. Shupp would be upset with that. And several other stores, Buddy?

UNIDENTIFIED SPEAKER: No, that is pretty much it.

MR. McCANTS: All right. Now has there been any -- to your knowledge, any problems associated with the operation of the parking lot since the last order?

MR. HOLLAND: Not to my knowledge.

MR. McCANTS: All right. Now you have delegated the actual management of the parking lot to someone, have you not?

MR. HOLLAND: That is correct.

MR. McCANTS: And who is that?

MR. HOLLAND: That is Mr. Weitzman.

MR. McCANTS: All right. And Mr. Weitzman is connected with the property in what way?

MR. HOLLAND: He is the owner of Chevy Chase Liquors.

MR. McCANTS: All right, then. I have no further questions of Mr. Holland at this time, Madam Chairman. Does the Board have any questions of Mr. Holland?

CHAIRPERSON REID: Ms. King?

MS. KING: No. I use your parking lot often and I am glad it is there. I hope it will continue.

MR. HOLLAND: Thank you very much.

CHAIRPERSON REID: Mr. Foushee?

MR. FOUSHEE: I do have one question. ANC 3-G noted, first of all, that they voted in support of this. However, they wanted to encourage patrons to observe the one-way traffic in that exit onto McKinley Street. Is there a directional signage that indicates where people should ingress and egress?

MR. HOLLAND: Absolutely.

MR. McCANTS: Yes, sir. And we will have Mr. Weitzman to address that issue, because I think that is a very good question and one that we have been struggling with for some time. So, if you don't mind, I will have Mr. Weitzman to resolve that particular question. Mr. Weitzman, again, would you please state for the record your name and address?

MR. WEITZMAN: Robert Weitzman, 11121 Post House Court, Potomac, Maryland.

MR. McCANTS: And, Mr. Weitzman, you have been identified as one of the operators of a store or commercial facility that is an accessory to this parking lot, is that correct?

MR. WEITZMAN: That is correct.

MR. McCANTS: And what is the name of your store?

MR. WEITZMAN: Chevy Chase Liquors.

MR. McCANTS: And how long have you been the owner of Chevy Chase Liquors?

MR. WEITZMAN: Twelve years.

MR. McCANTS: And during the course of that time have you had occasion to become the operator of or managing operator of the parking lot at this property?

MR. WEITZMAN: I have since the first day I bought the business.

MR. McCANTS: And what has been your experience in terms of the parking lot? Have you maintained the parking lot?

MR. WEITZMAN: Yes, we have maintained the parking lot above and beyond whatever the ANC has wanted over the 12 years and during the 12 years, we have never had a problem with the ANC and being called up about any problems that we have ever had.

MR. McCANTS: All right. Is there a trash dumpster located on the lot?

MR. WEITZMAN: No, there is not.

MR. McCANTS: All right. The trash dumpster is located on the commercial part, is that correct?

MR. WEITZMAN: That is correct. Each business has their own trash receptacle.

MR. McCANTS: All right. Now have you been able to insure that no trash or debris spreads on the parking lot itself?

MR. WEITZMAN: We maintain the lot every day. We have a person go out and clean the lot once a day, every morning.

MR. McCANTS: All right. Is the parking lot maintained and improved by material forming an all-weather impervious surface?

MR. WEITZMAN: It is.

MR. McCANTS: And is the parking lot striped in such a way that the delineation of each parking space?

MR. WEITZMAN: It is.

MR. McCANTS: And how many parking spaces do you have on the lot?

MR. WEITZMAN: I think it is about 30.

MR. McCANTS: About 30 parking spaces?

MR. WEITZMAN: Yes, I believe.

MR. McCANTS: All right. Now are there bumper stops erected to maintain and protect the adjoining property from cars that are parked in the lot?

MR. WEITZMAN: It is.

MR. McCANTS: Any vehicle to your knowledge that projects over the spaces that you have delineated for the parking?

MR. WEITZMAN: No.

MR. McCANTS: And has the lot been kept free from refuse and debris and have you maintained the landscaping?

MR. WEITZMAN: Yes, we have. We have a company that takes care of all our landscaping for us.

MR. McCANTS: All right. Is there any other use conducted from the premises other than parking space on the accessory parking area that we are talking about?

MR. WEITZMAN: No.

MR. McCANTS: Do you have any lighting on the parking lot?

MR. WEITZMAN: Yes. There is lighting on the perimeter of the parking lot that shines directly onto the parking area.

MR. McCANTS: And it does not impact the adjoining

residential property, is that correct?

MR. WEITZMAN: No, it does not.

MR. McCANTS: All right. Now the Board in its previous order had required that you have a regular meeting with the ANC to discuss issues with respect to the parking lot. Have you done that?

MR. WEITZMAN: Whenever they have called, which they never have, I have always been available and have gone whenever I am up there for my liquor license and they want to talk about it. I am always there to talk about it with them. But they have never called about any problems in 12 years.

MR. McCANTS: All right. Now there was one question raised by a member of the Board with respect to the directional signs for those who wish to park in the parking lot. Is there a directional sign there?

MR. WEITZMAN: Yes, there are several. We have one on the rear wall of the CVS, which is approximately 6 feet by 18 feet showing that it is one-way out. And across the base of the driveway, there are three huge arrows pointing down and stenciled in is the word one-way. And this is what we have been able to do. We keep that up to try and take care of that addressed problem.

MR. McCANTS: Now have you had any complaints from any of the neighbors or ANC with respect to persons not adhering to that directional sign?

MR. WEITZMAN: Yes, we have had complaints or conversations with them at the ANC meeting. We had them and we

discussed it. And as it was mentioned, that is private property. The police say they can't make a private property legally one way to give anybody tickets. I pointed out to them that on numerous occasions we see the police going up the driveway the wrong way. So our hands are tied. We don't know what to do with it except erect many signs trying to inform our customers to please use the other way out. That is legally all we can do because it is private property.

MR. McCANTS: Now that directional sign, the 6-foot directional sign, where is that located?

MR. WEITZMAN: When you come out of the parking lot, you are looking at the back of the buildings. And on the back of the CVS wall is this huge sign that says one way with an arrow pointing to the right. There are directional arrows as you come out showing you to go to the right. And across the base of the driveway is where we have it stenciled in one way with three big arrows.

MR. McCANTS: Now have you -- tell the Board just briefly where are the entrance and egress to this property?

MR. WEITZMAN: The entrance is off of McKinley Street, which is on the north side of the property. The egress is out into the public alley, which goes on the south side and goes to Morrison Street.

MR. McCANTS: All right. And the directional arrow indicates which part would be the entrance to the property?

MR. WEITZMAN: As you come down the driveway from McKinley Street, the arrows are pointing in front of you to continue that way to go out. And you make a right toward the west

side to go into the parking lot. And as you exit from the parking lot, there is an arrow pointing to the right to show you that is the way to go down beside the sign on the wall. And if you look to your left at that point, you see all the stencil work across the base of the driveway. And anybody that comes in the alley from the other side, if they were to attempt to go up the driveway, they see the big stenciled sign saying one-way with arrows down. And that is at the base of the driveway.

MR. McCANTS: Does anybody have any questions?

MS. KING: Yes, I do. The parking that is contiguous to Morrison Street -- not the one behind the diner, but the -- are they also -- do the people have to drive into that from McKinley or can they drive into that one from Morrison?

MR. WEITZMAN: Are you addressing the one on the back side of the alley behind the video store?

MS. KING: You are here in yellow and then there is a triangle down here that is marked parking.

MR. WEITZMAN: That triangle below that yellow has nothing to do with us.

MS. KING: I understand that. But do people have to drive through your parking to get to that or can they come --

MR. WEITZMAN: They can come up Morrison Street or McKinley Street.

MS. KING: I mean I know that you are -- which you have not said -- that your striping is angled so that it is uncomfortable for anybody who comes the wrong way. But I just wondered because

I have myself come in from Morrison Street.

MR. McCANTS: Thank you, Ms. King. You are absolutely correct.

MS. KING: It is very difficult for you to control since people are coming into parking from Morrison Street and there is no sign saying you can't do it. There is no sign saying you can park in here but you have got to go all the way around the block if you want to park there.

MR. WEITZMAN: Maybe there is some misunderstanding. If you come in from Morrison Street, you are allowed to drive up to the parking lot and make a left turn to go into the parking lot.

MS. KING: I see.

