UNITED STATES OF AMERICA

DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC HEARING

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WEDNESDAY

JANUARY 7, 1998

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WASHINGTON, D.C.

The Public Hearing was held in the Second Floor Hearing Room, Suite 220, 441 4th Street, N.W. at 1:00 p.m., Susan Morgan Hinton, Chairperson, presiding.

PRESENT:

SUSAN MORGAN HINTON

BETTY KING

SHEILA CROSS REID

MAYBELLE TAYLOR BENNETT

OFFICE OF ZONING STAFF PRESENT:

MOADELIENE DOBBINS, Director

TRACEY WITTEN ROSE

BEVERLY BAILEY

OFFICE OF PLANNING STAFF PRESENT:

ALBERTO BASTIDO

WITNESSES:

PETER SZEGEPY-MAOSZAK
LLOYD SMITH
JOE MARSH
GEORGE ROTHMAN
JEFF LeBEAU
KARL SKOUGLAND
CARL HUFF
GREGG RHETT
MIKE CRESCENZO
WILLIAM CARMODY
DEANNA AUERBACH
CONSTANCE THOMPSON
SHEILA CARSON-CARR
ANGELA T. MURPHY
ANTHONY BELL
EDDIE BECKER
LORENA CHECA
DOROTHY GLENN

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P R O C E E D I N G S

1:22 p.m.

CHAIRPERSON HINTON: The hearing will please come to order. Good afternoon, ladies and gentlemen. This is the January 7th, 1997, Public Hearing of the Board of Zoning Adjustment of the District of Columbia. I'm Susan Morgan Hinton, your Chairperson. Joining me today are Betty King and Sheila Cross Reid.

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

The order of procedure for special exception and variance cases will be as follows: 1) statement of witnesses of the applicant; 2) government reports, including the Office of Planning, the Department of Public Works, the Office of Zoning, the ANC; 3) persons or parties in support; 4) persons or parties in opposition; and 5) closing remarks by the applicant.

Cross examination of witnesses is permitted for persons or parties with a direct

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

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

The Board will make every effort to conclude the public hearing as near as possible to 6 p.m. If the afternoon cases are not completed, at 6 p.m. the Board will assess whether it can complete the remaining items on the agenda.

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

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

DIRECTOR DOBBINS: Yes, Madam Chairman. The staff has at least one preliminary matter that

may relate to the cases for this afternoon.

The staff did all it could do to get notices out to parties and applicants and property owners within 200 feet, in a timely manner. It was determined that we did send the notices down to go out November 25th. It's my understanding from looking at return notices and numerous phone calls that the mailroom did not send them out until December 10th. So the notices were postmarked for December 10th.

So in any event, the Board at this time will have to make a determination on each case before it, whether adequate notice was provided. You are aware that we give several different kinds of notice: the publication in the Register, the posting in the Office of Zoning, the notices that actually go out by mail.

So the Board in each case will probably need to make that determination. It's my suggestion that you make it in each case. And also, the posting provided by the applicant.

CHAIRPERSON HINTON: Okay.

MS. KING: Ms. Dobbins, that does not apply to the Manna case, is that correct? Or does it?

DIRECTOR DOBBINS: No. Was it a continued case?

MS. KING: Yes, it was.

DIRECTOR DOBBINS: Yes, it was, so it does not apply. This was continued to a date certain so they had met all the requirements for the notice. We did not have to re-notice it.

MS. KING: Thank you.

CHAIRPERSON HINTON: And we have two written requests for postponement, so why don't we deal with those first?

Case No. 16298. Is the applicant present? Could you come forward to a microphone, please? And this request basically says the notice of a hearing was received so late that you were not able to prepare your witnesses in time for the hearing, is that correct?

APPLICANT: That's correct.

CHAIRPERSON HINTON: We would be happy to grant a postponement.

APPLICANT: Thank you.

CHAIRPERSON HINTON: And let me talk to the staff and see when we can reschedule the hearing.

MS. ROSE: February 18th, the 2 o'clock agenda.

CHAIRPERSON HINTON: Does that give you enough time?

APPLICANT: Yes, thank you.

CHAIRPERSON HINTON: Thank you. Very good.

DIRECTOR DOBBINS: There are three cases already assigned to that timeframe so you will be the fourth case in the afternoon.

APPLICANT: Thank you.

CHAIRPERSON HINTON: The next case is 16299, and the applicant is coming forward. And this request is because of conflict in scheduling?

APPLICANT: Right. Our client has a time --

CHAIRPERSON HINTON: Okay. And the next available hearing date would be?

DIRECTOR DOBBINS: If the Board determines that it wants to hear five in the afternoon on the 18th of February, that is where that would go.

CHAIRPERSON HINTON: Yes, let's put it there. Is that acceptable?

APPLICANT: Yes.

MS. KING: Are you giving her a time certain or -- the fifth one on the 2 o'clock?

DIRECTOR DOBBINS: The fifth one on the 2 o'clock session, for February 18th?

MS. KING: Okay. If it's for 4 or 5 o'clock that's okay? I mean, I heard 5 o'clock but no, that was --

DIRECTOR DOBBINS: No, five cases.

MS. KING: Oh, five cases.

DIRECTOR DOBBINS: The fifth case.

MS. KING: Right.

CHAIRPERSON HINTON: Okay. Thank you. Are there any other preliminary matters from anyone in the audience?

DIRECTOR DOBBINS: Madam Chair, staff has at least one more. Application 16300. I have a copy of the affidavit and posting in front of me and I'm showing that it was posted Monday; that would have been two days before the hearing date. Your requirements are 15 days.

CHAIRPERSON HINTON: Is the applicant here for 16300? Could you come forward to a microphone, please? Could we have your name?

MS. GLENN: My name is Dorothy Glenn; I'm senior property director at Marbury Plaza Apartments, for the Charles E. Smith Company.

CHAIRPERSON HINTON: Can you tell us when the signs were posted?

MS. GLENN: They were posted on the 5th.

CHAIRPERSON HINTON: And Ms. Dobbins, they were due to be posted?

DIRECTOR DOBBINS: Yes, they would be 13 days late so it would have been the 23rd of December would have been the required posting date.

MS. KING: And as I recall they didn't go

out until --

DIRECTOR DOBBINS: They went out on the 10th.

MS. KING: From here?

DIRECTOR DOBBINS: Yes, which means --

MS. KING: But not from the building.

DIRECTOR DOBBINS: No, they went out from the building. They went out from the Office of Zoning on the 25th of November, and they were posted and mailed out on the 10th of December by the postage facility downstairs.

MS. KING: I see.

DIRECTOR DOBBINS: So the applicant would have received them in advance of the date required for posting.

CHAIRPERSON HINTON: Can you tell us why the signs were posted so late?

MS. GLENN: The unfortunate part, I had an illness in my family in Chicago and I had to leave the state, and when I returned they were posted. That is what happened. I had a 91-year-old aunt that I had (inaudible).

MS. KING: I would recommend that we postpone or continue or whatever it is, this case. That's a very high occupancy building and it would be too bad if we heard it today and found out that people had only learned today.

CHAIRPERSON HINTON: Yes.

MS. GLENN: The 672 units that I have there at Marbury Plaza, the residents are very interested. There is nothing in that area that bears a fitness center, and for health reasons as well as medical reasons they are in dire need of something of that nature, and all --

MS. KING: Do you have the support of the ANC, do you?

MS. GLENN: Pardon me?

MS. KING: Do you have the support of the Advisory --

MS. GLENN: I've not spoken with them, I've not had --

DIRECTOR DOBBINS: Madam Chair. I think it's probably only appropriate at this time for you all to determine whether adequate notice has been given in this case. You don't have to discuss the merits of it at all. You need to determine --

MS. KING: Right. You're right.

DIRECTOR DOBBINS: -- based on all of the requirements for notice, whether you -- there's been actual notice or appropriate or if it's where you can proceed or not proceed.

CHAIRPERSON HINTON: Now, the ANC would have been noticed by mail?

DIRECTOR DOBBINS: They would have been

noticed by mail, yes. The ANC is also notified that the case is pending when we initially get it in as an application. So they get two notices. But the notice of the hearing to the ANC would have gone out later, as did the others.

CHAIRPERSON HINTON: You don't think that we should postpone --

MS. KING: I'm conflicted about --

CHAIRPERSON HINTON: Ms. Reid?

MS. REID: I would agree --

CHAIRPERSON HINTON: Well now, the applicant's not asking about that. The sign was only posted two days ago, so we're considering whether that's adequate notice for anyone who would be interested in participating.

Now, anyone within 200 feet would have been noticed by now. Did you include a list of all the residents of the building?

MS. KING: Were they noticed by mail?

MS. GLENN: Of the 200 feet? We did come down and do the appropriate paperwork for those particular people. For the people in my building, yes, everyone has been notified. It's even posted at the building itself.

DIRECTOR DOBBINS: I don't think this office would have sent it out to all of the occupants of the building.

MS. GLENN: We posted a large orange sign. We posted it in the building as well. We were given three and we did post it throughout the building and on the elevators on Monday. This has been --

MS. KING: On Monday?

MS. GLENN: Yes, on Monday.

CHAIRPERSON HINTON: Are these condos or --

MS. GLENN: This is an apartment complex.

CHAIRPERSON HINTON: So they're not owners?

MS. GLENN: Yes, everybody -- it's right there on the elevators and coming through the front doors.

CHAIRPERSON HINTON: Are you saying that if besides the big orange signs there are other notices posted in the building?

MS. GLENN: The other notices -- residents have been constantly coming down to me to say, Mrs. Glenn, when is this fitness center going to open up? And we have said to them that we have the hearing -- a copy of the letter of the hearing. We posted that to say, I am going forth, and hopefully very soon. We had anticipated hopefully, in December, and unfortunately we did not get it then, so they're anxiously awaiting -- all 672 of them.

CHAIRPERSON HINTON: Is that posted in the

building, in the lobby, or some other public place where residents would --

MS. GLENN: Yes, in the elevators, in the lobbies. You know, they pull it down, we put it back up -- but, yes.

CHAIRPERSON HINTON: And how long have those notices been posted?

MS. GLENN: That's been going on since the beginning that we found that we needed the zoning for it; that we would be going forth.

CHAIRPERSON HINTON: I think based on that we can find that adequate notice of the hearing has been given, so we will go ahead with it today.

MS. GLENN: Thank you very much.

CHAIRPERSON HINTON: Does the staff have any other preliminary matters?

DIRECTOR DOBBINS: No, we don't have any.

CHAIRPERSON HINTON: Does anyone in the audience have a preliminary matter?

Very good. Let's call the first case.

MS. ROSE: The first case of the afternoon was postponed from the November 5th, 1997, public hearing. It is application 16275 of Manna, Inc. and Marshall Heights Community Development Organization, Incorporated, pursuant to 11 DCMR 3108.1, for a special exception under Subsection 353.1 for construction of 22 single-family dwellings in an R-

5-A District at premised 4800 - 4846 Texas Avenue, S.E. [lots 801, 803, 805, 807, 809, 811, 813, 815, 817, 819, 822, 825, 828, 832, 834, 836, 838, 840, 842, 844, 846, and 848 (per subdivision) in Square 5405].

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

(Witness are sworn.)

MR. SZEGEPY-MAOSZAK: Good afternoon, Madam Chairman and members of the Board. As you may know, my name is Peter Szegepy-Maoszak and I'm special counsel in land use and zoning at the law firm of Arnold & Porter. With me today are Bill Carmody, a lawyer at the firm, and Deanna Auerbach, our excellent paralegal.

First of all, I'd like to say it's a pleasure to be here. It's the first time I have appeared on this side of the podium; I used to sit right next to Mr. Bastido. And they say you can't come home again, sometimes. Well, I feel like I'm home again.

I would like to say one thing; that I had no involvement whatsoever in this case when I was with the Office of the Corporation Counsel.

Today we represent the applicant in this case, Manna, Inc., and Marshall Heights Community Development Organization, Inc., in this hearing on

application number 16275 for a special exception to construct 22 single-family row houses at 4800 - 4846 Texas Avenue, S.E. The property is located in an R-5-A zoning district. Your jurisdiction is predicated on 11 DCMR 3108.1, 353 and 410.

We intend to show the Board that the applicant's project meets the following two legal criteria for special exception relief in the zoning regulations. One, the special exception will be in harmony with the general purpose and intent of the zoning relations in the map.

Secondly, the Board can grant the special exception without adversely affecting the use of any neighboring property. Upon showing this by substantial evidence we would respectfully request that you grant us a special exception.

Our presentation will begin with introductory statements by George Rothman, president of Manna, and Lloyd Smith, president of Marshall Heights. Mr. Smith was a former member of the zoning commission.

Following their remarks you will hear descriptions of the project from members of the project team. The project team are solely from Manna and Marshall Heights.

The testimony in evidence in our presentation was initially presented to you in our

pre-hearing submission on December 22nd and two subsequent clarifications. If you have any questions in the course of our presentation please raise them, and everyone here is available to answer your questions.

Before introducing our speakers I would like to briefly reiterate the uncontested evidence in support of our application that is contained in our pre-hearing report, and I already gave it to the court reporter. We have the original letter from Council Member Chavous from Ward 7 in support. We have the letters of support from Fort Dupont and Benning Ridge Civic Associations, and we have the letter of support from Charles E. Smith.

I would also now like to thank Mr. Bastido at the Office of Planning. We met several times with him and his help was invaluable in getting us a project that we think merits special exception relief.

I would also like to draw your attention just briefly to Exhibit W in our pre-hearing submission which was a prior Board Order dated March 5th, 1980, in application number 13142.

This Order approves special exception and variance relief at our site for a residential project with 24 row houses and four semi-detached units, along with the option of one additional

rental unit per unit, for a total of 56 units on that site. A number of the units required lot area and FAR variances.

Our project only has 22 units, is considerably less units than the project approved in 1980. Unlike the earlier project we are not seeking any variance relief. All of our project is entirely within the R-5-A requirements.

Finally, we submitted correspondence to you dated January 2, '98, in response to a letter you received from the ANC-7A. I simply would like to say that we initially postponed the November 5th hearing because we wanted to address the ANC's concerns and we felt that our initial site plan didn't do that adequately.

Since then we met with the ANC and we have done our very best to meet all of their issues and the issues that are raised in their letter to you. Please pay particular attention in our presentation to our compliance with the concerns raised by the ANC - at least as they relate to the site plan.

I would now like to introduce George Rothman of Manna.

CHAIRPERSON HINTON: And before we start with that, of the people that stood up to testify in this hearing, is there anyone here in opposition to the case?

MS. MURPHY: Good afternoon. My name is Angela Thompson Murphy, the chairperson of 7A, and at this point in time we're waiting until we hear, because we did work with Manna and Marshall Heights to see about some of the things, to rectify some of the situations.

If those things have been rectified then we stand in support; if not, then we're in opposition.

CHAIRPERSON HINTON: Thank you. Is there anyone else in opposition?

CHAIRPERSON HINTON: Is the resident in opposition?

MS. MURPHY: She just has a concern.

CHAIRPERSON HINTON: Okay. So we can go through somewhat of a modified or expedited presentation, but pay particular attention to the concerns of the ANC.

MR. SZEGEPY-MAOSZAK: Thank you very much, Madam Chairman. Mr. Rothman and Mr. Smith are going to present their opening remarks. George?

MR. ROTHMAN: Good afternoon, Madam Chairperson, Board members, and concerned citizens. I am George Rothman, president of Manna, Inc., a non-profit housing developer operating exclusively in Washington, D.C. Thank you for giving me the opportunity to testify before you.

I am here to ask your support for the re-subdivision plan for a small parcel of residential land at the Southwest intersection of East Capitol Street and Texas Avenue, S.E.

Over the past 15 years Manna has developed and built or renovated 500 housing units here in the District. We have provided the opportunity for hundreds of District families to realize their dreams of home ownership. In addition to building and renovating homes, Manna is about building community and also neighborhood revitalization.

We are all too familiar with the problems of middle class flight to the suburbs -- and Prince George's Country in particular. We are also familiar with the very small home ownership rate in D.C. and in Ward 7: a city rate of home ownership of 38.9 percent and a Ward 7 rate of approximately 40.1 percent, versus a national rate of approximately 66 percent. The implications of this disparity are all too evident.

Manna, along with Marshall Heights, comes before you to ask your support to help in one small way to change this direction.

Chaplin Woods is planned to be a small, self-contained community of 22 new townhouses, sold at market-level prices in the 120s, and designed to compete head-on in terms of design and price with

the offerings of for-profit developers across the line in Prince George's County.

However, we do plan to offer more value than our suburban competition in that our units will offer more space for the consumer's dollar. We will be able to offer the excellent financing mortgage programs for first-time home buyers, which gives us another competitive edge.