MR. WEITZMAN: The concern has been people are pulling out either from the parking lot or coming -- cutting through the alley or coming from this lower parking lot and going up the driveway to McKinley Street to get out. It has nothing to do with them being able to -- that they have to come around to come into us. They can come into the parking lot from either direction. It makes no difference.

MS. KING: Okay.

MR. WEITZMAN: It is the exit that is the question.

MS. KING: I see. Okay. Well, it is -- you know, it is very difficult because there is a lot of open space and a lot of different people's parking and spaces and so forth back there. I think you -- it sounds to me as if you have made your best efforts to do what the ANC wants.

MR. WEITZMAN: I have been doing it for years.

MS. KING: Short of having cops out there all the time.

MR. McCANTS: Thank you. Mr. Weitzman, I just want to ask you a few other questions. To reestablish the parking lot, we have to consider certain issues or the Board has to consider certain issues. So I am going to ask you these questions. Is the accessory parking lot located in an open area?

MR. WEITZMAN: It is.

MR. McCANTS: Are the accessory parking spaces located in it entirety within 200 feet of the area to which they are accessorized?

MR. WEITZMAN: They are.

MR. McCANTS: Are the parking spaces contiguous to or separated only by an alley from the use to which they are accessorized?

MR. WEITZMAN: They are.

MR. McCANTS: Now is it economically impractical or unsafe to locate accessory parking spaces within the principle building or on the same lot on which the building use is permitted because of the following? Strip zoning or shallow zoning depth?

MR. WEITZMAN: You can't do it.

MR. McCANTS: All right. A restricted size of the lot because of adverse ownership or substantial improvement adjoining or on the same lot?

MR. WEITZMAN: Yes.

MR. McCANTS: And a lack of an alley or the lack of appropriate ingress or egress through existing or proposed alleys or street?

MR. WEITZMAN: Yes.

MR. McCANTS: All right. A traffic hazard caused by unusual street grades or other conditions?

MR. WEITZMAN: Yes.

MR. McCANTS: All right. Now are the accessory parking spaces so located and facilities in relation to the parking lot so designed that they are not likely to become objectionable to adjoining or nearby property because of noise, traffic, or other objectionable conditions?

MR. WEITZMAN: That is correct.

MR. McCANTS: And you along with Mr. Holland would like the Board to reestablish the parking lot and to give us another 5-year period as a special exception for accessory use?

MR. WEITZMAN: That would be correct.

CHAIRPERSON REID: Did you say 5?

MR. McCANTS: Yes, ma'am. We are asking for 5 years, please.

CHAIRPERSON REID: Okay.

MR. McCANTS: I believe that is all that we have at this time, Madam Chairman.

CHAIRPERSON REID: All right. Thank you. I did not see anyone else here in support or in opposition to. Is there? What about the ANC? Is there a representative from the ANC?

MS. KING: We have a memo from them.

MR. McCANTS: Madam Chairman, I think the ANC submitted a report.

CHAIRPERSON REID: We do have their letter -- Ms. King, would you please summarize that into the record?

MS. KING: Yes, sure. ANC 3-G voted 7 to nothing, a quorum being present, I believe, in support.

CHAIRPERSON REID: Okay.

MS. KING: Asked the applicant to encourage people to observe the one-way traffic flow and not exit on McKinley Street. I think that we have established that they have done all that is possible within their legal means. And the ANC asks that they continue to keep the parking lot clean and free from graffiti, which since they use the word continue, it indicates that they are doing that now and I am confident that they will continue. So ANC -- I think we give great weight to ANC's support.

CHAIRPERSON REID: Mrs. King, I have thought about that as far as the great weight was concerned. I did not see that there was a quorum present. It said 7 to 0, but it did not indicate that there was a quorum.

MS. KING: I think -- well, I can't -- I think that that is the number of members in that Advisory Neighborhood Commission, but I don't have any documentary proof of that. It is not a large ANC.

MR. McCANTS: I can attest that Mr. Weitzman and myself were there and it was a quorum. Not only that, but all the members of that ANC --

MS. KING: That is what I thought.

MR. McCANTS: Were present.

CHAIRPERSON REID: Okay. All right. That is what we need to know. Thank you. I appreciate that.

MR. McCANTS: We would respectfully request that the Board grant us a 5-year --

CHAIRPERSON REID: Wait, wait, wait. Just let me do it within the order of procedure.

MR. McCANTS: Very good. I am sorry.

CHAIRPERSON REID: There are no government reports, I don't think.

MS. KING: Yes, we do.

CHAIRPERSON REID: Do we have one from DPW?

MS. KING: From DPW.

CHAIRPERSON REID: Oh, yes.

MS. KING: DPW supports continued use of the parking lot in light of the lack of peripheral parking lots in the general area and parking spill-over will adversely affect the surrounding neighborhood. Therefore, the Department has no objection to the continuation of this present use.

CHAIRPERSON REID: Thank you, Mrs. King. It sure does. Okay. And now come the closing remarks, please.

MR. McCANTS: Very good. Thank you, Madam Chairman. Again, I thank the Board for hearing us today and we appreciate your considering this application. We respectfully request that the Board grant an approval for an additional 5 years to

reestablish this lot, and we respectfully ask the Board for a bench decision on this matter.

CHAIRPERSON REID: Are you all ready to dispose of this today?

MS. KING: I am ready to dispose of it.

CHAIRPERSON REID: Board members, I would move approval of this application. I think that the applicant has demonstrated that they have been in compliance with the previous Board order. They are asking a continuation of five years. We have no opposition to this particular case. And it appears that they have tried to adhere to the conditions that were set fourth in the previous order in 1993. I don't feel that this relief being granted would in any way be in disharmony with the general purpose and intent of the zoning regulations or a map, nor does it appear to adversely affect the use of neighboring properties. So I would move approval with the conditions that were set forth in the previous order.

MS. KING: I second.

CHAIRPERSON REID: The only change being -- excuse me.

MS. KING: I am sorry.

CHAIRPERSON REID: Five years instead of four years as it was previously indicated.

MS. KING: I second your motion.

CHAIRPERSON REID: Okay. All in favor?

ALL BOARD MEMBERS: Aye.

CHAIRPERSON REID: All opposed? A summary

order -- you should have your order within about two weeks.

MR. McCANTS: Thank you very much, Madam Chair.

MS. ROSE: Staff will record the vote as 3 to 0 with Ms. Reid, Ms. King, and Mr. Foushee to grant the application with the issuance of a summary order.

CHAIRPERSON REID: Next case, please? Or are we ready for one of the other cases that have been moved forth earlier.

MS. ROSE: Perhaps we can go back to the request for a continuance in 16321.

CHAIRPERSON REID: Are the individuals -- the applicant and the attorneys now present for 16321? Would you please come forward?

MS. GIORDANO: Good morning. My name is Cynthia Giordano. I just received a copy of a request for a continuance in the case. I represent the applicant, Papa Johns, and the property owner in this case. We strongly oppose the granting of a continuance. We have -- this application was originally filed on January 5. So this is not an application that was just filed a month ago. We feel that the opposition has had adequate time to prepare a case. The application was originally set down for a hearing in March. At that time, a continuance was granted at our request and there was no opposition to that request, to allow for additional time to look at the traffic and safety issues that were raised by the ANC. We have done that. Logically, we hired a transportation consultant to look at that.

The letter requesting the postponement indicates that the opposition needs more time because the applicant has a cadre of planners and attorneys and consultants on this case. At the time of the request for the postponement, the opposition had counsel retained. They were at the meeting in March. They also have a planner that works for the attorney. So this is not a situation where that expertise was not in place already. We have four people that came in from out of town for this hearing today. Papa John's Corporate Headquarters is located in Indiana and four people have traveled for this hearing as well as we have the architect and the transportation consultant here. We have prepared our case and there just really isn't any legitimate basis for the continuance. The notice was proper. They have been well aware of the case since January. The ANC deliberated on this matter in March and prepared a report which has been filed. So there has been due consideration given to this application and we would be greatly inconvenienced by a postponement at this time.

However, we have no opposition to leaving the record open and delaying a decision on the case if that would help the opposition to have additional time to prepare written submissions. We have no problem with that whatsoever. We would be happy if the record were left open for an additional 30 days. But we would like the opportunity to present our case today.

MS. KING: Could I ask a question? You sought a condition or a delay in March you are saying?

MS. GIORDANO: Yes. There was -- at that time, there were some issues raised by the ANC, and we met with all the

ANC at the committee level -- the full ANC as well as the Capitol Hill Restoration Society. So we did meet with community groups. We were available. There were some issues raised about transportation issues related to the application, which we were told that the problem was that D Street is a one-way street and there was only one means of access in and out of our site and that that would cause traffic problems in the area. So we took additional time to look at that and in fact we have added an additional lot to the proposal off of 8th Street to provide another means of ingress and egress, and we were specifically requested to do that by a number of citizens who indicated that that would go a long way to resolving their issues with respect to transportation and this proposal. So we took some additional time. We did some additional work to work with the community and their concerns. Personally, I think that should be rewarded by not granting additional delay in this case. We have done all the right things. We have met with the community on a number of occasions. We have taken the time to look at their concerns and responded to them. And we are ready and prepared and we would like the opportunity to present our case now.

MS. KING: But you don't have an agreement -- I mean, this two months of effort has not arrived at an agreement?

MS. GIORDANO: It has not.

MS. KING: All right. Thank you.

CHAIRPERSON REID: Mr. Nettler?

MR. NETTLER: Thank you. If I might respond. Richard Nettler on behalf of a group of individuals who are opposing

the application. Let me make one thing clear. Since the time that the applicant requested their continuance, they have never met with anybody from the community about this project. They requested the continuance because of legitimate concerns that were raised about traffic. They were not prepared to go forward the last time we were here on the basis of their lack of any information that they could provide to this Board. We obviously were prepared to deal with their lack of information at that time. What they have instead done, instead of meeting with the community on those very issues, ones that they have acknowledged were issues that were of concern to the community and would be of concern to you in hearing a special exception, is they filed an untimely pre-hearing statement. They filed it 9 days before this matter is scheduled for today as opposed to two weeks. They have not even had the courtesy to ask for a waiver for having failed to do so. Therefore, anything that they might try to put on today is not properly before you having filed something 9 days before. They didn't amend their plans to bring in this new lot. So that issue can't possibly be before you. They didn't bring to the community's attention the study that they had done, their untimely studies on the parking which are not properly before you. So they can't even offer testimony on that parking. And our attempts to get DPW to deal with this issue, while it resulted in DPW hastily putting something together yesterday, that isn't even properly before you because under your own rules DPW's report can't be submitted because no one from DPW could be here to testify regarding its report.

Therefore, it is hard to believe the applicant is properly before you today when the applicant couldn't present any witnesses on the issues that they recognize are of concern to you. DPW couldn't present its position because of the applicant's lack of diligence. And the applicant now saying that they have changed their plans, a position that is inconsistent with the position they took when they first came to the ANC about the use of this other lot, hasn't even amended its plans for you to review. And given those circumstances, the only thing that is appropriate to do is to continue this matter for another day and I believe the Council member has asked for the same. And I think there are other individuals who are here to support that request.

MS. GIORDANO: There is no requirement to amend the plans. We are not including -- we are not changing the site for this development. We are just offering to use another lot which is under common ownership with this lot for access. As far as DPW goes, DPW does not routinely appear before the BZA. It is difficult even to get a report out of them. There is no requirement that they be here. There is no requirement that we submit any documentation prior to the hearing for witnesses that we would call at the hearing. The purpose of the hearing is to present testimony on the issues. What we have done is appropriate. We have witnesses that are to be sworn in here. We have taken additional time to look at the issues raised by the community regarding this application and that is appropriate and proper and should be encouraged instead of discouraged. There is nothing wrong with that. We were prepared to appear but we decided

last time to take some additional time and look at the transportation issues. There is nothing wrong with that. It is absolutely appropriate.

MR. NETTLER: The Board can look at its own rules and will see that that statement, both in regard to DPW's report and to the requirement for a statement 15 days before are contained within your rules. I know that has been the practice here. It is on the document that each party receives and the rules I believe in Chapter 30 provide that you cannot accept a report that cannot be cross examined.

MS. GIORDANO: The rules say if the applicant chooses to submit additional materials, they can be submitted 14 days before the hearing. It doesn't require the submittal of additional documentation. In fact in most cases, the testimony is the additional documentation that is presented at the hearing. If the Board does not wish to accept that document at this time, they don't have to. We will present our case based upon testimony at this presentation. And we are fully prepared to do that. We have the traffic consultant here to present the findings of his study. We have an architect here to present the plans for the building. And we have Papa Johns representatives to testify in detail about the operations of this store. All of that was also done at the preceding ANC Commission meeting on this case. It is not new information.

MR. NETTLER: I think there are other people who want to speak to the issue as well.

CHAIRPERSON REID: Well, I think, Mr. Nettler, that we have gotten the gist of it. Not unless there is something --

MR. NETTLER: Well, there was a separate request from Council member Ann Rose, I believe. The Advisory Neighborhood Commission had a separate issue as well. That was our issue that I believe Ms. Giordano was responding to.

CHAIRPERSON REID: All right.

MR. SIMON: Good morning. My name is Gottlieb Simon. I am the Executive Director for ANC 6B. I wanted to associate myself with Mr. Nettler's remarks and his request to the Board. Let me also point out that the ANC agreed in February to a continuance in our process to allow Papa Johns more time to develop their case and present their information. We feel now based upon the additional information that they wish to submit to the Board that it would be appropriate that that same courtesy be provided to us as well. The notion that the Board might hold the record open I think is insufficient to provide us with the real time opportunity to cross examine and to discuss their witnesses.

CHAIRPERSON REID: Thank you.

MS. GIORDANO: Can I just mention that in terms of the ANC meeting, the ANC had originally planned to consider this at their February meeting. I called Mr. Simon and asked if we could schedule it for the March meeting given the fact that there was ample time before the hearing that was scheduled. I called him well in advance, I think three weeks in advance of that meeting, and asked him if that would be convenient for the ANC, and he indicated it made no difference to them and he had no problem with it. We certainly did not have the courtesy of someone asking the same of us at this time

so we didn't have to fly four people in from out-of-state for this hearing.

CHAIRPERSON REID: Thank you. Board members --

MS. KING: Did Ms. Ambrose want to speak to the issue?

CHAIRPERSON REID: Please come forward.

MS. AMBROSE: Good morning, ladies and gentlemen. My name is Sharon Ambrose. I am the Ward 6 Council member. I delivered to you this morning also a request for a continuance. Let me just say that in disputed cases in respect to zoning issues, the community -- when the community opposes it is often placed at a disadvantage when the applicant is well-funded and able to avail itself of all kinds of technical resources. This is really the situation in which this community, which is part of my Ward 6 community, finds itself. The traffic studies which people are thinking are the dispositive issues here -- I frankly do not consider them to be dispositive and I will think to other issues when we continue the case -- but the traffic issues often are dispositive in cases like this. The community, which has already taken up a collection literally to hire counsel to represent them because, of course, the applicant, which is a national corporation, has the wherewithal to hire very experienced large law firm counsel. The community, when it discovered that the applicant was also hiring a traffic engineer, asked me if I could find resources within government to help them present traffic studies. I asked DPW for anything that they had in respect to recent traffic

studies. I asked the Metropolitan Council of Governments traffic technicians if they had things that would be helpful. The bottom line is that the most recent large scale, full scale traffic study that DPW has done was done in about 1993. Various things have occurred since then that have changed traffic patterns, not the least of which is increased development along 8th Street. I might add a welcome commercial development along one of our main streets in the community. But DPW simply has not the resources to respond to my request in a way that would match the extent and scope of the professional traffic engineering study that I believe the applicant is prepared to put forward. I say I believe because we have not seen it and that is part of the problem.

So I would respectfully request that you allow a continuance so that the community can better martial its resources from whatever way we can to show you why we believe this to be an inappropriate business in this site.

CHAIRPERSON REID: Thank you.

MS. GIORDANO: I would just like to reiterate that that is not a legitimate reason for a continuance. When we met with the ANC, we had a number of people in the community that said to us we are very familiar with the traffic issues in this neighborhood and this is what is going on. There is a fire truck that backs up down this road. There is traffic congestion at this intersection during rush hour because of drop-offs for the Metro and pick-ups. They asked us, have you looked closely at these traffic issues, and that is why we did this. I mean, it is a totally appropriate thing to do and we should not be

penalized for doing that by losing the opportunity to present our case today.

CHAIRPERSON REID: Thank you.

MS. KING: Has your traffic study been given to the ANC and to the community?

MS. GIORDANO: No, I don't believe so. It is a matter of public record. It certainly was available.

MS. KING: And it was not provided even to the ANC, which is a party to this case?