We have submitted a re-subdivision plan for this site which provides for 22 townhomes. The previously approved plan called for a much higher unit count of 56. That plan if implemented, would have created more density, more traffic, and less open space. The Manna/Marshall Heights plan will create only 22 new single-family homes with substantial open space and almost two off-street parking spaces for each townhouse.

The number of units we plan to build is a matter of right; in fact, it contains less than half the number permitted. Our plan contributes to the safety and security of the neighborhood. What is now a vacant, but treed site, is also a dangerous place where drug use and drinking takes place and junk is dumped. It is a nuisance and a threat to the neighborhood and its youth.

Our new townhouse plan is contingent on your approval. We believe that our type of plan is

the type which the city should be encouraging; that is, alternatives which offer D.C. residents the option and the opportunity to remain in the city and enjoy the same housing styles they can get across the border.

It will provide both aesthetic and economic benefits to the owners and the city. These houses will be priced at market levels and add to the tax base and desirability of the city.

We have already invested substantial time and money in the project. We have met with neighborhood organizations to review the project and have obtained their support. Obtaining financing is not anticipated to be a problem. In fact, pre-development financing has already been committed from the private sector and a construction loan commitment is imminent.

We want to start site development and construction this spring. We project having the first group of settlements toward the end of this year. Please support this request for our plan to transform a nuisance into a middle class opportunity for home ownership.

Thank you.

MR. SMITH: Good afternoon Madam Chairperson and members of the panel. I'm Lloyd Smith and I'm president and CEO of the Marshal

Heights Community Development Organization. I am pleased to have the opportunity to address the Board of Zoning Adjustment today.

As some of you may already know, I have worked informally and formally in various aspects of zoning regulations and housing and community development for many years. I've been president of Marshall Heights and this is my 18th year.

One of our earlier, successful housing developments was done jointly with Manna -- a joint venture with Manna -- on Nannie Helen Burroughs Avenue, across the Howard D. Woodson Senior High School. We built three houses there, for-sale houses, and we added a fourth house to make some synergy with that block.

So this is nothing new for us to do a joint venture like this. We also, because of our respect and understanding of the zoning and zoning regulations and intent, we are really proud of our record rarely requesting zoning variance or exceptions at all, in the 18 years that I've been at Marshall Heights.

In fact, we have never asked for a zoning change in 18 years. We have tried to work with the existing zoning that is there in place. And there are obviously, many times that you have to look at an exception or a variance to make it work.

We think that evidence today presented will confirm our belief that the proposed Chaplin Woods Project is in harmony with the general purpose and intent of all applicable zoning regulations.

We are a non-profit, community-based organization with a primary focus in three areas: economic development, affordable housing, citizen participation programs -- social services, service delivery. And we have several new programs, including our child welfare initiative which we think, we hope will work on a model system.

We have worked very hard to enhance the quality of life for Ward 7 residents. Every project that is taken by Marshall Heights Community Development Organization has to have Board of Directors' approval. We have the largest community development Board of Directors in the United States of America. We have about 70 members on our Board and they all participate to the extent that they can, and join in on reviewing our projects.

We have included in our membership on our Board, of ANC, civic associations, churches, businesses, and others. These are true stakeholders in our Ward 7 community. Combined with our staff of 60, they have always been advocates with what's in the best interest of Ward 7.

This joint venture, we have met with

community leaders, ANC -- as you've heard -- the civic associations and others in the community. We have adjusted the initial design which you've heard to minimize all adverse impacts that we can possibly do.

We presented before the City Council recently -- which was unopposed -- the closing of a "paper alley" which was within the site. And if you look at the history you will find that we have a deep respect for maintaining a comfortable density level in our housing developments.

Our request for this special exception is for a small tract -- as you heard from Mr. Rothman -- R-5-A land. This is an undeveloped piece of property and would enhance I think, the adjacent property which all -- the adjacent property primarily is multi-family rental units. And this would bring a 1.5 acre parcel, increase home ownership, and further balance the large number of rental units in the area.

This self-contained community of 22 single-family townhouses with off-street parking will provide some relief needed to slow the hemorrhaging of our East of the river tax base. As you may or may not know, Ward 7 has lost more population than any Ward in the District of Columbia.

We have lost more than 40 percent of our population over the last 20 to 25 years. That is incredible. And most of the people have moved elsewhere -- out of the District of Columbia, etc. This is another project to help stabilize the home ownership base, taxpayer base, in this community.

This is a project that is using half the density allowable under R-5-A. The citizens that we want to keep and attract are the young and middle-aged, first-time home buying families who want affordable housing. For these reasons and many more, we are extremely excited about playing a role in Chaplin Woods Townhouse development, and ultimately making this another signature project of Marshall Heights.

We thank you for your time and attention in this matter and prepared to address any questions that may be presented.

MR. SZEGEPY-MAOSZAK: Madam Chairman, next is Michael Crescenzo from Marshall Heights.

MS. KING: Is this the paper alley that was closed or is this -- what alley is closed?

MR. SMITH: Well, it's in the -- inside --

MS. KING: It's the one that goes straight across here?

MR. SMITH: Yes, but you can --

MR. CRESCENZO: The paper alley goes this

way, within the --

MS. KING: I see, L-shaped --

MR. CRESCENZO: L-shaped, yes.

MR. SZEGEPY-MAOSZAK: Mr. Crescenzo.

MR. CRESCENZO: Madam Chair, members of the Board. I just have a few, brief comments. My name is Michael Crescenzo; I'm the vice present for Housing and Economic Development. And I wanted just to explain briefly that Marshall Heights decided to do this project with Manna when it was presented to us over two years ago because we saw Chaplin Woods as a project that scale that could offer a new home community in the Ward, which was very important to us.

We have generally done small, infill projects, one to six units. We saw this as an opportunity to make a significant impact on a piece of property, particularly one that's located across the street from a Metro station.

As a community based organization we undertook this project as we always do: with a commitment to quality, and of course respectful to the comments of all the community as has been discussed previously.

Mr. Rothman mentioned that we were -- private financing has been arranged. I just wanted to emphasize that we are not going to be seeking any

public dollars in the construction or development phase of this project, and that Marshall Heights and Manna will have invested themselves, over $250,000 during the development phase in order to bring this project to completion -- which is a significant amount of money for non-profit.

As a policy, Marshall Heights uses smaller, minority contractors for our own housing development, and on this project we will offer our subcontractors plus other certified, minority business enterprises an opportunity to bid for contracts on the project.

All concept contractors that are engaged or selected to do work on the project will fill any employment needs for this particular project using Ward 7 residents through the Marshall Heights employment office.

This is a policy we always use. We are currently a general partner in the Greenway Apartments renovation and that same policy of using the first source employment has created 20 to 30 jobs for Ward 7 residents.

Marshall Heights and Manna are experienced developers of condo and co-op projects and we feel we are uniquely qualified then, to help the new homeowners develop a functional and useful homeowners association, which of course will be an

integral part of this project.

Thank you.

MR. SZEGEPY-MAOSZAK: Madam Chairman, I would now like to introduce Joe Marsh who's manager of the project, and Carl Huff who's the site designer for the project, to describe it for you.

MR. MARSH: Madam Chairman, I'm Joe Marsh and my job is to manage the design and construction of this project. I think we're halfway through. We've assembled a number of consultants, designers, engineers, architects, to get this far. I want to show you three things briefly; I'm sure you're familiar with the proposal.

I want to show you the location of the site; I want to show you the neighborhood; I want to show you the matter of right -- just briefly review the matter of right conditions that we're entering into under 353.1; and I want to briefly just show you some of the features of the site.

The project is located approximately at the intersection of East Capitol Street and Benning Road, S.E. East Capitol Street of course, goes East. Texas Avenue swings back around right before you get to that intersection traveling East. It's in the R-5 zone, as you've heard.

To the North is C-1 along Benning Road. Businesses there are Exxon, the Shrimp Boat -- which

is a landmark -- and a strip shopping center at the intersection of Benning Road and East Capitol Street. The only other predominant use out there is R-2, which sandwiches in all around this area, and then this is R-5.

The site, Chaplin Woods Townhomes -- about one-and-a-half acres -- is surrounded by multi-family. To the West, in this area over here, is Fort Chaplin Apartments. That's a Charles E. Smith community. This is what that looks like.

Directly to the East of our project is small apartment buildings. Looking down Texas Avenue back towards the intersection, you'll see the C-1 zone over here. Here's Shrimp Boat, Exxon -- right in the edge here. The Metro is directly beyond -- the Benning Road Metro Station.

Directly across the street to the North is East Capitol Gardens, a co-operative community, multi-family. The only other use in the neighborhood is some single-family row houses. There are single-family row houses along A Street, S.E.; there are single-family row houses along Benning Road, S.E.; and some single-family detached housing -- very, very little.

Our site, if you look across Texas Avenue you'll see -- the approximately 500 feet that faces Texas Avenue, it's heavily wooded. That's got about

20 feet of public space which will remain, including the vegetation. It will be enhanced by some fairly low-key, alternating board fencing and planting -- low-level, 3-inch caliper evergreen plantings in front of the fence.

Looking across East Capitol Street it's wooded the same way. It runs around 400 feet along East Capitol Street; it's heavily wooded. It also has the 20-foot public space buffer which will remain, and similar enhancement with alternating board fencing and small evergreens. We'll have about 80 evergreens altogether around the site. So we expect the end-product to be very low-key, a lot of green space left.

I want to tell you that we're asking for approval under 353.1 as a matter of right. We meet or exceed all the maximums and minimums prescribed by the Board. Height: 40 feet is allowed in R-5-A, or three stories. We're asking for 30 feet or two stories.

Minimum lot size -- actually there's none prescribed by the Board but for R-4 and the precedents set by the Board it's 1800 square feet. Our minimum is 1800 feet and in many cases it's well in excess of 1800 square feet.

Floor to area ratio: 0.9 is allowed; we're only asking for 0.76. Percent of lot

occupancy: 40 percent is allowed; we're asking for 37.78 percent. Rear yard: 20 feet is allowed; we have 20 feet plus in all cases. Side yard: three inches per height per foot, but not less than eight feet. Ours are eight feet or better in every case.

Parking: under a different section it's one per dwelling unit; we're offering 1.818, or 40 spaces. So we're required to have 22; we're proposing 40 spaces. So we're not asking for any variance; we're asking for approval of the site plan.

Now let me show you the site. This is the triangular site -- about an acre-and-a-half. Our entrances for safety are along Texas Avenue. We have a 28-foot entrance up in this area. We have a 15-foot entrance at the bottom. They're both 2-way ingress and egress at this time.

MS. KING: What is the white patch down at the very bottom?

MR. MARSH: Down here?

MS. KING: No, at the bottom -- the next one.

MR. MARSH: That's an existing curb cut. That serves partially our site and partially for Chaplin Apartments. That was part of your old alley.

MS. KING: I see; okay.

MR. MARSH: Yes, the old alley actually came in here and up here, and used this curb cut which is also existing. This is a new curb cut.

MS. KING: I see. Thank you.

MR. MARSH: There's a lot of open space. We've made every effort to take care of the safety, access, circulation on the site. We've actually used some traffic calming up in this area. We've provided a buffer with Charles E. Smith on this particular side. We've done two things up here. We've used a 14-foot wide pave-in up here, along with two speed bumps to calm the traffic in that area.

We have adequate site lighting all through the project. We have fire hydrants, buildings are sprinkled. How many fire hydrants -- two, we ended up with. We have a lot of landscaping. We have a recreation area which we've found through our experience, is best left to the homeowners to dictate how they use that.

We have designed and funded recreation areas in the past that, it turned out the residents did not want that use. For example, we put in tot lots, the people didn't want the tot lots, they wanted barbecue grills. In this particular case we think the best thing to do is to provide the space, build the space, and turn it over to the homeowners

and let them do what they want to with it.

Any questions?

MS. KING: Does this complete your presentation?

MR. MARSH: No, we have more.

MR. SZEGEPY-MAOSZAK: Madam Chairman, before we finish I wanted Mike Crescenzo to show you how we had responded to the ANC's concerns, and that's coming up right now.

MR. CRESCENZO: This is the original site plan that was in our November 5th BZA hearing application. This is the result of a 2-year planning process on which we met with the Benning Road and Fort Dupont Civic Associations -- one through the approval process of all the -- common process of all the city agencies, and spoke with our neighbor, Charles Smith as they had to involve themselves in the alley closing process.

We met with the ANC in October, presented the site plan, and they raised four general issues that had not been raised previously by anyone else. One was the issue of ingress and egress, both for the residents and for emergency vehicles; one was the issue of availability of creation space; one was the issue of sidewalks, both on and off the site; and the fourth was the issue of parking.

After that October meeting we requested a

postponement to address those concerns and today have presented this site plan which you're being asked to consider. I just want to point out the changes that we made to address the ANC concerns.

We added the second means of ingress and egress of an 18-foot width which has been requested by the fire marshall. This has cost us some green space as we had to move all -- these units here were shifted to the right; we lost some green space in there.

We took the space here that previously had been just green space and just as Mr. Marsh said, we are leaving it now as recreation space. And when we have the bulk of the homeowners we will ask them what their preference is and as the developers we will install either a tot lot if that is what they wish, passive recreation -- whatever their desire is. But this is designated now as recreation space of their choosing.

We added considerable amount of sidewalks on the site in order to improve circulation. All these are added sidewalks. And we decided as developers to offer as a public benefit, the creation of sidewalks along the public space here to assist in the circulation and the ease of people moving on the site.

Now, we will do this as long as the

Department of Public Works grants us the public space permit to build on public space. We have no right to do it but we will apply for the permit, and it is our plan to add these sidewalks.

As Mr. Marsh indicated we have put two speed bumps on the new roadway in order to control the traffic internally. We feel that we've done everything we could do on the site to address the ANC concerns.

I just want to put out that in doing this we have added approximately $1100 to $1200 of costs per unit. This will impact to some degree, the affordability issue, but what it really will do is, it will cut our cost -- the price advantage versus our competitors in Prince George's County.

So we, you know, what we will be asking for the units will not be as competitive as we originally had planned, though we did this because we wanted to address the concerns of the ANC and because Marshall Heights and Manna have always respected community wishes in doing their projects.

I'll take any questions you may have.

CHAIRPERSON HINTON: That's concludes your presentation? Any questions from Board members?

MS. KING: Yes. What is the parking situation on Texas Avenue? I understand you've got what, approximately one-and-a-half spaces per unit?

MR. CRESCENZO: We have 40 spaces. Actually in our redesign we went from 39 to 40.

MS. KING: Okay. But what is -- is it residential, permit parking on Texas Avenue?

MR. CRESCENZO: No, this is not residential, permit parking but Marshall Heights -- as a community organization -- and the homeowners, would support any effort by the local community to have residential parking to preserve space. Today, if you go here during the day you'll find commuters who are using Metro will park here during the day.

MS. KING: I see.

CHAIRPERSON HINTON: Any other questions?

MS. KING: Let me just quickly review this. You've got two entrances. This left-turn sign, it's a DPW customer isn't it, or --

MR. CRESCENZO: The issue that the ANC raised is whether we would post a right-turn-only sign here, or alternatively, no left turn onto Texas Avenue. We will respect the wishes of DPW on that matter.

MS. KING: Emergency vehicles are okay. But this trash and garbage pickup by private contractors, is that going to be --

MR. CRESCENZO: Well, that is required in a townhouse project. This is not a private road, so yes, that will be contracted.

MS. KING: Sidewalks you've dealt with. Property should have been posted to reflect the hearing date to the public. Is that moot now?

MR. SZEGEPY-MAOSZAK: Madam Chair, the posting was done for the November hearing and has since been done according to the regulations, and Mr. Huff oversaw that.

CHAIRPERSON HINTON: Any further questions?

MS. KING: No, I have no further questions.

CHAIRPERSON HINTON: Thank you. Ms. Reid.

MS. REID: I have no questions. I think that the presentation and submission were very well done and it was very exhaustive, so therefore I do not have any questions.

MR. SZEGEPY-MAOSZAK: Madam Chairman, I just would like to thank you, and if you have any other questions --

CHAIRPERSON HINTON: In your pre-hearing submission there's a drawing of front elevations -- a typical front elevation for the building. And what I want to know is, where are those front elevations? Do they face East Capitol Street, Texas Avenue, or do they face sort of the parking lot?

MR. SZEGEPY-MAOSZAK: Madam Chairman, Karl Skougland is our architect. He can describe it for

you.

CHAIRPERSON HINTON: Great. Thanks.