MS. GIORDANO: Not at the time. The time that we met with the ANC, it was not done, no.

MS. KING: Has it been done today?

MS. GIORDANO: No.

MS. KING: Madam Chair -- the traffic study being referred to is this, is that correct?

MS. GIORDANO: Yes.

MS. KING: It is in my package. It was delivered to my house on Friday. I don't quite understand why the ANC, which is an automatic party to this case and which the Papa Johns applicants must have been aware of it being so. I know that Ms. Giordano knows that the ANC is automatically a party. That even the ANC did not receive the traffic study that is going to be part of the record that we are considering today. I don't think that is fair and I think it is a good excuse for a continuance. All the documents should be presented at least to the ANC.

CHAIRPERSON REID: Mr. Foushee?

MS. ROSE: But the documents are made part of the record and the ANC is free to come and review them. They get a referral early on, but not all of the documents are sent to them.

CHAIRPERSON REID: Mr. Foushee?

MR. FOUSHEE: I tend to agree with Ms. King. I am not quite sure about the process, whether it is given to them directly or whether it is available to them. But if the ANC has not had an opportunity to review the documentation so that everyone is prepared for this, I think we need to make sure that everyone has been brought up to speed on the case.

CHAIRPERSON REID: Mr. Nettler --

MS. KING: I would also hope, Madam Chair, that we would have something --

CHAIRPERSON REID: I was --

MS. KING: I beg your pardon.

CHAIRPERSON REID: Mr. Nettler, we are not clear on the organization that you represent. You said a group that --

MR. NETTLER: It is a group.

CHAIRPERSON REID: Let's reveal the name of that particular group, please.

MR. NETTLER: It is a group of individuals who live there, not with any formal name, as well as the Capitol Hill Merchants Society -- Mr. Kelly, Ms. Burn, Mr. Halberstein, and a number of other property owners who live immediately adjacent to it. I think the point that the staff made about the record being available to the ANC is worth addressing. Because as your rules provide and as everyone

knows, these documents are supposed to be filed 15 days before. I don't know about the ANC, but we checked to see whether they had been filed 15 days before and they were not. There was nothing in there to indicate that a request was being asked to extend. But in any event, since there was a representation made to the ANC at its meeting back in February that the applicant would be providing this information to the ANC directly, I think as Ms. King has said, it was only fair that they provide this information that they said they would provide.

CHAIRPERSON REID: Okay. Mr. Nettler, in other words you represent not an organization per se. You represent a group of individuals who have retained you to act in the capacity of their attorney.

MR. NETTLER: That is right. Karen and Byrne Kelly, Linda Barnes --

CHAIRPERSON REID: People who are abutters to that particular property?

MR. NETTLER: That is right.

MS. KING: Eligible for party status?

MR. NETTLER: That is right. We would have been asking for party status. They all live within the 200 feet. They all actually own property that immediately abuts this property.

CHAIRPERSON REID: Okay.

MS. PRUITT-WILLIAMS: Madam Chair, just for clarification. The supplemental application actually came in 12 days.

CHAIRPERSON REID: Can you all hear her? She

has a little laryngitis. So can you --

MS. PRUITT-WILLIAMS: Just for clarification of the record, supplemental application information came in 12 days to the hearing.

MS. KING: Came in when?

MS. PRUITT-WILLIAMS: 12 instead of 9 or 15.

CHAIRPERSON REID: Rather than the 14?

MS. PRUITT-WILLIAMS: Correct.

MS. KING: And we have nothing from DPW and nothing from the fire department, both of which appear to be --

CHAIRPERSON REID: I do not have --

MS. GIORDANO: There is a submission from DPW.

MS. KING: I don't have it.

MR. BASTIDA: Madam Chairperson, the Office of Planning has received --

CHAIRPERSON REID: The Office of Planning has a report and Historic Preservation has a report. I am sorry, this is Mr. --

MR. BASTIDA: For the record, my name is Alberto Bastido with the D.C. Office of Planning. The Office of Planning received a report from the Department of Public Works yesterday and this morning from the fire department, and we were going to submit it into the record at the time of our presentation as we customarily do so. Thank you.

MR. NETTLER: I would note, if you want, I have a stamped copy of the submission. And while it may look like it was April 22nd, it says April 27th is when it was stamped in as received by

the Board.

CHAIRPERSON REID: I think that I concur with my colleagues in this instance in regard to this particular continuance in that a continuance was requested and granted to the applicant. And we come now to a continuance that is being requested by the opposition and also in light of the issue of the timeliness of the submission of some of the reports for the -- to give the opposition an opportunity to have reviewed them adequately. I would tend to move toward a continuance. Should we vote or is it just a consensus?

MS. KING: Vote or not, I think we should continue the case and perhaps set a date certain for it. But I think admonish all sides to present each other with all documents well in advance of the next hearing so we don't have to do this again.

CHAIRPERSON REID: I am sorry, Mrs. King, the Secretary was talking to me.

MS. KING: I think that we should also admonish both sides of this controversy to share all information with each other well in advance of the next hearing so that we don't have to go through another continuance, but that everybody will have all the information and everything and that then we can get on with it.

MS. GIORDANO: Can we request that the continuance be granted to a date certain and that that date be timely? We have had this application pending since January.

CHAIRPERSON REID: I think that that is not an unfair request all things considered. I think to both sides to be equitable, I feel that whatever date certain we come up with will be it.

Any unreadiness at that time would be something that would be just unfortunately not anything that we would want to have to contend with at that date. Because we try to be fair and impartial to all entities involved. Whatever time we set, we ask that you please, number one, prepare your cases adequately. Two, if you can possibly meet and try to mitigate or diffuse the various obstacles or the various issues that you are now at odds with, that would be all well and good. We would like to see that when you come forward. If you can when you come forward for the next hearing, which will be --

MS. PRUITT-WILLIAMS: I am sorry, Madam Chair, do you want the next available hearing date or the next.

MS. GIORDANO: We would request -- I mean if two weeks is the controversy or the amount of time that they would have to review a report, that is what we would request is a two-week continuance.

CHAIRPERSON REID: Well, it would have to be -- it would have to be scheduled in such a way --

MS. GIORDANO: To conform with your hearing dates. I understand.

CHAIRPERSON REID: That would -- right. That would be in keeping with our calendar. However, we are going to try to get you the -- make it as expedient as we possibly can.

MS. PRUITT-WILLIAMS: We have -- the first available date appears to be June 3.

CHAIRPERSON REID: June 3?

MS. PRUITT-WILLIAMS: Yes. We have a meeting in

the morning and hearing in the afternoon.

CHAIRPERSON REID: Okay.

MS. PRUITT-WILLIAMS: So we could actually hear this case in the morning.

CHAIRPERSON REID: Mr. Nettler, June 3 is the proposed date.

MS. KING: I wonder -- Madam Chair, I wonder if we are adding this to our schedule. Unless we anticipate a very long meeting in the morning, I wonder if we could start it in the morning. Because it looks to me as if this was not going to be a short case.

MS. GIORDANO: Apparently Papa John has a national convention. Can you speak to that?

UNIDENTIFIED SPEAKER: We have a franchise convention and we have all our operations individuals in town from all over the United States into Louisville.

CHAIRPERSON REID: June 3 is not good.

UNIDENTIFIED SPEAKER: Right. That weeks is not good.

CHAIRPERSON REID: What is the next available date, please, Ms. Pruitt-Williams.

MS. PRUITT-WILLIAMS: The next available date would be --

MS. KING: June 17th?

MS. PRUITT-WILLIAMS: It is already filled. June 17th is filled. July is filled. The actual next available date unless you do a special hearing is going to be September.

MS. KING: Oh, no. Let's do a special hearing.

MS. PRUITT-WILLIAMS: So we can do a special hearing.

MS. KING: Yes, let's do a special.

MS. PRUITT-WILLIAMS: In June on the 24th. Does that conflict with your --

CHAIRPERSON REID: June 24th a special hearing. Is that date amenable to everyone involved? Mr. Nettler? Ms. Giordano? Okay.

MS. PRUITT-WILLIAMS: 9:30.

CHAIRPERSON REID: 9:30 is fine. June 24 at 9:30 a.m. This case will be continued. Thank you.

MS. KING: Madam Chair, I would like to note for the record that because we are under the gun so about how we cause so many delays and so forth. This case was filed in January, I understand. It was scheduled for March and delayed at the applicant's request. It is now being delayed further at the opposition's request and still further at Papa Johns request. So when the record -- let the record show that we were prepared to act two months after the case was filed and not 7 months or 6 or whatever it was. Just for the record because we are so self-conscious about our timeliness.

CHAIRPERSON REID: Well thank you, Mrs. King. Next case please? Were we able to contact anyone that was affiliated with the other two cases, Madam Secretary?

MS. ROSE: We are still waiting on -- just a moment. Yes.

CHAIRPERSON REID: Excuse me. We are still in session. We would appreciate it if you would please take the discussions that you have out into the outer lobby. Thank you very much.

MS. ROSE: Madam Chair, with regard to case 16288 of Ira Clements, there is a gentleman here that indicates that the -- well, did you want to explain? Give your name and home address for the microphone.

MR. HUGHES: I am Larry Hughes. I am here for Mr. Ira Clements. He had broke his hip and also he had notified me that he had not received the notice of where he was supposed to be for the hearing and he would like to make another date for the hearing if he could because he had broke his hip.

CHAIRPERSON REID: Okay. He wants to ask for a postponement?

MR. HUGHES: Yes, ma'am, for another date.

CHAIRPERSON REID: All right. Board members, I have no problem with that. Unless you do, then it will be so granted.

MS. KING: I have great compassion.

CHAIRPERSON REID: It will be so granted.

MR. HUGHES: Okay. Will it be sent --

CHAIRPERSON REID: And you will be notified -- or are you going to give them a date certain now.

MS. PRUITT-WILLIAMS: I was going to say, we can reschedule this for September at this point.

CHAIRPERSON REID: A date for September.

MS. PRUITT-WILLIAMS: September 2.

MR. HUGHES: September 2? Okay.

CHAIRPERSON REID: Thank you.

MR. HUGHES: Thank you.

MS. PRUITT-WILLIAMS: That will be in the afternoon at 1:00.

CHAIRPERSON REID: Ms. Rose, seeing no one else in the audience today other than for the applicant for Jerome Lindsey, can we just assume that Laverne Lacy just did not appear today?

MS. ROSE: Just a moment. The applicant was called in this case and his office will notify him whenever he arrives and he will call us back. We weren't able to speak with him directly yet.

CHAIRPERSON REID: All right.

MS. ROSE: So we can wait and see if he contacts us.

CHAIRPERSON REID: Okay.

MS. ROSE: So we can go on to the last case of the morning.

CHAIRPERSON REID: If we hear from him before the afternoon session, then perhaps we can do it just before we start the afternoon session -- or the meeting this afternoon.

MS. ROSE: Absolutely.

MS. KING: Could I ask staff a question about these two cases that are no shows. It appears that they are both in the

same neighborhood. They are both decks that were built without any permits or approval. I mean, is DCRA doing something about the -- is it the same contractor and is DCRA doing anything about it? Or is that beyond our purview? I mean, it just seems to me highly suspicious that we have two very similar decks in the same neighborhood, both built without permits.

MS. PRUITT-WILLIAMS: The problem is DCRA has one inspector that goes out in both cities.

MS. KING: I understand all the problems at DCRA. But I just --

MS. PRUITT-WILLIAMS: I think it is more of a functional --

MS. KING: Do you know what I am saying?

MS. PRUITT-WILLIAMS: I think it is a function of people doing it and not getting permits because they just know --

MS. KING: That is clear. And then somebody blows the whistle on them and the inspector goes out and then they come to us and say please don't tear it down. But I mean -- I think -- I just wonder if we could invite DCRA to look at some confluence of illegal decks and one particular builder and maybe do something about the builder. Anyway, let's not keep Ms. Buster waiting any longer.

MS. ROSE: The last case of the morning is 16339, the application of Jerome Lindsey on behalf of Kaleb L.L.C., pursuant to 11 DCMR 3108.1 and 3107.2 for a special exception under Section 205 and a variance from the on-street parking requirements of Section 2101 to establish an office and after-care child development center for

children ages 10 months to 10 years and two staff in the basement through second floor of an existing structure in an R-2 district at premises 801 Rittenhouse Street, N.W., Square 2980, Lot 24. Would all persons planning to testify in this application please rise to take the oath?

(WITNESSES SWORN.)

MS. ROSE: You may be seated.

MS. BUSTER: May I start now?

CHAIRPERSON REID: Yes.

MS. BUSTER: Good morning, Board members. I have a prepared statement, but it has been altered because there is no one here from --

CHAIRPERSON REID: Please give your name and address first, please.

MS. BUSTER: Okay. My name is Karan Buster. I live at 110 Abraham Street, N.W., Washington, D.C.

CHAIRPERSON REID: Okay. Repeat your name for me one more time?

MS. BUSTER: Karan Buster.

CHAIRPERSON REID: Buster. Okay. Mrs. Buster, as you can see there is no one here but you in this case. So if you would like to abbreviate or expedite, you can do so. You said that you had a prepared statement that was, I guess -- it was prepared in anticipation of having to put on a full case. Just basically give us the highlights of your case and then we will ask questions. We have quite a bit of information within our files that we have already read. So we

can move through this fairly quickly.

MS. BUSTER: Okay. The highlights are that I am requesting a special exception to open a daycare center in a residential neighborhood. I applied for a certification of occupancy and it was denied and I applied here for the exception. There was a request for parking. The code requires that you have one space for every four employees. I have submitted pictures of my property, and I do have parking for the employees, if I have that many employees. At this time, I don't have any. And I don't see having more than three, which I have parking for the three people that would be employed with me. However, I am only required to have one for every four employees. I have pictures of the street involved that I am willing to show to you and a picture of the facility to show that there is ample space. It is a beautiful site for a daycare center.

CHAIRPERSON REID: Okay. Ms. Buster, you are asking for a special exception under Section 205, correct?

MS. BUSTER: Yes.

CHAIRPERSON REID: All right. Then we need for you to go through 205 and tell us how you are in compliance or how you will comply with that particular regulation. Do you have a copy? Are you familiar with the section?

MS. BUSTER: I do have it here. I did bring it. Okay, I will address 205.2. It says that the center shall be capable of meeting all applicable code and licensing requirements. I have not applied for a license because you are required -- if you apply for it, you have 60 days in which to meet -- to be in compliance with -- to

complete your application procession. So I was told that I needed to get approval of the Zoning Commission before applying for the license.

CHAIRPERSON REID: Well, I mean, it says the center shall be capable of meeting all applicable codes and licensing requirements.

MS. BUSTER: And it is capable of meeting all of the requirements. It has the space. It has the playground. It has everything that is required -- the bathrooms. It has everything that is required in opening a daycare center.

CHAIRPERSON REID: Okay.

MS. BUSTER: 205, the center shall be located -- 205.3, the center shall be located and designed to create no objectionable traffic conditions and no unsafe conditions for picking up and dropping off the children. May I approach the bench and show you pictures of my street?

CHAIRPERSON REID: Yes. You can give them to the Secretary.

MS. KING: Do you have a plan for the drop-off and pick-up of the children?

MS. BUSTER: Yes. I am offering transportation. So there may not be many children being dropped off by parents. Many of the children live in the neighborhood, so many of them will walk. My plan is that the children would be dropped off on the north side of the street for safety precautions. Parents who drive will park on the north side of the street for approximately 15 minutes in the morning

and 15 minutes in the evening. As you can see on the pictures, there are very few cars on the street in the morning and in the afternoon. Usually it doesn't fill up until about 6:30 or 7:00 in the evening. I have pictures that were submitted with my application. They were taken approximately two months ago. Anytime you go down that street -- I am there everyday -- the street virtually looks like what you see there.

MS. KING: Okay.

MS. BUSTER: And that is in front of the house and on the side street. My property is on a corner, so there is no parking beside it because it is my property and there are no houses there. So there is no reason for anyone to be there.

MS. KING: Okay. So you are confident that that won't create a problem in the neighborhood?

MS. BUSTER: Yes. I also have a petition that I just received -- well, actually it is a notice that I received from my immediate neighbors, the ones that live adjacent to my property. And where you see those streets, they said that they don't have a problem with the parking. In fact, they would be glad to have a neighbor because the house has been vacant for a number of years. So I have been on the street cleaning it up. There was brush and trees. There are approximately 25 trees in my yard. It is over 6,000 square feet in that yard space. I have been -- I have done a lot for the neighborhood in terms of cutting down the brush and cleaning up the streets and cleaning the gutters. I mean I physically do it myself.

MS. KING: Would you like to come and do it at my house?

MS. BUSTER: Well, it is because I can't get anybody else to do anything.