MR. SKOUGLAND: Good afternoon, Madam Chairman and Board members. I'm Karl Skougland; I'm the design coordinator at Manna and the project architect for Chaplin Woods. The units themselves would face the interior of the lots, and these represent the four different kinds of elevations that we would propose to build.

Each one of these four types of elevations would also have four to five color packages to, in essence, make for a very few identical units.

CHAIRPERSON HINTON: Did you consider an arrangement that would have allowed the fronts of the buildings to face the major roads, since the fronts of buildings are generally more attractive than the rears?

MR. SKOUGLAND: I'm going to defer to the site designers at this point.

MR. ROTHMAN: Yes, Madam Chairperson. Yes, we did; that was one of the first that we considered.

And we wanted to create a community feel, and if the units faced outward you wouldn't get that. This way, everybody sees all their neighbors every day, going to work and on weekends. It works much better -- it's like a little village; it's a little

community.

CHAIRPERSON HINTON: Okay.

MR. ROTHMAN: And there's also -- it would be a safety issue with traffic, also.

CHAIRPERSON HINTON: Well, I'm thinking that there could -- I agree with you. I mean, I think that probably people are going to park their cars and want to come into their homes from the parking space, so it's logical to have an entrance close to that side of the building.

But I don't think that precludes -- townhouses can have a front and a rear entrance. So I guess I don't think my question precludes what you've just addressed; that yes, people are going to park and enter, you know, from that interior space.

I guess -- well, let me ask this and then you can respond to both. Are there housing units that are in this area, along Texas Avenue -- do they face out onto Texas Avenue or are they sort of inwardly oriented?

MR. CRESCENZO: Some face out, some face to the side if they are clusters of multi-family units. The Charles E. Smith property -- this is a parking lot here. They all face this way. They don't face at all to East Capitol on this side. Across the street some do, some don't; it's sort of organized around the parking lots in the multi-

family properties.

But I just want to address other issues. We look at the going out, but besides the reasons that Mr. Rothman indicated, we have this very large, heavily wooded, public space area here -- which would have been difficult to see -- we can't take these trees down, nor do we want to. We wanted to create the buffer zone, or leave the buffer zone.

The other thing is, this elevation here is very high; it's almost like a berm. And these houses facing out would have been up on a hill, almost, which would have detracted from their relation to these townhouses here.

CHAIRPERSON HINTON: Okay.

MR. CRESCENZO: We went through about six or seven internal attempts to come up with the best site plan that addressed many issues, including one which is very important to consumers in Ward 7, which is that people have private parking. The gang parking is very -- it is not desired. In all the houses we sell people want a parking space for their house, which is -- and we really felt we had to address that from a marketing perspective.

CHAIRPERSON HINTON: I just have one other question. I don't see dimensions on the plans that we have, but it appears to me that most of these lots would not be able to accommodate a deck on the

rear of the building if that were the homeowner's desire to add a deck. I think the requirement is 20 feet for a rear yard. Did you give any thought to --

MR. ROTHMAN: They can accommodate -- in fact, we show you an optional deck on the floor plans.

CHAIRPERSON HINTON: And those fit on each lot?

MR. ROTHMAN: Pardon?

CHAIRPERSON HINTON: Those would fit on each lot as a matter of right?

MR. ROTHMAN: As far as I know, yes.

CHAIRPERSON HINTON: So your rear yard -- what size is the deck that's shown on that map?

MR. SKOUGLAND: It's 12 X 16.

CHAIRPERSON HINTON: So your minimum rear yard is 32 feet?

MR. ROTHMAN: No, I think it's 20 feet.

MR. MARSH: Well, she's saying in the event that we put the deck, then you're --

MS. REID: You would exceed your occupancy.

CHAIRPERSON HINTON: Right. If there's a matter of right requirement for 20 foot rear yard, your deck cannot project into that 20 feet.

MR. BASTIDO: Madam Chairperson, if I

might interrupt. There is not a minimum rear yard requirement in the R-5-A district. They compare it to the R-4 that requires a minimum of 20 feet. In the R-5-A district there is a maximum FAR that it goes to the lot occupancy. But there's not a minimum lot -- and there's not a maximum lot occupancy as such.

MS. KING: And would the deck be considered part of the FAR?

MR. BASTIDO: That is correct. Which they would be able to meet because they have -- 0.9 is permitted and they are providing 0.76. So they cannot have the deck on each house, but they can have decks. They might be able to; I have to do the computations.

CHAIRPERSON HINTON: For each lot? Each lot would be considered an individual one?

MR. BASTIDO: Correct.

CHAIRPERSON HINTON: So some of the homes could have decks; it's depends on --

MS. REID: Siting.

MR. CRESCENZO: And when we're marketing -- we'll be marketing off a model. These five units will be the model, and when we're marketing off the model if someone wants to have a deck built as part of their purchase, we would then make sure that the lot they selected would have that.

I think Mr. Huff wants to also point out that some of these yards cannot accommodate decks but rather patios, and he can show you which ones that is.

CHAIRPERSON HINTON: That's fine; that answers my question. Those are all my questions.

MR. SZEGEPY-MAOSZAK: The other thing, Madam Chairman, is that under 410 which we have to comply with it says -- under .8 -- the front entrances of not more than four one-family dwellings, no more than four dwelling units per floor shall face any street that abuts the lot.

So our compliance, we believe that we're in full compliance regardless of whether or not there are no more than four, because there's none. And as a result, we viewed that as compliance with Section 410.

CHAIRPERSON HINTON: Okay. Thank you.

MR. SZEGEPY-MAOSZAK: Madam Chairman, would you like -- Gregg Rhett is here. He's a special assistant to Mr. Smith and he was in charge of community outreach. Would you like him to briefly summarize how we work with the communities, or have you heard enough?

MS. KING: Why don't we hear from the community itself, some of its representatives, and then hear from you if you have more testimony.

MR. SZEGEPY-MAOSZAK: Thank you very much.

CHAIRPERSON HINTON: Thank you. Government reports. Do we have a report from the Office of Planning?

MR. BASTIDO: Yes. Good afternoon, Madam Chairperson, members of the Board. For the record, my name is Alberto Bastido with the D.C. Office of Planning. The Office of Planning filed this report in a timely on December 30th, 1997. My understanding was that the Board members had not received a copy of our report and I provided a copy a little earlier in the procedures.

CHAIRPERSON HINTON: Yes.

MR. BASTIDO: Our report is brief and to the point and it's that, the applicant has provided a very extensive presentation, so I would address basically the recommendation and I will provide for the record, the Department of Public Works report.

The Office of Planning is of the opinion is that the applicant has generally met the burden of proof relative to the zoning relief being sought in this case. The proposed project complies with the applicable provisions of 353 and 410 of 11 DCMR. Overall, the proposal complies with all requirements of the R-5-A zoned district.

As a result, the project will not adversely impact the site or the surrounding

neighborhood and would not impair the intent, purpose, and integrity of the zone plan for the R-5-A zoned district, provided the applicant make their proposal to include the following.

One, additional planting material to be located between the proposed two-and-a-half inches in caliper evergreen. These plants and materials should be at least 24 inches high. And two, that at least 25 percent of the dwellings to be built with brick facade. That is complying with the Office of Planning's belief that the proposal would provide great benefits of the District of Columbia.

I would also, before I end, would like to point out that the proposed planting materials is public space, so the Board has no authority to mandate. So the Board can recommend and encourage the applicant to get the proper permits for the Department of Public Works to provide such planting.

That concludes the report on the Office of Planning. If you have any questions I would answer them, but if you permit me I will provide the recommendation of the Department of Public Works that it was received on December the 9th, 1997.

The Department of Public Works, in the last paragraph it states, "From a transportation point of view, DPW finds that there is adequate parking provisions for this project. The project

will not result in any additional parking of traffic demand of the neighborhood streets; therefore, the Department of Public Works has no objection to the proposed construction".

I also would like to point out that along Texas Avenue there is a great parking demand in the daytime because of the site is diagonally across a Metro stop. In the evenings there seems to be ample parking, especially on that side of the street. So in addition to the 40 parking spaces that are provided by the applicant there will be available parking spaces along Texas Avenue for guests of the proposed project.

So the Office of Planning concurs with the Department of Public Works that there is ample parking for this project. The Office of Planning would like also to thank the applicants who are working hard with the Office of Planning to try to finesse the project to meet all concerns of the Office of Planning.

That you. That concludes my presentation. I will try to answer any questions you might have.

CHAIRPERSON HINTON: Thank you. Questions from Board members?

MS. REID: No, not from me.

CHAIRPERSON HINTON: Your condition number two, 25 percent of the buildings be built with brick

facades, are you referring to front and rear?

MR. BASTIDO: That is correct. That's why we used the word "facade" rather than front facade.

CHAIRPERSON HINTON: Okay. So that would be 25 percent of the fronts and 25 percent of the rears?

MR. BASTIDO: Correct. And the reason for that is the majority of the buildings in the area are all brick. Accordingly, it will be visually detrimental in our opinion, that no brick facades will be provided on the project.

CHAIRPERSON HINTON: Understood. Thank you. The ANC is next. While you're getting set up, did the applicant have any cross examination of the Office of Planning?

MR. SZEGEPY-MAOSZAK: No, ma'am.

CHAIRPERSON HINTON: We're going to start with the official position of the whole ANC.

MS. MURPHY: Good afternoon. My name is Angela Thompson Murphy. I'm Chairperson for 7A. This is Sheila Carson-Carr; she's our treasurer for 7A. And this is Constance Thompson, a resident in 7A boundaries.

The position from Advisory Neighborhood Commission -- I'll just read the letter that we presented to you.

"Advisory Neighborhood Commission 7A has

taken under consideration the application number 16275 of Manna, Incorporated, and Marshal Heights Community Development Organization. A quorum of 7A commissioners were present at the November 18th, 1997, meeting. Five commissioners were present; a quorum is four.

"All commissioners present were in agreement. We have the following concerns and issues listed below. If these issues are rectified to the commission's satisfaction, we will stand in support of the applicants.

"Our concerns and issues of 7A were the minimum of two entrances in and out of the proposed property; that there be a "no left turn" sign posted at the exit onto Texas Avenue, S.E." -- I'll just read down them and then we'll go back -- "assurance of emergency have ability to enter and depart property in a timely and safe manner; trash and garbage pick-up by a private contractor; the lane of sidewalks bordering proposed property on the even side of Texas Avenue between A Street and East Capitol Street, S.E.; properties should have been posted to reflect hearing dates to public; provide on-site activity area -- example, playground; reasonable amount of mature trees encompassing the property.

"We still feel that 22 proposed buildings

on the area seemed excessive; and also are concerned about the adequate addition of parking". And it's submitted by myself, Angela Thompson Murphy, Chairperson. And we can go down each issue or whatever way you want to do.

CHAIRPERSON HINTON: Yes, that would be great.

MS. MURPHY: They did answer the -- we worked very diligently with them and we're fine with the two entrances. Our concern was where the entrance was located at the lower side -- which is really the top of this drawing here -- because of the fact that there is an island that comes up Texas Avenue that's on -- this isle here, which is basically a 2-car-length distance.

So coming out of the proposed property, to make a left turn onto Texas Avenue to get to East Capitol Street is a hazard. And we don't want it to be a situation where we're trying to bring in new homeowners and basically they're taking their life in their own hands trying to make a left turn to go to their jobs or to even get to the Metro.

So that was our major concern and we still have that concern -- the location of that first entrance there by that alley -- that it is sufficient so that when a person makes a left turn they really cannot make a left turn there because

it's too dangerous.

And I think that the gentleman did go down and one of their lives was almost taken one evening because of that. I mean, it's a dangerous curve to come around -- it's a blind side. And if you're still talking about allowing people to park on that side of Texas Avenue it's a blind sight trying to make a left turn.

So we still stand with, whoever is responsible for making sure that people cannot make a left turn onto Texas Avenue for safety measures -- not just for those residents but for the residents that already reside in that community or that travel Texas Avenue from East Capitol to Ridge Road -- that for safety that that really needs to be looked at.

The assurance of emergency vehicles -- I spoke to the fire marshall. He said that it was supposed to be 20 feet and I heard today that the gentleman said that there is enough space here.

This new entrance -- I think they said it was 18 feet -- and whatever the guidelines are for, if they have that, we want to make sure that those vehicles can get in and out without backing out. So that was our main concern on that one.

The trash and garbage pick-up by the private contractor -- if that's going to be done then we're fine with it. We just don't want it to

be a situation where dumpsters are having to be pulled out of a community and sitting on Texas Avenue. The responsibility is to bring dumpsters back around.

The laying of the sidewalks bordering the proposed property -- which is number 5 -- we still would like to have those sidewalks, whether it be DPW or the applicant, to make sure for safety matters once again, that those sidewalks connect from Texas Avenue to East Capitol Street.

There are already sidewalks on East Capitol Street and on Texas Avenue in front of the Fort Chaplin properties now. And they stop at that paper alley or the cut, the new cut that was there, because it was a wooded area. But now that residential property is going to be there, our recommendation is still to have those sidewalks be continuous all the way down Texas Avenue to meet East Capitol Street.

The property should have been posted, I'm not real familiar with as far as I heard you say 15 days prior to, but because this was a postponement hearing -- I noticed the orange signs the last Tuesday evening. I don't know if that was ample or what it was supposed to be.

But just to make sure that it was, that was the 30th? The 31st, right. So we want to make

sure that Tuesday evening or Wednesday morning --

MR. SZEGEPY-MAOSZAK: Wednesday.

MS. MURPHY: No, because it was Christmas Day. New Year's Eve, right. So it was the evening prior to, is when the big orange sign was up there. The old signs were up but they were faded off, so I don't know if it's supposed to be a new posting or not. But that's when those signs arrived -- were on that property.

CHAIRPERSON HINTON: Are you saying that's the first the signs were there or that's the first that you saw them?

MS. MURPHY: No, that's the first that the signs were there. I looked for the signs. Right, so the sign was there, the big orange sign was there on - it wasn't there that morning; it was there that evening. That was the 30th -- the 30th or the 31st, one of those two days.

Right, the old signs were on East Capitol Street; they were never taken down. They had faded to that color.

CHAIRPERSON HINTON: Okay.

MS. MURPHY: We still have the concern about the on-site activity area based on the fact that the applicants are proposing their marketing strategy is to first-time homebuyers and single-families. And so the single-families, then they

would want to have something.

Our concern from the ANC is that if a playground or some type of area is not proposed there, that they're going to do -- since they're going to be building in sections and that all these 22 homes are not going to be built at once, they're going to do a part and then once they sell then they're going to do the next portion.

So when will the homeowner's association kick in and make a decision? Do the first five people that buy get to make that decision, or will we have to wait until 22 families move in or 22 persons purchase before there's a decision made as far as what's happening in that area. And also that's a concern we have; that something needs to be there so that it does deal with the marketing that's being done for the properties.

CHAIRPERSON HINTON: Are you saying that -- then you want the developers to decide what will go in before they start selling, rather than letting the homeowners decide?

MS. MURPHY: Well, they decided that the Recreation Department -- the Recreation Department, I'm sorry. The recreation area is going to be there, but we'd really like them to say that, you know, these are the options that you'll have, that you can have a playground there.

So that it won't be a situation that someone might want to purchase that has a small child -- because the only other area, since they're locating this here on East Capitol Street which has basically turned into Baltimore-Washington Parkway or 295 as far as the traffic flow and the speeds that are there -- there is nowhere, if someone decides to purchase there, for their small children to safely play, especially since the backs of these properties are all butting up against either East Capital Street or Texas Avenue.

CHAIRPERSON HINTON: Right. And I understand what you're saying. My question is, for us to resolve this to your satisfaction, do you want it identified like right now in the hearing, exactly what play equipment will be placed there, or do you -- at what point do you want that decided? When half of the units are occupied? I'm trying to find out when it is that you want it to be --

MS. MURPHY: Well I guess, my concern -- our concern is that, we don't know when; we just want to make sure that it's not a situation where everyone has to wait; that the first five people or the first six people that buy into this property are making the decision for the whole community.

So if it's going to be that the homeowner's association will make this decision,

then the homeowner's decision should be based on everyone and not just the first five or whatever. Well, Ms. Carr can tell us how she feels.

MS. CARSON-CARR: This is one of the areas I had great concern over -- with the recreation area -- because I hadn't seen one there before, and I keep hearing how it wouldn't be competitive with P.G. County.

And if you go to those housing areas they already have an area for the children to play in safely and not go up the street to a Recreation Department or across the street to Plumber, nor do -- and I told a gentlemen that a lot of African-American children play together so they're not going to be in one person's back yard or in their own back yard so they're going to be out in the main area.

We don't want them to be around the cars. So my concern was to have an area where you could say, go play.