CHAIRPERSON REID: Mrs. Buster, you said that you provide transportation for some of the children who would be attending the child development center?

MS. BUSTER: The option to be picked up and dropped off at home will be available to the children.

CHAIRPERSON REID: All right. Well continue with the 205 please.

MS. BUSTER: 205.

CHAIRPERSON REID: I think we stopped at the --

MS. BUSTER: 205.3

CHAIRPERSON REID: 205.3.

MS. BUSTER: 205.4 -- the center shall provide sufficient off-street parking spaces to meet the reasonable needs of teachers, other employees, and visitors. I spoke to that earlier.

CHAIRPERSON REID: Yes. Just go to the next one.

MS. BUSTER: Okay.

CHAIRPERSON REID: You told us about that. That is fine.

MS. BUSTER: All right. 205.5 -- the center including any outdoor play space provided shall be located and designed so that there will be no objectionable impacts on adjacent or nearby properties due to noise or activity or visual or other objectionable conditions. You have the pictures. The page where the trees are, that is my yard. That is the backside of my yard. So that is where the

children will play. It is fenced in. They are little children, so there shouldn't be very much noise.

MS. KING: What ages?

MS. BUSTER: Well, most of the children will be 2 and 3. Some of the children will be older for tutorials. I am offering a service that is really needed in the area. So at 3:30 -- the tutorials are by appointment only. So there will be older children there, but they will be supervised at all times. I don't have any objection -- they neighbors don't object to it. They would rather see the children -- I was told that they would rather see the children there than some of the other things that have been present. That is the best I can say. And according to the requirements of the Consumer Regulatory Affairs, there is ample space for the number of children that I plan to provide service for. In fact, I have enough space to provide for three times the number of children that I will have in terms of play area.

MR. FOUSHEE: Excuse me, Ms. Buster, can we go back to something for a moment. For 205.4 regarding the parking and it says shall provide sufficient off-street parking. Are you providing off-street parking somewhere here in a yard or paved area? I am also looking at the letter that Ms. Nungert sent, which was dated January 20, 1998. It looks as if the parking that you are referring to is on-street as opposed to off-street parking.

MS. BUSTER: I have off-street parking. In the packet that you have -- I don't have those actual pictures with me today. It gives you a picture of the facility here. Do you have this package, the one I submitted?

CHAIRPERSON REID: Yes.

MS. BUSTER: The picture in the front right here, there are two parking spaces here and there are actually three parking spaces behind the fence.

CHAIRPERSON REID: Okay.

MS. BUSTER: And they are concrete.

CHAIRPERSON REID: Can you bring that up so that we can see?

MS. KING: I think it is this one, isn't it?

CHAIRPERSON REID: Right here, you mean?

MS. BUSTER: Oh yours isn't as clear as mine.

CHAIRPERSON REID: No. Okay. I see.

MS. BUSTER: There they are.

CHAIRPERSON REID: By here you mean -- the same as you have --

MS. BUSTER: There are parking spaces here and there are parking spaces all the way 112 feet.

CHAIRPERSON REID: Into the yard?

MS. BUSTER: Yes.

CHAIRPERSON REID: Okay. Now the question is is that area separate from where the children's play area is?

MS. BUSTER: Okay. The children's play area is on this side of the building.

CHAIRPERSON REID: Okay, now --

MS. BUSTER: All the pictures that you have there are on -- facing the building, they are to your right.

CHAIRPERSON REID: Do you have any fence or anything that would separate wherever the cars are being parked from the children's play area?

MS. BUSTER: Yes. There is a fence right here. As you enter here, there is a fence right there. There is another fence, and it is on that picture that you have.

MR. FOUSHEE: This one here?

MS. BUSTER: Yes. So this is the right side of the building and that is the only area that I am using for play space. Do you see the fence right there? That separates one of the play areas --

CHAIRPERSON REID: That is the fence that would separate the --

MS. BUSTER: That is a separate fence. There you can see it better.

CHAIRPERSON REID: Okay. All right.

MS. BUSTER: And at the end of the driveway, I haven't erected a fence or put a fence up because I don't want to spend money when I don't have to. You know, in terms of -- if it is not approved, then I don't want to put it up.

CHAIRPERSON REID: But you would?

MS. BUSTER: I would. Oh, definitely.

CHAIRPERSON REID: All right.

MR. FOUSHEE: That is all.

MS. BUSTER: Okay. There was one other document that I wanted to share with you in terms of -- did I make copies? I am not exactly sure how to do this part of it.

My neighbors signed -- many of them are very old and have sicknesses. So they asked that they turn this in. What I said is I am not exactly sure how to present that or who I should present this to. I just picked it up yesterday, but this is a copy of the statement from my neighbors saying that they are not in opposition to me opening a daycare center there and there is no parking problem for them.

CHAIRPERSON REID: Okay. Continue, please.

MS. BUSTER: The Board may require special -- 205.6. The Board may require special treatment in the way of design, screening of buildings, planting and parking areas, signs or other requirements as it shall deem necessary to protect adjacent and nearby properties. I think that is for you to address me.

CHAIRPERSON REID: Yes. Go ahead.

MS. BUSTER: I don't plan to put a sign up. 205.7 -- any off-site play area shall be located as not to result in endangerment to the individuals in attendance at the center and traveling between the play area and the center itself. I have a yard for the children to play in, so I won't be going to nearby playgrounds.

205.8 -- do you want me to address that? I think that is for the Board to decide.

MS. KING: What is it?

MS. BUSTER: It says the Board may approve more than one child development center in a square or 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.

MS. KING: Is there another facility that close to where you are going to be?

MS. BUSTER: Yes.

MS. KING: Oh, there is?

MS. BUSTER: Yes.

CHAIRPERSON REID: Another childcare center?

MS. BUSTER: I am sorry?

CHAIRPERSON REID: Another childcare center?

MS. BUSTER: Yes.

MS. KING: How far away?

MS. BUSTER: Three blocks in one direction and five blocks in another direction. On Georgia Avenue.

CHAIRPERSON REID: Okay.

MS. BUSTER: All of these centers are on commercial roads or very highly traveled.

CHAIRPERSON REID: So to your knowledge, there is one other?

MS. KING: Two.

CHAIRPERSON REID: There are two?

MS. BUSTER: Two other.

MS. KING: One is five blocks and one is three blocks.

MS. BUSTER: Actually, there is another one as well. The Howard Preschool is on Piney Branch Road which is five blocks away as well.

MS. KING: And what is the benchmark? 1,000 feet?

MR. FOUSHEE: Yes.

MS. KING: How many feet in the average block? You are the planner, you should know that, Maurice?

MR. FOUSHEE: Well, 1,000 feet would be roughly one-fifth of a mile. And usually 10 to 12 city blocks is equal to a mile. So if you are talking about five blocks, five city blocks --

MS. BUSTER: They are pretty big blocks.

MR. FOUSHEE: Those would be outside probably. The one we would probably be concerned about would be the three block -- the center that is within three blocks.

CHAIRPERSON REID: And it also states that only -- we will approve -- the Board can approve it if we find that the cumulative effect of these facilities will not have an adverse effect on the neighborhood due to traffic noise, operation, or other similar factors.

MS. KING: Yes.

CHAIRPERSON REID: So we have to look at that in light of whatever opposition we may see or hear, which there does not appear to be any. So go on to the next one.

MS. BUSTER: Okay. 205.9 -- before taking final action on the application for use as a child development center, the Board shall submit the application to the D.C. Department of Public Works and Human Services and the D.C. Office of Planning for review and written reports.

205.10 -- the referral to the D.C. Department of Human Services shall request advice as to whether the proposed

center can meet all licensing requirements set forth in the applicable laws of the District.

CHAIRPERSON REID: Board members, did you receive something from Human Services?

MS. KING: I didn't, no. Did you?

CHAIRPERSON REID: No, I did not.

MS. KING: Did we ask for it, Tracy? Did we request anything from DHS?

MS. ROSE: I am showing that all referrals were made properly. I don't have that, so I can ask.

CHAIRPERSON REID: Where is the file? Let's just check in the file?

MS. ROSE: I checked on Monday and this morning and there was no response. I checked it the other day. On the 19th, a referral was made -- did you say DCRA?

MS. KING: Yes.

MS. ROSE: Yes.

MS. KING: No, to DHS?

CHAIRPERSON REID: Human Services.

MS. KING: Human Services.

MS. ROSE: Exhibit 15.