CHAIRPERSON HINTON: So -- okay, and I understand that. My question to you is --

MS. CARSON-CARR: When should we --

CHAIRPERSON HINTON: -- when are you --

MS. CARSON-CARR: When should we make this decision?

CHAIRPERSON HINTON: What do you want the Board to say about that? Do you want us to require

that the developer specify before we make a decision, exactly what's going to go there, or are you willing to say wait until half of the units are sold and let those first-half homeowners decide what will go there? I mean, I'm trying to --

MS. CARSON-CARR: I could -- I like that idea that at least half -- because we don't know how long this is going to take and to say you wait for all 22 I think is not a good idea. So I agree that at least when half of the homes are sold -- but I also want to make sure this is in documentation that is clearly stated and seen by everyone so that developers will do this.

CHAIRPERSON HINTON: And what you mean by that is that the homeowners who are buying the property will understand that there is a playground that's promised --

MS. CARSON-CARR: That's correct.

CHAIRPERSON HINTON: -- and that --

MS. CARSON-CARR: No additional process -- should be already within.

CHAIRPERSON HINTON: And they will have some input into what's selected to go there.

MS. CARSON-CARR: That is correct. Whether it's a playground area, whether it's the barbecue with the gazebo-type setting there; it will be up to them.

CHAIRPERSON HINTON: Now, are you comfortable with half, and that would be that after --

MS. CARSON-CARR: Yes.

CHAIRPERSON HINTON: At the point that 11 units are sold --

MS. CARSON-CARR: Yes, that would be the first --

CHAIRPERSON HINTON: -- that those 11 homeowners --

MS. MURPHY: Will make a decision.

CHAIRPERSON HINTON: -- will get to make a decision along with the developer, how that play area will be outfitted?

MS. CARSON-CARR: Yes, exactly.

MS. MURPHY: Right.

CHAIRPERSON HINTON: Okay. And we could also then, require the developer to install that play equipment before the last unit is sold --

MS. MURPHY: Correct.

CHAIRPERSON HINTON: So that will put a timeframe so that it's not --

MS. MURPHY: Forever, correct.

CHAIRPERSON HINTON: -- 20 years from now is when the --

MS. MURPHY: Okay. Before the last --

CHAIRPERSON HINTON: Before the last unit

is sold? Is that what --

MS. CARSON-CARR: You know, I don't know the time because we have some other housing that's in the area, and we're talking two years now and it still isn't all the way sold. And when they told us out at ANC that the people that would be buying these homes would be a single mother with two-and-a-half children.

So we know that children are going to be there. So I don't know if we want to put it all the way to the last. I mean, I don't know. It's up to you on that one. I'm just saying about the times that --

CHAIRPERSON HINTON: Okay. Okay, what was next? Number 8.

MS. MURPHY: Okay. The reasonable amount of mature trees encompassing the property. We don't want it to be a situation where a new property is being built, all the trees are cut down or torn down because they still need to do a survey of the trees that they're going to be able to keep. But the way that it's being developed anyway, most of those trees will have to come down to start again.

We just don't want little, teeny, tiny trees that we have to wait until our grandchildren are born before we can see that the landscape is wooded again. So some mature trees -- adequate,

mature trees there.

CHAIRPERSON HINTON: Now what I heard them say this morning -- although it's not shown on the site plan we're looking at -- but that that buffer area along Texas Avenue will include the existing trees that are there. Those will be saved. Do you think that's sufficient?

MS. MURPHY: But they aren't lovely trees to start off with. I mean, they're just trees. So I mean, I don't really see that they're the buffer -- that they would be the buffer that they're saying that they're going to be as far as the type of trees that are there.

Now, you know, I mean if the type of trees that are there -- because there are a lot of Dutch Elms in that community that they are cutting down now -- so I mean, so it's all those trees that are there are Dutch Elms, they're not going to be there anyway. We just want to make sure that there will be trees and that they're mature trees there so it's aesthetic -- so that it looks still woodsy.

CHAIRPERSON HINTON: Well --

MS. MURPHY: You know what I'm saying? I mean, we just don't want all those trees to be cut down.

MS. CARSON-CARR: And 2-foot trees.

MS. MURPHY: And they're 2-foot trees.

CHAIRPERSON HINTON: Okay. And they've told us the part of the site where they can preserve the trees. And I'm asking you, does that --

MS. MURPHY: I'm having a hard time hearing because of the sign.

CHAIRPERSON HINTON: They've showed us on the drawing where they can save trees that are existing. So what I'm asking you is, is that acceptable to you at this point? There is nothing they can do about the quality of trees that are there. You know, I mean, what's there is what's there. They can either save it or they can remove it and --

MS. MURPHY: Start it over.

CHAIRPERSON HINTON: -- start over. So I'm asking you what --

MS. CARSON-CARR: Okay. We also asked them to get back to us to let us know what types of trees are located there is this buffer zone so we know if they are the Dutch Elms that have to be cut down because the city is doing this, period.

And we just want to make sure, like we said, you can see here these -- I mean, 51 and 52 is the wooded area and they took it in the wintertime so you really can't see how thick it could get in the summer. And they keep talking about this close-knit neighborhood that would be secluded from

everyone else. If they really want to have this effect that they say that they want, then you need true greenage there.

Now, I think a 2-foot tree that they said that they're going to put around, would take this forever to give you this enclosed area or atmosphere that they are referring to. So I'm just saying, we just want to make sure that they take into consideration, and that this 2-foot tree.

MR. BASTIDO: Madam Chairperson, I think that it was clear they are providing a fence, that they are providing two-and-a-half inches caliper evergreens to add to the density -- because that was one of the concerns of Office of Planning.

The Office of Planning went further saying that in between those trees that are going to be approximately 24 inches -- or say they are 34 inches -- and say that additional planting of evergreens should be provided.

So the evergreens that they are going to be first planted there, are fairly sizable trees and mature, because it's two-and-a-half inches caliper. And the additional --

CHAIRPERSON HINTON: That's the trunk at breast height, so about four feet off the ground, that's how big around the trunk will be. So that's a pretty big tree.

MS. CARSON-CARR: Okay, well they didn't give us those figures before.

CHAIRPERSON HINTON: Okay. That's what on the plan so that's what would have to be installed because this is what they've shown to us.

MS. MURPHY: Okay, that's fine.

MS. KING: Well, but not at four feet because it seems to me it's two-and-a-half or three feet in height.

MR. BASTIDO: No, no. I required an additional planting of bushes in between those trees --

MS. KING: Oh, I see.

MR. BASTIDO: -- that with a minimum height of 24 inches to add to that and to add to the density of the planting.

MS. KING: Okay.

MS. CARSON-CARR: So with a minimum?

MR. BASTIDO: No. They are the trees --

MS. CARSON-CARR: I understand that, but I'm talking about --

MR. BASTIDO: -- and additional to that these bushes --

MS. CARSON-CARR: -- the height --

MR. BASTIDO: No, the trees are two-and-a-half in caliper which makes it eight to ten feet in height.

MS. CARSON-CARR: Eight to ten feet?

MR. BASTIDO: Yes. Okay, then in between those trees there would be bushes that have to be planted that would be at least 24 inches high. So that it would also grow a mature to maybe four, five -- between four and six feet.

MS. CARSON-CARR: Okay.

MS. MURPHY: Okay. All right. We're fine.

CHAIRPERSON HINTON: Okay. Number 9.

MS. MURPHY: Number 9, we still -- as far as the 22 proposed buildings on the area, seems excessive, because of just like -- I mean, one of the other issues that was brought up about the deck situation, we too had a concern about the, coming in the front door and everything that you need to do you have to come through your house to get to your back yard, and there's no way to get around the side to get to your back yard.

And that's kind of a concern. You're talking about a community and people working together and coming together. If you wanted to go outside and do something, then people will have to go through your house to get to your back yard. So if you're bring a barbecue grill or whatever, I don't know if there's going to be a fence on the outside for them to be able to unlatch it to do

whatever.

If it's not then that's a problem, because that -- I mean, because we want to have the 22 we understand for the money purposes and everything, to cost and all. But the cost effectiveness of someone not wanting to buy something because of the fact that everything you do in your backyard you have to bring people all the way through your house is a bit much.

So I mean, we still have a concern about that, we don't know what could happen about that. But I mean, if they have to have the 22 then that's fine, but we just have that concern.

CHAIRPERSON HINTON: That would be pretty typical of any row house development, wouldn't it?

MS. MURPHY: Yes, it's going to be --

CHAIRPERSON HINTON: Because they're normally in groups of --

MS. MURPHY: Four or five, whatever.

CHAIRPERSON HINTON: -- six to eight units.

MS. MURPHY: We basically put down the things that we had concerns about. We understand that some things are zoning issues and some things are other things, but these were the concerns that the ANC had and that's why we presented them that direction.

CHAIRPERSON HINTON: Okay. And the last one?

MS. MURPHY: The adequate, additional parking -- we brought to both organizations our concerns as far as the cost to residents for the zoned parking. And even though that parking is now being used for people during the daytime to go to Metro, Metro is open until 12 o'clock or 2 o'clock in the morning if there's special activities taking place.

Now that the Arena -- people do park there and then take the subway. So we want to make sure that people that are using the subway for commuter traffic are not affecting the additional parking that might be allowed to those residents.

We want to also make sure that the homeowners's association decides that they don't want boats or campers or those type of things, or motorcycles on their property, then that means that on Texas Avenue, because it's public space, that now someone can park a trailer, somebody could park a motorhome there -- at least for 24 hours.

There's nothing that says they can't park it there 72 hours they need to move it, but they could park it there for those 72 hours. So that is a concern if you have 22 townhomes and they have 1.5 or whatever amount -- it's 40 parking spaces or 38

parking spaces -- but it still is a concern for the community because it is all -- the majority of that property is rental property: across the street, up the street, and behind, for Chaplin Apartments. So that is a concern that we still have.

We do not feel that because it's a new development coming in that those that reside in the community should have to spend whatever amount of money it is, to have a parking sticker and have to go through the inconvenience of going down there to pay that little extra $50 just to say that you're a zone whatever so you're allowed to park there for a certain amount of time.

MS. KING: I think it's five dollars, not 50. Ten? Ten dollars.

MS. MURPHY: It's not free. Right, and you know, I mean, it's not -- and so that is a concern that we have.

A few other things that we just have problems with -- and I mean, we've been through this before -- is the letters of support. Anyone can send a letter of support, but Fort Dupont Civic Association and Benning Heights Civic Association, you must pay dues to be a part of those organizations.

Benning Heights is not a part of the area where this proposed development is being presented -

- is basically being proposed to be built. Fort Dupont Civic Association does represent a part of that section of it.

But the letters of support should come from those that are in that community, that reside in that community, and that would have a vested interest in it, and the weight being given to a civic association that is out of the boundaries of this project is a bit much. Anybody can send a letter of support and all, but we don't feel that that should take any precedence over.

Also, the gentleman spoke as far as wanting this variance based on a 1980 -- what was it -- resolution, because 54 houses had been proposed prior in 1980. Well, this is 1998 so we're talking 18 years ago and many things have changed within that community. There was not a Metro Station at that time, there was not traffic traveling up and down East Capitol Street at 55 miles an hour. So a lot of those things -- what happened in 1980 should have no bearing on what's happening in 1998 or '97 when this began.

Also, the few things were left off as far as the things that are in our community. There are two gas stations and not one gas station. There's an Exxon gas station that's across the street at the bottom of Texas Avenue and East Capitol Street,

which is directly across from the Metro Station and the Shrimp Boat.

Also, there's a Texaco gas station which is in closer proximity to this property which is across the street, with the gas station, the back, would face the front of this property, basically -- which is closer. So you have the Texaco gas station, you have the Popeye's chicken, and then across from there you have the strip mall with a small grocery store and fast food things.

And we really had a concern about the fact that, I mean, those things just now hearing about them and -- it's just a little bit much. If you're going to present something as far as what's in a community, we want you to know that there's everything in the community because that affects who's going to buy in that community.

One gas station across the street is one thing but when you have a gas station on the left and a gas station on the right, that's something to think about. And there are two gas stations there. So we just wanted to, you know, make you aware of that, that that was something that was left off.

The other properties that are on Texas Avenue face the front of the street. There's one apartment building on Texas Avenue directly across from where this proposed property is that faces

sideways. The rest of the buildings face frontwards onto Texas Avenue. So those are some of the things that we just, you know, want you to be aware of.

The nuisance and crime report I guess we just on record would kind of -- we'd like to see what the crime report says; that this has become a drug -- it's not a drug-infested area on that corner. There are other areas that is taking place, but those are not the woods that have become crime areas.

Now, if the crime report shows that, then that's one thing and I'll -- you know. There's been one -- when was that, a year ago? A body was found, and that's the only thing that -- that's basically what we have.

And then also we have -- okay, go ahead.

CHAIRPERSON HINTON: Now, before we conclude with the ANC --

MS. MURPHY: I'm sorry?

CHAIRPERSON HINTON: Before we conclude with the ANC, I need you to make a determination whether, after what you've heard today, is your position in opposition? Yes, the ANC, based on --

MS. MURPHY: We've heard today.

CHAIRPERSON HINTON: -- what you've heard today.

MS. CARSON-CARR: I'm going to ask the

commissioner, too. I wanted to address something before we confer on what you're asking right now. Okay?

CHAIRPERSON HINTON: Okay. Yes.

MS. CARSON-CARR: They addressed a concern that the citizens and the commissioners had was about making sure that Ward 7 residents were able to secure work on the site, and they did address that today, saying that Ward 7 residents would get first preference or preference to work in the area.

But my concern also was that -- and I addressed it to them -- that even though you might have the opportunity, we don't know how many people in Ward 7 have the trade abilities. So we asked them if they could do some type of apprenticeship on the site for Ward 7 residents, and I didn't hear that today.

And I just wanted to bring that back out to make sure that that's in there somewhere for the Ward 7 residents. Because you might not be able -- I don't know how many people was able to be the electricians or whatever, from Ward 7. So to say I have it in here and then it's two Ward 7 residents because nobody else qualifies, still is defeating the purpose.

We have too many construction going on in Ward 7 that does not have Ward 7 residents and don't

even have District residents working in. So my concern as the ANC commissioner is to make sure that our tax dollars or the money that they will receive will be fed back into D.C. in there.

CHAIRPERSON HINTON: Okay. In the applicant's closing remarks we can ask them to address that.

MS. CARSON-CARR: Okay.

MR. BASTIDO: Madam Chairperson? If I may refresh her memory on a couple of things that the ANC requested. On the emergency vehicles, when they ask for a building permit, the building permit will not be provided unless it fulfills all the requirements.

CHAIRPERSON HINTON: Yes, that's correct.

MR. BASTIDO: In the left-turn, if the applicant want to put it in the private property they can put the signs saying "no left turn permitted". If it's going to be in the public space the Department of Public Works will have to approve such a thing.

And thirdly, in order to create a residential parking identity, the residents of the area will have to sign that petition. It's not only 22 residents could bring such an action into being. So everybody would be consulted or will have to sign upon that -- not everybody, but at least 75 percent

of the residents of the area.

Thank you.

CHAIRPERSON HINTON: Thank you.

MS. CARSON-CARR: My last thing that I wanted to say is that, when they talk about the other housing and the apartments that are in the area, if you go up Texas Avenue on the same side, there is another -- Fort Chaplin is there. This --

MS. REID: Just a moment. One second, please.

MS. CARSON-CARR: Okay.

CHAIRPERSON HINTON: I'm sorry. The ANC?

MS. CARSON-CARR: Oh, okay. I was telling you about the area. I really wanted to make sure it's clear how the area really is. Okay, if you come up Texas Avenue on the same side as the project, there's Fort Chaplin, there's another Fort -- it's a part of Dupont Park but I've forgotten the name. Fort -- what's the name of it? Whatever; it's a little park area.

Then it's housing and then this is residential parking -- I mean, residential, semi-detached homes for at least the next blocks. Keep going on Texas Avenue, cross Texas there's family housing, there's one more block of apartments. So it begins to be residential.

On A Street, there are homes on A Street,

there are homes and apartments on B Street, and C Street is almost totally residential. At the very bottom on Benning Road is apartments again. So the area does change from residential --

CHAIRPERSON HINTON: Right.

MS. CARSON-CARR: Right. Just wanted to make sure because it wasn't presented here like that.

CHAIRPERSON HINTON: Yes.

MS. CARSON-CARR: And up on East Capitol Street the same way. As you go up East Capitol on the right, yes there are apartments, but right after the apartments there's a strip of houses again, facing East Capitol. Thank you.

CHAIRPERSON HINTON: Thanks.

MS. MURPHY: Do you want us to confer? Okay. Ms. Thompson, can she go ahead and give her -- and then we'll confer here?

CHAIRPERSON HINTON: Sure. Now Ms. Thompson, are you a --

MS. MURPHY: She is hard of hearing, so please speak up loud.

CHAIRPERSON HINTON: Okay. Is Ms. Thompson connected with the ANC at all? Is she a part of the ANC presentation?

MS. MURPHY: Are you part of the ANC?

MS. THOMPSON: Yes.

MS. MURPHY: No, not on the Board, no. No, as a citizen. She's not a commissioner.

MS. THOMPSON: I'm a resident that resides in the single member district of which this proposed site is.

CHAIRPERSON HINTON: Okay, so now that we've concluded the ANC I'm going to let you confer and we will ask for your determination.

MS. THOMPSON: Okay.

CHAIRPERSON HINTON: But the next part of the hearing is persons or parties in support. So they go first. So let me call -- are there any persons or parties in support?

MS. THOMPSON: May I ask her to interpret -- I'm having a hard time hearing in this room and -- wait a minute, she said the people --

MS. KING: She doesn't have to decide. I mean, she can speak in opposition which will be the next thing. It's just the routine that we follow.

MS. MURPHY: You can speak in opposition or you can speak in support. They have to do support people first, then you come. Are you opposing or are you in support?

MS. THOMPSON: Are you supporting?

MS. MURPHY: We're doing this right here right now. We're deciding.

MS. THOMPSON: Okay. I am sort of -- when

I came and asked to speak it was dependent upon the revised drawings by which we had not seen it. We were told that it was going to be done, so my concerns had been and expressed to both the applicant and to the commission about the entrances.

I see on the drawing there are two entrances now, so I no longer have that concern. I still have a concern about a lack of recreation area on the site because there will be a minimum of two bedrooms, three bedrooms, and I felt there should be some recreation there for the family to buy.

Fort Chaplin Apartments on the back of where these homes will be built, and they have a play area that is restricted to others that do not reside on that property. So I felt that we need to have some assurance, some small area that will be called recreational area, so that the tenants -- well, the homeowners, will have this facility built-in once the zoning approval is given. This is all in the record.

My other concern is, I too have wanted to express brick fronting and backs. I happen to live two blocks form the property but all of the existing properties around this proposed site, in order for these townhouses to conform with what is there already, brick should be somewhere on the front, and I would go also as far as saying on the back.

I live two blocks up. Once you go past Fort Chaplin Park, the next corner at C Street begins the semi --

MS. MURPHY: Semi-detached.

MS. THOMPSON: -- duplexes on Texas Avenue. And there are approximately 100 dwellings. They are all 2-story, brick dwellings. We have -- some of us have an alley, which I'm fortunate to have an alley. we have front yards, we have sidewalks to go back down to the street where this proposed project is.

Once you come across Fort Chaplin Apartments on the same side, the left-hand side from here, the sidewalk ends just at the beginning of where this property land would begin. You would find, even with your driveway, you've got a multiple amount of space to get down to East Capitol and Benning.

So therefore, there's nothing there but dirt. The residents should have the sidewalks so that it's a continuous sidewalk so that that side and that parcel would be equal to what is already existing. On the opposite side there's full sidewalk. The side that stops just before they begin, there is sidewalk.

I would like to see this included into the decisionmaking; that sidewalks would be there at the

beginning, not after the tenants -- after -- I'm sorry, I say tenant but I mean the residents -- not after they purchase their home and then you negotiate with who's going to pay one-half of the bill. I feel the developers should put the sidewalk in along with the beginning of the homes.

My other concerns have already been addressed because I gave them to the commission, but I was concerned with the hazard of only have one way you get in and the same way to get out. And that has been addressed and it has been put here on charts. After I finish I would like to ask the organization if I might have a copy of this, because the only copy that I had was the previous one when they were going to have just the one.

I am not a commissioner now but I was a commissioner for this single member district for 17 years. And even though I'm not still a commissioner, the community has some general concerns and we are not opposed to new housing going up because we all realize we need housing.

But we are opposed to shoddiness and cutting corners based on money and not needs and beautification for the community by which something is getting ready to be developed in. So I thank you for this time.

CHAIRPERSON HINTON: Thank you. Are there

any questions from the Board members?

MS. REID: Let me just ask a quick question. The sidewalk issue that you raised, were you referring to the same sidewalk that was brought up with the ANC commissioner?

MS. MURPHY: Yes.

MS. REID: Okay, so that was the same sidewalk area?

MS. MURPHY: Yes, yes.

MS. REID: Okay. I just wanted to make sure it wasn't somewheres different.

MS. KING: Do I understand your testimony was that all of the houses and apartment buildings in that immediate neighborhood are all brick? The apartment buildings as well as the houses?

MS. MURPHY: Yes. The buildings in that area are brick. Right. There are some houses on A Street that are, but they have brick and then they have some wood posts, right. But the majority of the buildings are brick.

MS. THOMPSON: Everything. The apartments across from there and the next nearest residential on that side of the street are all brick.

MS. KING: Thank you very much.

CHAIRPERSON HINTON: Okay, thank you. Are there persons or parties in opposition? We have closing remarks then, by the applicant.

MS. KING: We need to hear from the ANC --

CHAIRPERSON HINTON: Oh, I'm sorry.

MS. MURPHY: We stand with the letter. We see that the three things, as long as they're rectified -- number 2, they can put the "no left turn" on their property then we're fine with that. The laying of the sidewalks is still our concern; and the playground which was already decided.

So if those things are rectified then the ANC 7A stands in support of this project.

CHAIRPERSON HINTON: What are the numbers?

MS. KING: Two, five, and seven.

MS. MURPHY: Two, five, and seven were still the same issues -- were the issues, right. As we said, we do the -- 11 people would make the decision about the activity center, so we're okay with that.

And if they can put the "no left turn" on their property side, then that solves that; and the sidewalks that connect the property so that it's aesthetic to what's happening in the community now.

And with the brick facade and everything that would be on the other people's --

CHAIRPERSON HINTON: Thank you.

MS. MURPHY: Thank you so much.

CHAIRPERSON HINTON: Does the applicant have any cross examination?

MR. SZEGEPY-MAOSZAK: No.

CHAIRPERSON HINTON: Okay, thank you, ladies.

MS. MURPHY: Thank you. We have to leave. Is there a reason why we need to stay? You'll send us a--

CHAIRPERSON HINTON: No, you're free to go. I'm not -- we may make a decision today or we may make a decision in February. I'm not sure.

MS. MURPHY: Okay.

MR. SZEGEPY-MAOSZAK: Madam Chairman? Are we now allowed to make a rebuttal or --

CHAIRPERSON HINTON: Yes, absolutely.

MR. SZEGEPY-MAOSZAK: I would first simply like to thank the ANC. Currently there hasn't been a single member commissioner from that area, I think, since this young lady was. So there's currently none. So we've had to deal with Ms. Kelly from 17A, so they're not precisely in the neighborhood as the young lady has put.

We've tried very hard to meet all of their requirements and I would defer, I think the three things left on the table regard the "no left turn" sign. As we said, we would fully support any action by DDW to do that. Putting it on private property has absolutely no enforcement value.

I mean, if someone takes a -- they can see

it and that can be -- if they violate that, I would think maybe the homeowner's association could fine them, but it's something that's typically done by an agency. It didn't show up in the DPW report regarding traffic, but as we say, we would be more than happy to -- and as I understand from George, is that correct? -- to abide by any decision, "right turn only; no left turn" -- whatever that the agency that has jurisdiction would tell us.

I mean, we recognize that there is a problem, as they do. But that's -- we would be certainly glad to comply with any DPW order. We believe it's beyond our control.

We're happy about the emergency vehicle exit and entrance. We believe we've addressed that; that was very important.

The open space question, Madam Chairman and fellow Board members, really raises something to us that's a bit of a problem. We designated it as open space and it will always be open space, but putting in a use there now at cost to us when the homeowner's association hasn't decided how it wants to use the space, it's very difficult.

Moreover, using the number 11 threshold, for certain decisions, homeowner's associations need two-thirds vote, more than have, complete majority. You know, you may have ten members wanting a jungle-

jim there and you may have 12 members wanting a tot-lot.

It's our position that it would be really up to however that conflict may be resolved within the homeowner's association, we believe that that -- as long as we've dedicated the space to recreational use we believe that that's what it would be, and we do not want at this point, to invest money into something that may or may not make the property more marketable.

Right now we're committed to open space and recreational space; we just don't know at this point, what type.

MS. KING: And on your plan there's an area called 23 and another area called 24. Are those buildable lots?

MR. SZEGEPY-MAOSZAK: Are those -- 23 and 24 --

MS. KING: Down at the bottom right where it's -- and up at -- that big triangle up at the top where Texas intersects with -- are those buildable lots?

MR. HUFF: Number 24 could be a buildable lot but we have no intention to build on that particular lot.

MS. KING: And 23?

MR. HUFF: Number 23 --

MS. KING: No, 23 is down at the bottom, where your elbow is.

MR. SZEGEPY-MAOSZAK: Next to roadway.

MS. KING: Between the two -- the old access and the new access.

MR. HUFF: Number 23 only represents the balance of the space that will not be dedicated to the individual uses. Which will include this lot --

MS. KING: Is it a buildable lot?

MR. HUFF: I'm sorry?

MS. KING: Is it a buildable lot?

MR. HUFF: It's not --

MR. ROTHMAN: Let me say, the open space which exists will be dedicated to the homeowner's association; they will own the ground.

MR. HUFF: Which will include a driveway and walkways and things of that sort; but it is not intended as a "buildable lot".

MS. KING: Thank you.

CHAIRPERSON HINTON: And I -- it would be my interpretation that if the Board approves the plan you are showing us, that none of that green space could be later built. That the plan would be 22 lots as shown and --

MR. SZEGEPY-MAOSZAK: And that was our intention. We did not want additional --

MS. KING: And if they did want to use

that space they'd have to come back here.

CHAIRPERSON HINTON: There would have to be some modification --

MR. SZEGEPY-MAOSZAK: Absolutely. It would be a modification.

MR. CRESCENZO: Yes, one of our planning goals was to maximize the green space on the site. We did not want to build every square inch; we did not want a use on every square inch. And you can see, if you put something on the corner of Texas and East Capitol that would be -- could be in the triangle of this of this -- it's not particularly practical.

And the lower corner is right now next to the second means of egress which requires someone, like a child or someone or even a family, to cross the road. We did not want to do this.

MS. KING: No, I was just wondering if that became additional -- I mean, that does in effect, become additional recreational space. A father could go out with his son or daughter and throw around the baseball and so forth, in those spaces. I mean, presumably they would --

MR. CRESCENZO: Those are trees now and we don't intend to remove those trees.

MS. KING: I see. So it's so heavily treed that it's in fact, a wooded area?

MR. CRESCENZO: Right. That's on our property and we intend to keep those trees there. that was a very conscious decision to maintain on our property, those wooded areas.

MS. KING: Okay. Thank you.

MR. SMITH: I just want to point out that in the past those would be buildable lots. We don't intend to build on them because we are trying to reduce the density here. We also operated here with no District Government subsidy. I'd just like to point out --

MS. KING: I understand.

MR. SMITH: -- there is no government money in here. We are borrowing this money and if it was government money in here other things could be done. But there isn't any, and so we're trying to leave as much space available as we can for open space.

MR. ROTHMAN: I would like to address the economic issue a little bit too in response to one of Mr. Bastido's concerns. You know, both Manna and Marshall Heights are non-profit developers and we like -- we're not out to make money. But to remain viable we have to break even on a project.

This project is just about break-even and it can't afford any more hits. Mr. Crescenzo referred to the additional $1100 to $1200 a unit

which was added to the cost as a result of accommodating the ANC.

Now, Mr. Bastido said something I really wasn't aware of. He talked about size units with brick fronts and also brick rears. I wasn't -- I don't think we've agreed to brick rears and that would be sort of a budget-breaker for the project.

One of the things we have tried to do is to -- in designing this project is to stem the flow of people to Prince George's County. We've spent considerable amount of time looking at the types of projects that are out there. Believe me, none of them have brick rear elevations. We respect brick and we all love brick, but there are certain cost considerations.

If we want to make this project competitive and stop people going across the border, there are some cost constraints, and one of them is that the usage of brick, while used somewhat, you know, cannot be maximized. So please, I don't know that we can agree to his condition that we do brick rears, but we will certainly -- we have agreed to doing 25 percent brick fronts.

MR. CRESCENZO: I wanted to address the sidewalk issue. At considerable cost, as Mr. Rothman said, we agreed to add sidewalks on the property, on Texas Avenue, in public space. Now, it

will cost us a lot of money to do that because we have to build it to DPW specification. We can't build it to the same specifications we're going to build it on our own property. We cannot add any additional sidewalk. We cannot cut a sidewalk down to East Capitol Street and above.

MS. KING: As someone who has in a past life sat as a hearing officer through sidewalk and alley improvements, I know how much it's going to cost you and I think you're extraordinarily generous because of what it would otherwise cost the homeowners should the ANC or some of the homeowners petition and the hearing officer determine to install DPW-standard sidewalks there. It's a colossal expense and I do agree with you that you have made a very generous contribution.

MR. CRESCENZO: Marshall Heights as a community organization, will work with ANC 7A to petition DPW for extensions of sidewalks to East Capitol and beyond; beyond our second --

MS. KING: But bear in mind that the owners of the property that abut those sidewalks are going to have to pay -- Lloyd, is it half or a third?

MR. SMITH: Half.

MS. KING: Half of the cost paid out over a 3-year period. So you know, your people are going

to pay -- if you own it at the time that the sidewalk is installed by the city, you pay. If somebody's bought the house, they pay.

MR. CRESCENZO: Well, I realize that. Marshall Heights has been asked by staff members at the Department of Housing and Community Development to suggest capital improvements that the Department of Housing and Community Development might do in the Ward using CVBG dollars, and that's what we would do.

MS. KING: Yes, that's right.

MR. CRESCENZO: We would not want to impose any additional cost on any new homeowners or existing homeowners, but we cannot build additional sidewalks beyond what we've proposed to do.

MS. KING: The point I wanted to make is that I think you're extremely generous in what you've proposed.

MR. CRESCENZO: Thank you.

MR. SZEGEPY-MAOSZAK: Madam Chairman, do you have questions? You look like you may have some questions.

CHAIRPERSON HINTON: I thought, and I'm probably wrong, but I thought that when a piece of property like this that's vacant is sort of subdivided and built into residential, that generally the developer did provide the -- whatever

DPW requirements are in the right-of-way abutting that property. Is that not usually the case?

MR. SZEGEPY-MAOSZAK: Well --

CHAIRPERSON HINTON: Any improvement -- for instance, the street trees and the sidewalk, wouldn't it normally be provided by the developers?

MR. SZEGEPY-MAOSZAK: The idea is that it's in public ownership, and so the prior developer would have to apply for a public space permit and then assess its own -- assess the project for the cost of it, basically.

We had talked about an alternative which would be, if it were more important to -- rather than providing the sidewalk as far up as we did, to actually provide the sidewalk from the lower entrance down to the corner if that were viewed as the more important sidewalk.

It seems to me that that's what the ANC wanted. They didn't seem -- given the tree-laden nature of that public space where the current sidewalk is, it's very -- I mean, it's very heavily wooded and a sidewalk may make more sense and I think -- I don't know if I can speak -- would the applicant be willing to put the sidewalk in below the lower entrance rather than where it is now?

MR. ROTHMAN: Yes, we would.

MR. SZEGEPY-MAOSZAK: So Madam Chairman, I

guess if DPW functioned better they would be out doing this, but right now, given that the project is running awfully close to its -- very close to its budget, we'd be glad to accommodate whatever we can but that's the maximum -- I think it's 250 -- how many feet is that, Mike, of sidewalk, there?

MR. CRESCENZO: What we proposed to put in between the two curb cuts -- the existing one and the new one we've created -- is approximately 250 feet.

MR. SZEGEPY-MAOSZAK: That's an awful lot of sidewalk. But we would be more than glad, in the Board, if you would rather, to move the sidewalk down so that there's a contiguous -- there's a connection to the sidewalk along East Capitol and then up to the first entrance. I mean, that's an alternative. That may make it more desirable; that will get people out of the development down into the intersection.

But as Ms. King said, this is -- these costs you don't really realize until you're out there trying to cost it out -- 250 feet of sidewalk is a very significant expense that, as I say, they are fully willing to accept, but they can't do any more than that.

Ms. Reid, do you have any questions?

MS. REID: Just one, and that's in regard

to the speed bumps. It appears that you have speed bumps there and there, but you don't have any on the top section -- that parking lot there. I don't see any speed controls. Is there a reason why?