MS. KING: Oh, to Jerry Williams, yes.

CHAIRPERSON REID: It was done?

MS. KING: On the 17th of March.

MS. ROSE: Yes.

CHAIRPERSON REID: And they have not

responded?

MS. ROSE: No.

MR. FOUSHEE: The applicant has indicated that she has --

MS. BUSTER: I am sorry, I can't hear.

MR. FOUSHEE: You mentioned that you have also been checking for a response and have not received anything?

MS. BUSTER: No, I haven't. I received a call from the ANC Commissioner for 4B-04 last Wednesday, and that is the only response, and you have a statement from her. That is the only response I have heard.

CHAIRPERSON REID: Ms. Rose, when we refer things out to the various governmental agencies, is there a time limit in which they are supposed to respond so that we can consider their submission when we are --

MS. ROSE: I think that it is 7 days before, but I would have to check to see if that is only limited to certain agencies. I know the ANC is required to respond 7 days before and the Office of Planning.

CHAIRPERSON REID: But I mean the government agencies.

MS. ROSE: And the Office of Planning is 7 days before. But I will have to -- I am going to look at the regs to see if it is all of them.

CHAIRPERSON REID: Okay. Ms. Buster, go ahead.

MS. BUSTER: I went to the ANC meeting in February

-- actually, no, in March. There was not a quorum so they could address the daycare center. At that time, there was no opposition. However, since -- and also the seat on the street that I live in -- I mean, where my house is, it was vacant or it appeared to be vacant in March. As of last week, many of the neighbors found out we do have an ANC Commissioner. So she has expressed some interest in the daycare center on Rittenhouse Street. However, that is why my neighbors sent their letters in because they are not in opposition. The opposition is coming from three or four blocks away.

MS. KING: Do you know what the basis of it is? I mean, I am not asking you to argue their case, but I mean --

MS. BUSTER: I know that there was a case that was -- there was an application for a daycare center on Rittenhouse Street some years back and there was a problem there. But there is no problem there anymore because the house has been boarded up. It was a -- I really don't want to speak to the issue because I don't know because I had nothing to do with it.

MS. KING: I am sorry, that is really not a proper question.

MS. BUSTER: That was the only problem I saw and that was the only thing that my neighbors -- I have only been involved with the neighborhood for about a year and that was the only issue that they brought up. But they understand that I am a very different person. I mean, the things that I am doing, I am physically there and they can see me and they can reach me. So they know that I am not a part of that happening. I don't know anything about that.

CHAIRPERSON REID: I don't think that -- did you all receive anything in your packages regarding this opposition?

MR. FOUSHEE: No.

MS. KING: No. The only thing we received was today, the ANC's request that we give them --

CHAIRPERSON REID: A continuance?

MS. KING: No, that we give them 30 days.

MS. BUSTER: She called me and she requested some information and I submitted the information that she requested. I have called her every day since to set up a time to meet with her and walk through the property and talk to the neighbors in the neighborhood, but I haven't had a chance to meet with her. I am there every day. It is just that I think she works during the day, so she hasn't had a chance to get back to me. I haven't heard from her yet.

CHAIRPERSON REID: Okay.

MS. BUSTER: But I do know that there is a meeting next Thursday that I plan to attend.

CHAIRPERSON REID: Okay. Are you done with your presentation?

MS. BUSTER: Yes.

CHAIRPERSON REID: Okay. Board members, do you have questions -- additional questions?

MS. KING: No. I have some -- I think -- you indicated that you would have no problem with the record being held open for us to hear from the ANC?

MS. BUSTER: Oh, no. I mean, I want to work with

the people. This is a community event, not something that --

CHAIRPERSON REID: For the 30 days?

MS. BUSTER: Oh no, not the 30 days.

CHAIRPERSON REID: Okay. But that is what they --

MS. KING: Well, they are meeting next Thursday.

CHAIRPERSON REID: Two weeks. You are -- well, what we have to contend with is the request is for 30 days.

MS. KING: I understand.

CHAIRPERSON REID: And either we will extend it for 30 days or we will not. You can't amend their request.

MS. KING: No, but I just -- it seems -- when would they have to -- if we were to decide this case at our June meeting, which is what? The third of June is it? When would they have to have their stuff in?

MS. ROSE: If the applicant wants to respond, then we would have two dates. The first date would be -- the submission would be due on May 18 and the responses would be due May 27. The Board could decide the case on June 3.

CHAIRPERSON REID: So they would have had -- they will --

MS. KING: They would have four days to get their thing in.

CHAIRPERSON REID: Four?

MS. KING: Four because of the 18th. Didn't you say the 18th?

MS. ROSE: May 18th.

MS. KING: They are meeting on May 14th.

CHAIRPERSON REID: Oh, you mean after their meeting?

MS. KING: Yes, their meeting on the 14th, which is a Thursday. They would have until the following Monday to deliver a letter or fax a letter over with their decision.

CHAIRPERSON REID: Well --

MS. BUSTER: I would like to state for the record that I am opposed to the 30-day wait, but I have no problem with the 15-day wait.

CHAIRPERSON REID: Well, if we make this decision for our June 3 meeting, then it would give them some time to have met and to -- once they are so notified of our decision today, then to make a timely submission. So it would give them a window of opportunity if they so desire.

MS. KING: Absolutely.

CHAIRPERSON REID: Okay. Then in regard to that issue, Mrs. Rose, we would -- well, we will come to that. We will make that determination as we go through the case. Have you completed your presentation?

MS. BUSTER: Yes, I have. I would like to know if I have any rights after they have submitted whatever it is that they submit.

CHAIRPERSON REID: Yes. You will have -- after they submit whatever they submit, you will then have --

MS. BUSTER: A chance to respond to it?

CHAIRPERSON REID: You will receive whatever they submit. Does she receive it automatically? Do they have to notice --

MS. ROSE: Yes. They will have to give it to her as well. All parties.

CHAIRPERSON REID: Okay. So they will have to make sure that you receive it and then you have a certain time frame -- how long?

MS. ROSE: Until May -- hers would be due on May 27.

CHAIRPERSON REID: To respond to whatever they submitted. And then we will decide the case on June 3.

MS. BUSTER: Okay.

CHAIRPERSON REID: Okay.

MS. BUSTER: Will I be required to be here? I do have to leave town. My mother has cancer and I have to leave for a portion of May.

CHAIRPERSON REID: I am sorry to hear that. No, you do not have to be here for the meeting.

MS. BUSTER: But I will respond in a timely fashion.

CHAIRPERSON REID: Okay. Let's see, where are we. Government reports -- we didn't have any is what we have determined. ANC did not submit anything. Board members, did you -- did I overlook something? I did not receive anything from the ANC except for the letter in which they requested and we are dealing with that as we go along. Opposition and support, obviously there is none.

Do you have closing remarks?

MS. KING: You know, I wonder -- it is usual in these daycare center cases for us to establish hours -- you know, put in the order hours of opening and stuff like that.

CHAIRPERSON REID: We will do that once we come to the disposition.

MS. KING: But, I mean, she is not going to be here then. So what we need to find out from her I think at this point is when are you going to be open and what are your hours of operation, et cetera.

CHAIRPERSON REID: That is --

MS. KING: How many children and how many staff?

CHAIRPERSON REID: That is in her letter -- her report. She requested from 7:00 a.m. to 7:00 p.m.

MS. KING: Okay, great.

CHAIRPERSON REID: She requested children between the ages of 10 months and 7 years -- no, 6 months to 10 years for the two -- regular and before and after care?

MS. BUSTER: Yes.

CHAIRPERSON REID: Weekend tutorials from 9:00 to 5:00 p.m.

MS. KING: Okay.

MS. BUSTER: Those are by appointment only.

CHAIRPERSON REID: Okay. And you asked for -- well, you are going to supply 3 parking spaces, 15-plus persons. We need to get a number on how many children. A number -- an exact

number of --

MS. KING: Not exact, but a maximum number.

CHAIRPERSON REID: Okay, maximum.

MS. BUSTER: A maximum of 25. And the reason why I say 25 is that in walking through the neighborhood -- actually, I had a waiting list of 7 children and three parents, which weren't very many. But in order to accommodate some of the community, I would have to increase my number. So I agreed to increase it to 25 after talking to the mothers in the neighborhood.

CHAIRPERSON REID: Okay. 25 and then --

MS. BUSTER: Max.

CHAIRPERSON REID: And --

MS. KING: Number of staff?

CHAIRPERSON REID: Number of staff members?