MR. HUFF: It was felt that the speeds bumps that were located here would be adequate to slow the speed coming in or out of this direction. We did not feel that it would be appropriate in any other portion, especially because of the topography.

There's a steeper incline for example, here to here, which a car could -- the speed could be much higher. And so this is an attempt to slow that speed. Now whereas this is more gradual and they have their car more until control. Now, if you feel that a speed bump in some other location would be appropriate then we would consider it.

MR. CRESCENZO: Well, the other issue of course, is that the second means of egress is curved and we wanted to make sure that they slowed down at the curve. The top part of the parking area is straight and we did anticipate supporting any DPW requirements for either "no left turn" or "right turn only", which would obviate the need for a speed bump at the top since people wouldn't be going out.

CHAIRPERSON HINTON: Any other questions from the Board?

MS. KING: None.

MS. REID: No.

MR. SZEGEPY-MAOSZAK: Madam Chairman, if we might ask. Financing of this project is, because they want to get going by spring, it's very important that they get it, so if we've met the ANC's concerns and if you deem it in your discretion we would request if you could, a summary order if you so deemed this case, and that would then allow us to secure our financing more quickly. Thank you very much.

CHAIRPERSON HINTON: Thank you.

MS. ROSE: Madam Chairman?

CHAIRPERSON HINTON: Yes, Ms. Rose?

MS. ROSE: I just needed -- I need to know the party status of all those waiting to testify.

CHAIRPERSON HINTON: We have one party that's being --

MS. ROSE: And that's all?

CHAIRPERSON HINTON: Yes. I'm sorry, I had one more question before you went. I just want to get some clarification. This is about the playground equipment.

MR. SZEGEPY-MAOSZAK: The playground equipment. George would be best and Michael would be best able to answer that, Madam Chairman.

CHAIRPERSON HINTON: And what I want to know is, because the community is concerned about

the timeframe, how long do you expect it to be from when you begin construction till the last unit is completed, and at what point can you commit to providing that playground equipment?

MR. CRESCENZO: Well, we're committing to providing the recreational equipment that's desired by the homeowner's association today. And --

CHAIRPERSON HINTON: No, no. I mean, at what point would you install it?

MR. ROTHMAN: Generally, the way the documents -- when I say homeowner's association documents, condo documents, FHA requirements, Fannie Mae requirements -- usually you turn control over to the association when 70 percent of the units are settled or at the end of two years, whichever comes there later, and that's what we would expect to do.

CHAIRPERSON HINTON: Okay. Two years or 70 percent --

MS. KING: And I don't think we should become fixated with quality of playground equipment because as the gentleman has pointed out, the homeowner's association may prefer to have picnic tables and a grill --

MR. ROTHMAN: That's correct.

MS. KING: -- rather that a tot-lot.

MR. CRESCENZO: Right, but the cost will be borne by the developers -- whatever the

homeowner's association should --

MS. KING: And I think with all due respect to the ANC -- and I understanding that they're concerned -- each of these houses has a back yard --

MR. ROTHMAN: Fenced in.

MS. KING: -- fenced in back yard. So the recreation area is not the only recreational facility available to the owners and the residents of these houses. They will have their own private recreational space in their fenced back yard.

MS. MURPHY: That wasn't the concern -- I don't know if this is the process here -- that wasn't the concern of the ANC. The ANC's concern was that this is a community development and that if it's a community development that there should be an area that the community that resides in that community can come together as a whole.

It's not a separate entity. Our concern was not about the fact that there was a lack of a place for people to socialize within their own properties. But our concern is that there is not a place for the communities -- children -- to come together and play together, or for you to have a barbecue grill or whatever. That's what our concern is.

MS. KING: Fine. Thank you.

CHAIRPERSON HINTON: That's all from me. Thank you.

MR. SZEGEPY-MAOSZAK: Thank you so much, Madam Chairman.

CHAIRPERSON HINTON: Ladies?

MS. REID: I give approval, Madam Chair, with the conditions stipulated by the Zoning Office and also the ANC, I think that the applicant has complied with the matter of right requirements for R-5-A zones and the subsection 353.1 and 410.1 through 16 of the Zoning Regulations.

The ANC has weighed in in support predicated upon certain conditions. And we can look at the conditions that have been somewhat modified to include within the ordinance. The Office of Zoning has given approval and has stipulated -- was stipulated in their testimony --

MS. ROSE: Office of Planning.

MS. REID: Oh, Office of Planning, okay, has so stipulated. The DPW letter had no objections. In regard to the negative impacts, there does not appear to be any great negative impacts as far as the development was concerned. And does not seem to impair the intent of the zoning regulations.

Now, should we look at the various conditions --

CHAIRPERSON HINTON: Before you -- let me just second the motion, then go ahead to your conditions.

MS. REID: The conditions as proffered by the Office of Planning in regard to the additional planning material to be located within the proposed two-and-a-half inches in caliper evergreens at least three, 24-inch high evergreen bushes, and at least 25 percent of the dwellings be built with brick facades. I think that week --

MS. KING: Well no, we need to make it clear that -- the developer's understanding is that they will be brick fronts.

MS. KING: That's exactly -- I'm not finished yet.

MS. KING: I beg your pardon.

MS. REID: At least 25 percent are supposed to be built with brick facades on the front. And in regard to the ANC, the developers have agreed to the installation of an activity center or recreation center area to be determined by the homeowner's association, either within two years or after 70 percent of the occupancy or settlements.

The sidewalk, the developer of course, have agreed to -- now, did I understand -- help me with this, Madam Chair. Is it specifically the area at the southern part of the development, or is it

going to be just the --

MS. KING: This essentially said that they'll do 250 feet of sidewalk.

MS. REID: Is it specified?

MS. KING: That they will do a maximum of 250 feet of sidewalk.

MS. REID: Was that specified?

MS. KING: Specified where? We're the ones who are --

CHAIRPERSON HINTON: It's shown on the drawing.

MS. KING: No, no, but we're talking about the sidewalk, now.

MR. SZEGEPY-MAOSZAK: This is what the developer proposes he will do.

MS. KING: Although they said that they --

CHAIRPERSON HINTON: But in the alternative --

MS. KING: -- would talk about --

MR. SZEGEPY-MAOSZAK: Alternatively not this, but this.

MS. REID: Who is going to determine where it goes?

CHAIRPERSON HINTON: We are.

MS. REID: Okay, so then you're saying that instead of there you're going to put it at the top? That's what --

CHAIRPERSON HINTON: They have proffered that. They felt it was the community's desire to have a connection to East Capitol Street, and so they're proffered that they could put it in that location rather than where it's shown.

MR. SZEGEPY-MAOSZAK: I understand the confusion. We had been willing to dedicate 250 feet here thinking that it made sense for pedestrian access in the units here. What we heard the ANC saying which I think is not unreasonable at all, is that they were more concerned in some ways with this connector from here down to East Capitol because this is a more heavily traversed area than this may be. Especially now up front.

So we'd be willing to -- we can't afford to extend this but we'd be willing to, instead of this, put one in here. We did this because we thought this made more sense for our development. But this --

MS. KING: Is it reasonable to suggest that if we're making the condition -- and Ms. Reid, you let me know if you think this is a friendly amendment -- that we say that the developer will install a maximum of 250 feet of sidewalks at -- you know, again by agreement with the owners?

MS. REID: ANC.

CHAIRPERSON HINTON: She's saying with the

owners. I don't think -- well, that would mean you would have to wait till the owners are in to have them decide.

MR. SZEGEPY-MAOSZAK: It's just, as Ms. King pointed out, it's a substantial cost. In most other cities this would be the amenity. What I guess we've been trying to say is, given the amount of single-family housing that's available in Ward 7, we viewed the project, seeing the forest through the trees, as being the real gem here.

MS. KING: I mean, if we're going to decide, why don't we decide to go from the top curb cut to Eastern, because there is paving that the residents would walk on to get themselves around their own property.

MR. SZEGEPY-MAOSZAK: And down East Capitol, is that what you're saying, Ms. King?

MS. KING: Yes. But you know, internally the gray roads that you're building on -- you know, and parking and so forth -- provides them with a dirt-free method of getting around --

MR. SZEGEPY-MAOSZAK: Oh, absolutely. And here to the internal sidewalks here.

MS. KING: So that, you know, they can get around without getting their feet dirty within their property, and if we're thinking of it from the point of view from the people who are going to live there,

that probably the amenity that would be most desirable to them is from Eastern Avenue to the top curb cut.

MR. SZEGEPY-MAOSZAK: From East Capitol --

MS. KING: From East Capitol.

MR. SZEGEPY-MAOSZAK: -- to here?

MS. KING: Yes.

MR. SZEGEPY-MAOSZAK: Okay. But I believe George, that that's -- the developer is more than amenable.

MS. KING: I mean, if we're going to make a decision for the homeowners, if I was a homeowner that's what I'd prefer.

MR. SZEGEPY-MAOSZAK: What has the least impact on the most people, so for us that's great. But it's also -- it doesn't then, leave a gap that many people more than likely, especially if they parked here, they get sidewalk here, have to wait here -- this may be a much better amenity put here, and we're more than willing to do that.

MS. KING: Well, it's probably more desirable for the homeowners.

CHAIRPERSON HINTON: Not only is it more useful up there, but if you don't have to install sidewalks in the other area, more of the existing trees will be saved.

MR. SZEGEPY-MAOSZAK: That's true, too.

There will be more public space here in other words, Madam Chairman, to leave whatever's in the public space.

CHAIRPERSON HINTON: To leave what's there -- existing.

MR. SZEGEPY-MAOSZAK: That's right. right.

CHAIRPERSON HINTON: So then let me see if this condition satisfies those concerns. The sidewalk will be provided from the northern entrance to connect to the sidewalk existing on East Capitol Street.

MR. SZEGEPY-MAOSZAK: That's amenable to the applicant.

CHAIRPERSON HINTON: -- instead of the sidewalk as shown on this submitted --

MR. SZEGEPY-MAOSZAK: Instead of this. Yes, yes. George is that -- okay. Thank you.

MS. REID: And I think that the last issue is in regard to left-turn sign which the applicant has agreed to provide in compliance with DPW.

MS. KING: No, has agreed to join with the ANC and the neighbors in --

MR. SZEGEPY-MAOSZAK: We have to go to DPW and say, please put --

MS. KING: -- asking the DPW --

MR. SZEGEPY-MAOSZAK: -- up a left-turn

sign.

MS. REID: Excuse me; that's what I'm saying.

MS. KING: But they don't install it themselves.

MS. REID: No, no. Would you please repeat what you were saying?

MR. SZEGEPY-MAOSZAK: Yes ma'am. What we were going to do is, we were going to support, along with the ANC, whatever -- left or right turn, no right-turn, no left-turn signals -- or signs -- that are here. That's absolutely what we're going to do.

CHAIRPERSON HINTON: So this condition then would be the applicant will work with the ANC to petition DPW to install a "no-left turn" sign at the northern entrance?

MR. SZEGEPY-MAOSZAK: I think that's something that the applicant is willing to do. Yes.

CHAIRPERSON HINTON: Because I see no reason to put a sign on private property that has no way of being enforced.

MR. SZEGEPY-MAOSZAK: It's like if you were a unit owner and you say, don't park in my parking space. I mean, how many times have people just parked in the parking space?

CHAIRPERSON HINTON: Okay. Let me look through here to see I need anything else.

I think that's everything, and that gives us five conditions?

MS. KING: Could we just quickly run through what the conditions are?

CHAIRPERSON HINTON: Yes.

MS. KING: The two-and-a-half-inch evergreens between the taller trees?

CHAIRPERSON HINTON: Yes, condition number one as written in the OP report. Condition number two as written in the OP report with the change that --

MS. KING: Brick facades.

CHAIRPERSON HINTON: -- with brick facades on the front. So 25 percent of the fronts would be brick. Number three is that recreation equipment as selected by the homeowner's association and the developer, will be installed in the spaces identified on the plan as recreation space. Number four --

MS. REID: Within two years of -- do we need to specify? Two years or 70 percent of --

CHAIRPERSON HINTON: Well, that time is when -- that's when the running of the homeowner's association is turned over to the homeowners. But I think we need to be careful. We cannot direct when those people would make a decision. I mean, at either two years or 70 percent is when the

homeowners get control of their association. It may take them another year to decide what they want.

MR. SZEGEPY-MAOSZAK: Ms. Reid, we'd certainly be willing to use best efforts to do that, but the idea is to sell these. Ideally, if we had 70 percent after two years we'd be very happy to do that. But we really don't know so we certainly would be glad to use best efforts to do that.

MS. KING: Okay. So will be installed -- can we say, as soon as possible? You know, we're not getting any language that can be enforced.

MR. SZEGEPY-MAOSZAK: We can say, within a reasonable period of time.

CHAIRPERSON HINTON: Okay.

MR. SZEGEPY-MAOSZAK: And that takes into consideration that the site has to be cleared and sold, and I think we all know what we mean.

CHAIRPERSON HINTON: Okay, so recreation equipment as selected by the homeowner's association and the developer, will be installed within a reasonable time in the space as identified on the plan as recreation space.

MR. SZEGEPY-MAOSZAK: Okay. Is that okay, George?

CHAIRPERSON HINTON: Number four, sidewalk will be provided from the northern entrance to connect to the sidewalk on East Capitol Street

instead of the sidewalk as shown on the site plan.

MR. SZEGEPY-MAOSZAK: Madam Chairman, let me just -- real quick. Mr. Rothman asked me, do you view this as two recreational spaces or one?

MS. REID: I see only one.

MR. ROTHMAN: There's one designated. I think one of the Board members asked the question about parcel 24; that could probably be used for anything.

MS. KING: No, 23 and 24, it's just that -- the triangle where the -- the shorter piece of the driveway, the parking comes in --

MR. SZEGEPY-MAOSZAK: Just show where it is.

MR. ROTHMAN: No, here is 24 and someone asked the question, is this a buildable lot? And the answer was that it's going to be dedicated to the homeowner's association so therefore it can be used for whatever purpose they want. But we indicated only one area here for recreation.

MS. KING: They only have one area for recreation.

MR. ROTHMAN: Yes, they can use this for recreation, but the equipment will go here.

MS. KING: They're going to install recreational equipment of some kind in one place.

MS. REID: Designated recreational area.

CHAIRPERSON HINTON: Okay. So in the space identified on the plan as recreation space. I misunderstood.

MS. KING: Right. Because I was just being nosy about what that -- those lots were.

MR. SMITH: Actually, there are two areas for recreation but we're only committing to build something on one.

CHAIRPERSON HINTON: Okay, we're clear.

MS. ROSE: Well, the order needs to be clear as to where the equipment will go. Is there two areas?

CHAIRPERSON HINTON: There's not. There's one on the plan that says recreation.

MS. BAILEY: Madam Chair, just perhaps --

CHAIRPERSON HINTON: We have one more condition.

MS. BAILEY: I'm sorry.

MR. SZEGEPY-MAOSZAK: Madam Chairman, can I ask a question? If the homeowner's association wants to keep that open space, do you regard that as being their choice of recreation space?

CHAIRPERSON HINTON: Yes.

MR. SZEGEPY-MAOSZAK: Okay, thank you.

CHAIRPERSON HINTON: Okay, then number five was, the applicant will work with the ANC to petition DPW to install a "no left turn" sign at the

northern entrance.

MR. SMITH: What I would prefer to say is, the applicant will apply to DPW for "no left turn" and notify the ANC. I mean, what is it that they're going to do.

CHAIRPERSON HINTON: That's better. That's fine. The applicant will apply -- because the ANC clearly wants it. So the applicant will apply to DPW.

MR. SMITH: Right. We have to apply -- and we will notify them that we have applied and give them copies. The problem is "work with" --

CHAIRPERSON HINTON: I understand. It's the result. Now, Ms. Bailey.

MS. BAILEY: I wanted to ask the applicants, are all the plans that were presented today in the file? For example, the landscaping plan and so forth. Are all of those plans in the file and if so, you need to leave the ones that are not in the file because we need to have a record of that.

MR. SZEGEPY-MAOSZAK: Mr. Huff would be the best person to answer. Please, Mr. Huff, come up here. The question is, Carl, are all the plans in the zoning file, and the ones that aren't -- for example, landscaping we have to leave with the board.

MR. HUFF: Beverly, hi. To the best of my knowledge, the plans are on the file, which includes the landscaping, the fencing, some of the additional plans that were asked for by the Office of Planning. That should be in the record. Before I leave here today I'll check to make sure, but it should be there.

CHAIRPERSON HINTON: They appear to me to be in the record already.

MR. HUFF: Okay, thank you.

CHAIRPERSON HINTON: Anything else?

MS. REID: Madam Chair, I just have scribbled in my notes something -- the ANC had indicated a condition regarding trash pick-up.

CHAIRPERSON HINTON: That's required by law and that will be provided, so we don't need to --

MS. REID: Okay, and then also, what about the discussion regarding the Ward 7 residents having an opportunity to work at the site, or training? That is something we cannot do?

CHAIRPERSON HINTON: We can't require it and the applicant has told us that they are going to use minority contractors to do the construction to the extent possible. We can't require who those contractors --

MS. REID: No, but we cannot also require

that -- that not require the condition that there be a percentage of the residents in the area to be able to have opportunities with the site.

CHAIRPERSON HINTON: No, we can't.

MR. SMITH: Ms. Reid, we run an employment center. We do employment counseling to find people jobs. There is no federal or district money in this project. It's not required. If you had a federal or district-funded project then you would be required to have first-source agreement with the Department of Employment Services.

However, we are going to, as George said and Michael said, we always try to hire as many people as we can from the community. In Greenway, we had a succession of people that we sent, worked two days, leave, and on and on. So we always try to do that. That is something -- and they know this, okay?

MS. REID: And I do too.

MR. SMITH: They know it. But it is sometimes difficult, but in this case we always tried to get local subs -- we do our own general contracting. We hire local subs; that's our routine. And by the way for the record, for the last 11-and-a-half years, we have not made a dime in providing housing for Ward 7. We have barely broken even and have lost a lot of money.

And we use our economic development money to help subsidize this project and others to try to make a go of it. I don't anybody really understands that and so you know, we're not getting $24 million in grants like some people do. And so we do this on our own. So we're at break-even now.

CHAIRPERSON HINTON: Okay. So I think that covers all the conditions. Are we ready to vote? All those in favor?

(Chorus of ayes.)

Opposed?

(None.)

MR. SZEGEPY-MAOSZAK: Madam Chair, is there a possibility of making that a --

CHAIRPERSON HINTON: Oh, you asked about that.

MR. SZEGEPY-MAOSZAK: Yes, a summary order.

CHAIRPERSON HINTON: Well, we can't do summary orders if there's any opposition on the record, and --

MS. KING: But the officers -- we've dealt with the officers.

MS. REID: I thought they removed it -- placated upon meeting their conditions.

MS. KING: They said if we met the three conditions and we've met those three conditions.

CHAIRPERSON HINTON: Well, no. One other condition was sidewalk along the entire property frontage, which is not being done.

MS. KING: Oh, I see. Between A street and East Capitol Street.

CHAIRPERSON HINTON: Yes.

MS. KING: Which is even beyond --

MR. SZEGEPY-MAOSZAK: A street is beyond the property line.

MS. KING: Beyond the property line.

MR. SZEGEPY-MAOSZAK: It just seems that we're so close and as Mr. Smith and Mr. Rothman have said, time is of the essence now because they have to get their financing. If at least you could -- if not, then if we could just simply get an expedited order or to the best of your ability, or whatever -- findings of fact, if that is the case.

MS. ROSE: Perhaps if they submit a proposed order --

MR. SZEGEPY-MAOSZAK: Yes, we can submit -- by the end of the week we'll submit an expedited -- findings of fact, conclusions -- and see if you can-

CHAIRPERSON HINTON: Yes, that would --

MR. SZEGEPY-MAOSZAK: Would that be okay?

CHAIRPERSON HINTON: That would be great.

MR. SZEGEPY-MAOSZAK: And could you then

act on that? Would you have to wait till the next meeting to act on that or could you --

CHAIRPERSON HINTON: We could review it at our next hearing which is in two weeks.

MR. SZEGEPY-MAOSZAK: Okay, that would be great.

CHAIRPERSON HINTON: And if it's all in order it could be adopted and --

MR. SZEGEPY-MAOSZAK: Great. Well, thank you.

CHAIRPERSON HINTON: -- at that time. So then it will done in two weeks.

MR. SZEGEPY-MAOSZAK: Okay, thank you.

MS. ROSE: Let me record the vote. Staff would record the vote as three to zero to grant the application, of Ms. Reid, Ms. Hinton, and Ms. King to grant. Ms. Richard is not present; not voting.

CHAIRPERSON HINTON: We're going to take a 5-minute break before we move to the next case.

(Whereupon, the foregoing matter went off the record at 3:48 p.m. and went back on the record at 3:57 p.m.)

CHAIRPERSON HINTON: I think we're ready to go back on the record.

MS. ROSE: The next application is 16297, of Eddie Becker and Phillip J. Gedring, Jr., pursuant to 11 DCMR 3107.2, for a variance to allow

an addition to an existing non-conforming structure that exceeds the lot occupancy allowance [Paragraph 2001.3(a)]; and a variance from the floor area ratio requirement (Subsection 402.4) for a fourth floor addition to a single-family structure in an R-5-B District at premised 1844 Mintwood Place, N.W. (Square 2550, Lot 176).

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

(Witnesses are sworn.)

MS. ROSE: You may be seated. The applicant will please come forward.

MR. BECKER: Good afternoon. My name is Eddie Becker. I'm the owner, part-owner of the building on 1844 Mintwood Place. We'd like to build a shed dormer on the -- as an attic extension and turn that into a family room. The first floor of the house has been a pre-school since 1972. When the tenants bought the house in 1987 we decided to keep that there, so we really don't have use of a living room kind of family room.

So we thought we'd put a little addition onto the attic and use that room up there, which is a lot quieter, too. I brought along my architect who's kind of like done all of the designs and has been working with historic preservation.

CHAIRPERSON HINTON: Could you speak up a

little bit?

MR. BECKER: Yes. This is Lorena Checa. She's done all of the designs and can show you and explain to you all of the features that she's been able to work out with historic preservation. I also attended an ANC meeting where this matter was brought up.

Bill Shyer referred it to the committee on historic preservation and I've also answered questions from a variety of neighbors who couldn't quite figure out exactly what all of the, you know, variance language was on the original application, so I showed them the designs and everybody kind of, you know, people sort of like understood what it was all about.

So here's Lorena if you have any questions, or you can ask me, too.

MS. CHECA: Good afternoon. I'd like to say I'm glad I'm here, Madam Chair, and I'm here representing Mr. Becker. And I'm the one who developed the plans an did the research. And I'd like to add that from the beginning, one of our concerns was definitely to not impact the community adversely knowing that it is historic district.

I, myself, raised my 20-year-old son in this neighborhood and he actually attended the pre-school when he was a little boy. It's a non-profit

-- not really a pre-school, it's a daycare.

And I'm proposing that we take the circumstances of a long-term lease from this pre-existing daycare as an unusual circumstance that might allow us to have you favor our petition for the variance, to provide some more usable space on the top floor.

And the word here, the verbiage, says fourth floor addition. And I just want to clarify that what we're adding is just a start of a floor. So we're adding 150 feet to the existing attic. I don't know if you had much of a chance to have to look at the drawings.

MS. KING: How long has Mr. Becker lived in this property?

MR. BECKER: I moved into the property in 1983 and then the tenants bought the property in 1987.

MS. KING: The tenants bought? You mean, you don't own the property?

MR. BECKER: The tenants -- I'm a -- I was a tenant when I moved in in 1983.

MS. KING: And then you bought it when?

MR. BECKER: In 1987.

MS. KING: So you've lived there for more than ten years. And the daycare center in the ground floor has been there for those entire ten

years?

MR. BECKER: Yes, the daycare center I think was established in 1972/73.

MS. KING: And with whom is their lease?

MR. BECKER: With the owners of the buildings. I'm one of --

MS. KING: Which is you?

MR. BECKER: -- the owners. Yes.

MS. KING: And when was the lease last renewed?

MR. BECKER: The last renewal was in the beginning of the year.

MS. KING: Of this year?

MR. BECKER: Yes.

MS. KING: For what --

MR. BECKER: The school year.

MS. KING: -- period of time?

MR. BECKER: Well, we're renewed it for a year. We used to have a long-term lease and we just, you know -- we had a long-term lease and since that expired we haven't like, entered into a long-term lease --

MS. KING: But your architect has just argued that a long-term lease constitutes a unique -- the practical difficulty. And I think --

MR. BECKER: Yes, I think --

MS. KING: -- your line has just blown

away your --

MS. CHECA: No, I'm sorry. I did not know that that was the existing --

MR. BECKER: It's a long-term relationship.

MS. CHECA: That was my understanding. The school has --

MR. BECKER: It's a long-term relationship that continues from year-to-year. And initially it was --

MS. CHECA: The school has been there for a long time. It is a non-profit --

MS. KING: I understand.

MS. CHECA: Yes. Your point is well-taken.

MS. KING: But I mean, he could take possession of the ground for -- on 12 month's notice at any time he wants? Less than that.

MS. CHECA: And I believe -- correct me if I'm wrong -- that that's not the spirit of -- I mean, the spirit of the relationship is to let them stay there as long as they want.

MS. KING: I understand that. But that doesn't necessarily constitute a unique or exceptional situation under the zoning.

MS. CHECA: Okay.

CHAIRPERSON HINTON: In addition to which,

it is clearly a self-imposed hardship if it is a hardship at all, because it is your choice to continue to use the ground floor in that way.

MR. BECKER: Right. It's a -- if we had decided to put out the school then we wouldn't need to do this. So we wanted to offer the community this service and still accommodate our family -- which is why we did it. Or why we want to, you know, put in -- why we've asked to do this and spend all of this money to do it. We want to accommodate the school.

MS. REID: What is your case? I mean, are you able to make a case for why you should be granted this variance today?

MR. BECKER: Why we would want to make a case --

MS. REID: Why are you asking us to grant you approval for your application for your variance? You have to basically be able to demonstrate to us why we should do that, since you have the burden of proof. Have you really thought?

MS. CHECA: Well, I guess my response is that they need more space; that the existing structure is a non-conforming structure before the zoning ordinance was enacted because it was an existing structure in an existing lot; that exceeds the lot occupancy requirements of the fact that

that is the main reason why we need a variance.

The floor area ratio requirements, our variance was borderline, because when I spoke with the zoning administrator they took into consideration the basement as part of the calculation for the FAR. So my sense is that the two restrictions are making a restriction on how much they can use the property. And obviously --

MS. KING: The variance, according to the notes from DCRA, the variance for lot occupancy is just 11.7 percent. But I don't see any calculation with the variance for the floor area ratio. Do you know what that is going be?

MS. CHECA: No, I don't. And I know the requirement was 0.9 and I remember a conversation --

MS. KING: With him.

MS. CHECA: -- before we typed this up that there was a question about including the basement or not, and that that -- that he decided to include the basement. And that brought us --

MS. KING: Is the basement usable space?

MS. CHECA: No, it's storage space.

MS. KING: But it's usable; it's used as storage. I mean, it's tall enough so a person can walk down there?

MS. CHECA: Yes.

CHAIRPERSON HINTON: There appears to be a

complete bathroom down there.

MS. CHECA: Yes.

CHAIRPERSON HINTON: Are you saying that's not used?

MR. BECKER: There's a laundry room and a bathroom that's used by the school.

CHAIRPERSON HINTON: It's used by the school? So the childcare facility uses the basement and the first floor?

MR. BECKER: The basement isn't used by the children; it's just used by the staff and to do laundry. And to put in if they have --

MS. CHECA: And it's not the entire floor. So I just clarify that. There's --

CHAIRPERSON HINTON: Well, there's some mechanical equipment down there and other things. Are you saying there's some reason why the basement shouldn't be counted in FAR?

MS. CHECA: Well, my understanding was that there was a definition of the distance from the ground -- from the first floor height to the floor outside, and if you take that technically, I had not taken the measurements exactly. So when I had the conversation he decided to take the safe route -- I'm sorry, I'm getting very dry mouth -- from the calculation of the FAR.

And there's area on the front of the

building where the basement is higher than the required dimension for defining whether a floor is used for the FAR calculation or not. That was my understanding.

MS. BAILEY: Members of the Board, typically the basement is not included in the FAR calculation; it's from the first floor on up. It's definitely not included -- the basement is generally not included in that calculation.

MS. KING: Even if it has a bathroom and --

MS. BAILEY: Yes, ma'am.

MS. KING: I beg your pardon?

MS. BAILEY: Yes.

CHAIRPERSON HINTON: But the regulations say that it depends on what -- the relationship between the basement and the outside grade -- whether it will be included in FAR, isn't that correct?

MS. BAILEY: I'm not -- the zoning regulation says that?

CHAIRPERSON HINTON: Yes.

MS. BAILEY: What section has that? I've never seen that. What section of the regs is that?

CHAIRPERSON HINTON: It's the section that defines how FAR is calculated.

MS. BAILEY: I don't --

MS. CHECA: And that's where I bring up the point, ma'am, that --

CHAIRPERSON HINTON: And it has to do with the outside grade?

MS. CHECA: Right.

CHAIRPERSON HINTON: Whether you count it or not?

MS. CHECA: Right. And we are -- you know, it was a very gray line and at the time when the zoning administrator was -- Ms. Hicks had been sick and it had been delayed in many files and they wanted to get this through, and I had not done the calculations and he just said, I'm going to put it through this way. And you know, maybe I should have argued it at that point but I didn't.

CHAIRPERSON HINTON: Well, if you're going to tell us today that it's not needed you should have done the calculations and found -- you need to show us that it's not needed; that that's -- do you know what I mean?

MS. CHECA: Yes.

CHAIRPERSON HINTON: If that's your position, you need to be able to demonstrate that a variance isn't really needed.

MS. CHECA: Well, the variance would still be needed because of the non-conforming structure.

CHAIRPERSON HINTON: But you're talking

about the differences between one or two variances.

MS. KING: Yes, because the DCRA said you need a variance to allow -- you need a variance for non-occupancy and you need a variance for FAR. And what you're saying is you don't think that the latter is justified but you don't have any data upon which -- except that you feel that that's not right -- and we need a little tougher evidence than that.

MS. CHECA: And would that mean that there would be more of a chance of getting the variance if there's only one exception that we need?

CHAIRPERSON HINTON: Well, let me answer that this way. The first variance goes to lot occupancy and your proposal does not change lot occupancy. This is an existing condition and your condition does not change it at all. Anything you would do would require a variation because of the existing condition of the property.

The second variance to floor area ratio, you are increasing the FAR by your proposal, so it does make a difference. In my mind it makes a difference. We don't have the information -- you would have to show us that that variance isn't needed.

MS. CHECA: So may we request that we be given the chance to present further evidence?

CHAIRPERSON HINTON: What normally would

be done would be that you would do the calculations, meet with the zoning administrator and get a revision to this memo that would say that that variance is no longer required.

What we can do with the case as it is in front of the Board, we can continue it indefinitely. We can wait until you get a response from the zoning administrator and then take additional testimony from you. And we would schedule that after we have heard from you that you're ready.

MS. CHECA: So it's up to me to get this resolved and then notify the Board?

CHAIRPERSON HINTON: Yes. And what I'm going to say to the Board members, before we send you on that so that it's not a complete waste of time, if the Board members feel at this point that there's not sufficient information to grant a first variance, there's no sense in you going ahead to do that.

So why don't we see if we can resolve it to that point?

MS. CHECA: May I -- sorry, go ahead.

MS. KING: No, go ahead. Please.

MS. CHECA: The only other part of the presentation that I wanted to stress was that if we're not concerned with the FAR that we went to great extent to make sure that we were in compliance

with historic preservation. And I even had the representative meet me at the site and look at what we were proposing to do and make sure that we met all of the requirements.

We've set back the addition so that it's not so visible from the side. We've minimized it from the back. So in terms of the impact to the community and the impact to the architectural character of the neighborhood, I really believe we've gone to a great extent --

MS. KING: Are you in an historic neighborhood -- in an historic district?

MS. CHECA: Yes, ma'am.

MS. KING: And do you have the approval of the Historic Preservation Review Board? Preliminary approval or any kind of approval for your design?

MS. CHECA: Not final approval but we have conceptual. It's filed. I have met with -- they have our --

MS. KING: Could you provide us with a copy of that?

MS. CHECA: Oh, of the application that went to the --

MS. KING: No, no. You said it's been filed and that there's preliminary approval?

MS. CHECA: No, there's conceptual approval; that I have met with the representative in

the office of D.C. Historic Preservation. We have reviewed everything; she reviewed the application. It has not gone to the Board; I believe it goes this month. But we have followed all the guidelines that were suggested from the department.

CHAIRPERSON HINTON: Well --

MS. KING: Mr. Becker, are you aware that your neighbor at 1842 has written in opposition to this application?

MR. BECKER: No, I wasn't aware.

MS. KING: Mr. Thomas D. King. Is Mr. King here?