MS. BUSTER: Well, the number of staff would be determined by the ages of the children, but no more than 5.

MS. KING: And doubtless we will put a condition -- if we grant your application, we will doubtless put a provision that this is subject to your being properly licensed by the Department of Human Services.

MS. BUSTER: Absolutely.

CHAIRPERSON REID: Definitely.

MS. KING: Okay.

CHAIRPERSON REID: Okay. Closing remarks?

MS. BUSTER: Thank you for allowing me to speak, and I respectfully request that the Board, if there is no opposition,

grant my request for the exception and the variance. Thank you very much.

CHAIRPERSON REID: Okay. I think that concludes the morning session.

MS. ROSE: The record in this application is closed except for the documents from the Advisory Neighborhood Commission which would be due on -- what did I say -- May 18th, and proposed findings of fact and conclusions of law and responses to the ANC report will be due on May 27. The Board will consider a decision in this case on June 3 at the public meeting at 9:30 a.m.

CHAIRPERSON REID: Okay. Now we conclude our morning session.

MS. ROSE: Madam Chair, we did have one other case that was still pending because we were waiting to hear from the applicant. Was there another matter with regard to this case that you needed to mention, Ms. King?

MS. KING: No. I was just curious if you want these files back or not.

UNIDENTIFIED SPEAKER: The applicant is on the phone now.

MS. ROSE: Okay. The applicant is on the phone in the -- I think it is the first application of Laverne Lacy.

CHAIRPERSON REID: Okay.

MS. ROSE: And Ms. Pruitt has that information.

MS. PRUITT-WILLIAMS: Madam Chair, for the record I just -- we got a call from -- a request from Mr. Neal Snyder,

who is representing Ms. Lacy, and there appeared to be some confusion on his part as to when the hearing actually was. Suffice it to say he is out of town and both he and his partner are out of town. I was talking to them long-distance. And they are requesting a continuance on their case.

CHAIRPERSON REID: Okay. Do you want to -- actually, that is a postponement, isn't it? We view that as a postponement?

MS. ROSE: A postponement.

CHAIRPERSON REID: Yes, a postponement until --

MS. PRUITT-WILLIAMS: September -- the first available date would be in September and they have no concerns with that.

CHAIRPERSON REID: Board members?

MS. KING: Again, we have an illegal deck for which they will again have the summer to enjoy it before potentially having to tear it down.

CHAIRPERSON REID: September what?

MS. PRUITT-WILLIAMS: September 2.

MS. KING: I have no problem.

CHAIRPERSON REID: September 2. Okay, that is fine. They will request a postponement -- we will grant the postponement.

MS. KING: Do you want us to return our files so that you don't have to do them over again?

MS. ROSE: If you would like to, yes. I think there are

three of them -- three cases that are being either continued or postponed. If you want to return the material.

CHAIRPERSON REID: In Ms. Buster's case, just give me the dates again. The ANC report is due by May --

MS. ROSE: May 18.

CHAIRPERSON REID: By May 18. And the response is due by May 22?

MS. ROSE: 27.

CHAIRPERSON REID: The 27th?

MS. ROSE: Yes.

CHAIRPERSON REID: All right. Thank you, Ms. Buster. Pictures -- please pass the pictures back.

MS. BUSTER: Do you need them for --

MS. ROSE: Yes, we need them for the record.

CHAIRPERSON REID: Well, she submitted copies of the pictures.

MS. ROSE: Do we already have those pictures in our record?

CHAIRPERSON REID: Do we have colored pictures in the record?

MS. BUSTER: No, but I can make them for you.

CHAIRPERSON REID: Would you?

MS. BUSTER: Yes.

CHAIRPERSON REID: If you have not submitted them, we would appreciate them. That would help us for our determination.

MS. KING: I think we -- Tracy, don't we have to keep these having used them as part of our deliberations?

MS. ROSE: We need to have those in the record, whether she provides us with them --

MS. KING: These aren't your only copies are they?

MS. BUSTER: Yes.

CHAIRPERSON REID: Can they be returned? Okay, these are her only copies. So can she provide us with copies of these?

MS. ROSE: Yes, she can. When will you do that?

CHAIRPERSON REID: Can you do that by this afternoon?

MS. BUSTER: Yes.

CHAIRPERSON REID: Thank you.

MS. KING: So we return everything -- we hang onto --

CHAIRPERSON REID: I will keep mine.

MS. ROSE: That is fine.

CHAIRPERSON REID: Because that is like a tickler for me as to -- I have a home file. Boy, do I have a home file.

MS. ROSE: Whenever you submit it to us, just one copy. Just one for the record. Would we be amending that application, the last one, to eliminate the variance for the parking?

CHAIRPERSON REID: You mean Ms. Buster's?

MS. ROSE: Yes. Wasn't there a variance for parking?

MS. KING: The Holly case?

MR. FOUSHEE: No, the Buster.

MS. KING: Okay.

CHAIRPERSON REID: The special exception -- I didn't see a variance. There is not a variance.

MS. ROSE: Yes, Section 2101. There is a variance from the parking requirement and she didn't address that.

CHAIRPERSON REID: Where is that?

MS. ROSE: Except to say that she is providing parking.

CHAIRPERSON REID: Oh, I am sorry, I overlooked that.

MS. KING: She says she had got five parking spaces. That is not a variance, is it?

MS. ROSE: Exactly. So we will be amending this.

MS. KING: Oh, amending her application because she has got five parking spaces.

MS. ROSE: Right. Since she is providing them, she doesn't need a variance.

MS. KING: Right.

CHAIRPERSON REID: Why was it -- I don't understand why that was made a part of this then?

MS. ROSE: I don't understand either. Maybe the zoning administrator didn't know that she had the parking.

MR. FOUSHEE: Either that, or maybe he saw the pictures that detailed the off-street parking.

CHAIRPERSON REID: The Nunley letter says for a special exception --

MS. BUSTER: But I can address it if it needs to be.

CHAIRPERSON REID: You see, I did not see on the Nunley letter --

MS. ROSE: Anything about parking?

CHAIRPERSON REID: Anything regarding a variance request or a variance relief being requested for parking. It was a part of the special exception process. Number 205. I didn't see that on there.

MS. ROSE: Maybe Ms. Dobbins just added it and it wasn't addressed.

CHAIRPERSON REID: The Nunley letter?

MS. ROSE: Yes. We have that. But it does not -- it says special exception only. It doesn't say anything about a variance. And the parking issue was addressed under Section 205. Usually with child development cases, we don't usually -- I guess unless there is something special -- have a need for a variance.

MS. ROSE: Right. Unless they can't provide parking.

CHAIRPERSON REID: That is not -- it states here -- did you hear the discussion? It is not something that was requested from Nunley or from the DCRA. So --

MS. KING: So we don't have to -- then it is not important.

CHAIRPERSON REID: No, because it is being addressed under 205.

MS. KING: So we can amend --

MR. FOUSHEE: This says if you are not able to meet the off-street parking requirements a variance from this may be obtained.

CHAIRPERSON REID: If you are unable to.

MR. FOUSHEE: Yes.

MS. KING: But she is able to. So a variance is not necessary.

CHAIRPERSON REID: What is this letter? Who is this from?

MR. FOUSHEE: This is from -- this is Nunley. It is at the very bottom there.

CHAIRPERSON REID: Wait a minute, this is my Nunley letter.

MR. FOUSHEE: Right.

CHAIRPERSON REID: And your Nunley letter is different.

MR. FOUSHEE: No, it is the same.

CHAIRPERSON REID: Oh, okay. I see. I see. If you are unable to --

MR. FOUSHEE: Yes, right.

CHAIRPERSON REID: Okay. So do you think -- why do you think that the requirement for a variance relief was put in?

MS. ROSE: Apparently he didn't think she could provide it.

MS. KING: No, it says if you can't.

CHAIRPERSON REID: Maybe --

MS. KING: And she has demonstrated to us that she can. So --

CHAIRPERSON REID: Maybe Madeline just put it in there so we could address it.

MS. KING: And we have addressed it and it is not an issue. So she doesn't need a variance.

MS. ROSE: She doesn't need a variance. And all I was saying was when we do the order, did we want to eliminate the request for the variance because that will not be addressed in the order.

MS. KING: Yes.

MS. ROSE: Okay.

MS. KING: I think so.

CHAIRPERSON REID: I think so. We don't need it.

MS. ROSE: We are adjourned.

(Whereupon, at 11:26 a.m., the hearing was adjourned.)

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