CHAIRPERSON HINTON: Why don't we --

MS. CHECA: Was it filed -- may we ask, when it was submitted?

CHAIRPERSON HINTON: It was received today. Why don't we -- we'll take a minute to read this and give you a moment also.

MR. BECKER: This is the neighbor in the new condominium next door that had the fourth floor extension to it approved by this Board, and I think he's the occupant of that building.

CHAIRPERSON HINTON: I'm sorry, I didn't hear what you said.

MR. BECKER: Lorena asked me which neighbor this was and I --

CHAIRPERSON HINTON: That's fine. I

thought you were talking about this.

MS. KING: I don't know that we have a unique condition or a hardship that isn't self-inflicted.

CHAIRPERSON HINTON: That's the really difficult thing. First you have to have a unique condition in your property and a lease for a childcare is not it. It's not a unique condition and it has nothing to do with the property. It's the use of the property, not the property itself. So first, you don't meet that test.

Secondly, using the first floor for a child development center is completely your decision. And because you're doing that you have less space to use for other purposes. That can't be a reason for building an addition either; it's your choice.

MS. CHECA: May I ask? The fact that we are a non-conforming structure because of the lot occupancy requirement before the zoning regulation was enacted, that does not constitute a unique situation?

CHAIRPERSON HINTON: No. There are many cases of that in the city. But even if it -- sometimes it is depending on what it is you need to do. But in this case you're saying that you don't have enough room for a family room because the first

floor is being used for daycare. So there's an easier alternative than getting a variance and building an addition and that is, getting rid of the daycare.

Part of what you have to show at the variance is why this property cannot be used as a matter of right. Why the building itself isn't suitable for residential use.

MS. CHECA: You mean, or why the community might want the school to stay there?

CHAIRPERSON HINTON: No, no. What the community wants has nothing -- your burden is to show there's a unique condition in the property that is causing a hardship to use it for matter of right use.

I gave you the choice earlier so I'm going to go ahead with it if you want to try to remove the one variance and come back with the other. That's up to you. I don't think that I've heard anything --

MS. KING: I do not think that that -- I think that's unfair to both of these people because I -- you know, the burden of proof is on Mr. Becker or you as Mr. Becker's representative, to -- the burden of proof is on you to show that there's a unique or exceptional situation and a hardship that is not self-inflicted.

And I mean, the fact is that there were -- had you not made the decision, voluntary decision to rent out a floor to a daycare center, you wouldn't need to build another third of a floor in order to have adequate living space. And under the zoning regulation that is not a unique situation.

MR. BECKER: Yes, it's true, it's a particular sacrifice that we've made to provide this space for a neighborhood --

MS. KING: This is not the Department of Human Services --

MR. BECKER: I'd like to be able to --

MS. KING: -- this is Zoning.

MR. BECKER: I'm sorry?

MS. KING: This is not the Department of Human Services, you know, that can -- we don't have the option of saying, you know, that we will allow everybody --

MS. CHECA: Even though --

MS. KING: -- who wants to have a daycare center on their ground floor to, you know, to have a --

MS. CHECA: Even though it was there prior to them purchasing the house? I mean, part of the agreement of purchasing the house was to allow --

MS. KING: But then -- I mean, you're just reinforcing the fact that they knew that the space -

- they lived there for more than ten years without needing another third of a floor.

MS. CHECA: Well, they have; they just haven't been able to afford it.

MR. BECKER: So your recommendation would be -

MS. KING: Wait just a second.

(Pause.)

CHAIRPERSON HINTON: The child development center, how many children are there?

MR. BECKER: Approximately 13 -- 10 to 13.

CHAIRPERSON HINTON: And that's properly licensed through -- is it DHCD? No, it would be --

MR. BECKER: DCRM.

MS. CHECA: The CFO is labeled single-residence with daycare, and they are inspected --

CHAIRPERSON HINTON: And is there a limit on that CFO for the number of children?

MS. CHECA: I have not seen it, but I believe that they're in compliance.

CHAIRPERSON HINTON: Do you know? Is there a limit on the CFO?

MR. BECKER: I'm sure there's a limit, but I'm sure they're in compliance. I just have an estimate of the number. If you want we can get you that number.

CHAIRPERSON HINTON: My reading on the

zoning regulation said that it's a matter of right up to 15 and that beyond that, that would also need to be approved by the Board.

MR. BECKER: I'm sure they're aware of that. I'm think it's around 10 to 12.

CHAIRPERSON HINTON: Well, why don't we conclude the hearing? Why don't we go through the other steps they have? Is that all that you had to present to us? Is that the extent of the applicant's presentation?

MR. BECKER: Yes.

MS. CHECA: Yes, I guess if you needed to see drawings, I was ready to point out to you the efforts that we went to. But if that doesn't apply based on what I'm hearing, then I won't waste my time.

CHAIRPERSON HINTON: Well, we have the drawings here and we do review them. So I think we understand the nature of the proposal. Let me just check our calendar. We have no reports from the Office of Planning or Office of Zoning. We have no report from the ANC. There are no letters of support and there is one letter of opposition. And this is the next door neighbor, apparently. Shares two common walls -- Ms. King -- who is in opposition.

MS. KING: Because of impact on the

neighborhood.

CHAIRPERSON HINTON: Right.

MS. KING: He can't sleep in the morning, he can't get out of his driveway sometimes.

CHAIRPERSON HINTON: Which it seems that this addition would have no effect on. Except to the extent that the addition allows the continuation of the child --

MS. KING: Of the daycare center.

CHAIRPERSON HINTON: -- development center. Okay. Persons or parties in support? Persons or parties in opposition? Closing remarks by the applicant.

MS. CHECA: I would just like to have you consider that you're not adding any -- inflicting any adverse use of the space. It's residential space that we're wanting to add and if there's any consideration of your re-looking at our application if the FAR consideration was removed, I would appreciate if that's the case.

CHAIRPERSON HINTON: I didn't understand that last -- if there's any consideration?

MS. CHECA: If there's any space for you to reconsider the application for the variance based on just that occupancy.

CHAIRPERSON HINTON: Okay, we can't do that with what you've told us. The only way we can

do that is if you request a postponement and you go and try to get that changed.

MS. CHECA: Right. And we're ready to do that, I believe, if you give us a sense that there's a possibility that we might get the variance if the FAR requirement is removed, and I would like some clarification from you on that.

CHAIRPERSON HINTON: We can't -- you're asking us to decide the case before you decide to ask for a postponement and we can't do that. Once we decide the case it's decided and we won't be able to go back. So you need to take what you've heard from us and make the determination based on that.

MS. CHECA: Would you like to ask for a postponement?

MR. BECKER: Well, I don't know. I mean, you were going to sort of like give us a decision on one part of the request before.

CHAIRPERSON HINTON: Well, we can't decide the case but I think you've heard each Board member say that they don't see that you have even identified a unique condition -- that's the first thing -- and that any problem that you're having seems to be of your own choosing.

MR. BECKER: So I guess that that doesn't make any sense to do an extension then if -- I mean, the only logical solution is to ask the school to

leave if we wanted that extra space. Is that correct?

CHAIRPERSON HINTON: We'll get -- yes, as soon as we decide I think you'll understand.

MR. BECKER: I'm sorry, can --

CHAIRPERSON HINTON: As soon as we decide I think you'll understand.

MR. BECKER: My question was, the only logical way for us to expand this space as a family room would be to ask the school to leave? Is that my understanding of what you --

CHAIRPERSON HINTON: Well, that's what I'm saying. Once we just -- that's what we're going to decide. We haven't decided that.

MS. KING: We haven't taken a vote yet, although you have heard our discussion of your burden of proof and whether you've met the burden of proof, so you can probably get a fairly educated guess as to what we're going to do.

MR. BECKER: I'm really slow. You're not going to take a vote now but if we bring it back --

CHAIRPERSON HINTON: We're going to take a vote now.

MR. BECKER: Oh, they are going to take a vote now. Oh.

CHAIRPERSON HINTON: That's what I was saying. Unless -- your architect asked if we would

reconsider the FAR issue. We cannot do that with what you've put in the record. If you want us to do that you need to ask for a postponement before we make a decision, and go and try to resolve it and then come back.

MR. BECKER: Well I guess, you know, we'll try to resolve it. We always want to resolve stuff, right?

MS. KING: So you're asking for a postponement?

MR. BECKER: Sure.

CHAIRPERSON HINTON: Okay.

MR. BECKER: It's eternal optimism that --

CHAIRPERSON HINTON: Then that's what we will do. We will -- this is going to be a continuance. We will wait to hear from you until we schedule it, so you need to do the calculations, get a revision from the zoning administrator, then come back and let the staff know that you're ready.

MS. KING: And try to figure out some way of dealing with the burden of proof that we've already discussed with you.

CHAIRPERSON HINTON: Yes. You can always do that, too.

MR. BECKER: Okay. And in the meantime I'll talk to our neighbor and see if he can work something out with the school so they don't block

his 1-

2 CHAIRPERSON HINTON: That would be a good idea3

4 MS. KING: If he withdraws his objection the 5burden of proof is still on you -- regardless of whether your neighbor likes you or not.

7 MR. BECKER: Thank you very much.

8 CHAIRPERSON HINTON: Thank you. Good luck9

10 MS. CHECA: Thank you very much.

11 CHAIRPERSON HINTON: Okay, let's move to the 12last case on the agenda.

13 MS. CHECA: May I ask who am I supposed to contact?14

15 MS. ROSE: Contact the Office of Zoning. Do you 16have the number?

17 MS. CHECA: Yes. Do I speak to anybody in particular?18

19 MS. ROSE: You can ask for Tracey Rose, I guess20.

21 The last application is 16300, of Smith Proper22ty Holdings One (DC) LP on behalf of Metro23politan Fitness and Safety Academy, pursuant to 11 DC24MR 3108.1 for a special exception under Subsection 354.1 to establish a fitness center for weight training and safety and security education as an adjunct to an apartment building on the basement

level in an R-5-A District at premised 2300 Good Hope Road, S.E. (Square 5627, Lot 99).

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

(Witnesses are sworn.)

Would the applicant please come forward?

MS. GLENN: Good evening Madam Chairperson and Board members. Thank you for hearing us this evening. I'm Dorothy Glenn. I'm senior property director of Marbury Plaza Apartments employed for the Charles E. Smith company, and we're before you this afternoon to ask for the special exception for the fitness center because there are no fitness centers available in the Southeast area.

We feel that this center will be a plus and a benefit to our more than 2,000 people -- residents that are at Marbury Plaza. Not only would it help us -- would it help them health-wise, but we're looking at medical issues as well.

A lot of our residents -- we have some retirees, we have some seniors -- and of course this helps not to have to go across the bridge to Bally's or wherever. And plus a little bit more affordable.

Because it is at Marbury Plaza on our B1 level they have to take the elevator down, so that's a help within itself. The other thing is is that as I said, they don't have to worry about their

transportation. For people who have medical problems, rehabilitation problems, breathing problems, that type of thing, you know, we're there available to help them.

We provide parking for our residents already at Marbury Plaza, and they're anxiously awaiting the opening of a fitness center there.

CHAIRPERSON HINTON: Okay, thank you.

MS. GLENN: Thank you.

CHAIRPERSON HINTON: Ms. Rose, can you help me understand something? The zoning administrator has identified section 354.1 which deals with convenience stores in apartments?

MS. ROSE: I had the same question. I was just getting ready to pass out that regulation. I don't know why.

MS. KING: Would this fitness center be available to only residents of Marbury Plaza or to others as well?

MS. GLENN: For my residents at Marbury Plaza.

MS. KING: Only? Exclusively?

MS. GLENN: Yes.

MS. KING: And do they have to pay a fee to join, or is there a membership fee, or use fee every time they use it or what?

MS. GLENN: Because we're renting that

space out they would pay whatever the owner would -- or the rental applicant would ask for. Far less than what a Bally's or whatever would charge. You're talking something like five dollars a day.

CHAIRPERSON HINTON: We need a minute to figure this.

MS. GLENN: That's fine.

CHAIRPERSON HINTON: Are you going to charge for the use of this?

MS. KING: They're going to rent it out to somebody who's going to run it.

MS. GLENN: We're renting the space out to Mr. Bell, and he would actually run it. The fee would be less than five dollars a day to the residents, whoever is going to --

MS. KING: It's got to be personal services.

CHAIRPERSON HINTON: And so is there anything under this regulation that we're required to do if this is allowed as a special exception?

MS. KING: It's below level so -- below the main floor level, right?

MS. GLENN: Yes, it's below the main floor.

MS. KING: Is there direct access -- direct entrance to it from outside of the building?

MS. GLENN: We feature a 24-hour desk

service that --

MS. KING: No, but I'm saying, can you get into the space --

MS. GLENN: No.

MS. KING: -- from out of doors? You have to go through the building to get --

MS. GLENN: Exactly. Exactly.

MS. KING: It's not visible from the sidewalk?

MS. GLENN: No, it is not.

CHAIRPERSON HINTON: And there won't be any signs --

MS. GLENN: There are no outside posters stating that there's a fitness center in our building. No signage -- outside signage -- no.

MS. KING: What is this number six?

MS. REID: "The center of the principal entrance of the apartment house shall be more than one-fourth mile walking distance from the nearest principal business street frontage of any business district previously established and operating in a commercial or industrial district." Now, what does that mean?

MS. KING: The center of the nearest commercial strip --

MS. GLENN: The nearest commercial strip for us -- we are on Good Hope Road and there is a

new Safeway that they just built. It's that extension right --

MS. KING: Right across the street?

MS. GLENN: Not quite right across the street; probably about a couple of blocks up.

MS. KING: Yes, that was on Channel 5 this week.

MS. GLENN: Yes, it was, with Tony Perkin and Mark McCarthy.

CHAIRPERSON HINTON: So I think the essence of this 354.6 is, are there any other fitness facilities that are provided within a quarter-mile?

MS. GLENN: None, whatsoever.

MS. KING: That's the way I would read this.

CHAIRPERSON HINTON: Okay. Did you have anything else to add?

MS. GLENN: No. Thank you, Madam Chairman.

CHAIRPERSON HINTON: Let's just move through the other parts of the hearing. We have no Office of Planning or Office of Zoning report; no report from DPW; no input from the ANC.

MS. KING: Have you been to the ANC or the local civic associations to talk about -- I mean, you're so big you practically are an ANC in and of

yourself, I think -- or a single member district anyways. But I mean, have you been to any community organization to seek their support?

MS. GLENN: I have not on this particular issue. I have attended some of their affairs on the Dandy and that type of thing, but I did not in this regard.

MS. KING: But they were noticed properly?

CHAIRPERSON HINTON: Yes, from us. They have received notice in the mail. Are there persons or parties in support?

MR. BELL: Yes, ma'am.

CHAIRPERSON HINTON: Could we have your name and home address for the record?

MR. BELL: I'm Anthony Bell. I'm the owner of the fitness center, if you choose to allow me to do so.

CHAIRPERSON HINTON: And you're in support?

MR. BELL: I'm in support, definitely.

CHAIRPERSON HINTON: Am I good or what? Did you want to have any testimony?

MR. BELL: Yes, I have -- some of the residents has written me letters and telephoned me and I would like to read, at least three brief letters that will show you exactly what the situation is over there. I also have a letter from

the president of the Tenant's Association who's in full support. And they had a vote in that meeting and they said that they definitely want it.

CHAIRPERSON HINTON: Okay, in the interest of time would you submit them for the record rather than reading them? We'd appreciate it.

MR. BELL: Okay, I can do that. But when will we get the answer?

MS. KING: Probably right away, but we've got to finish the process.

MR. BELL: May I submit them?

CHAIRPERSON HINTON: Yes, to the secretary, please.

CHAIRPERSON HINTON: And those go to the reporter. Any other persons in support? Any persons in opposition? Closing remarks by the applicant.

MS. KING: Excuse me. Tracey, I'd like to see the letter from the Tenant's organization, if I might?

MS. GLENN: I just wanted to say that I know the fitness center is very important to my residents. I had a resident who recently just had to undergo surgery and in working out, you know, she's found that it was helpful because she was working out before she went into surgery and lost quite a bit of weight as a result of that. So that

is really helpful.

I have some seniors that are in my building and they do not -- it's hard, it's difficult to take transportation, public or otherwise, across town to do that. So that would really serve as the purpose for my reason of being here today.

And I thank you and Happy New Year to you all.

CHAIRPERSON HINTON: Thank you.

MR. BELL: Excuse me, ladies. The success which she just noted -- the letters are in front of you. The one that had the operation -- serious operation. She lost 42 pounds. And the second one she noted was a senior citizen. She's 86 years old and she's very worried that she will not get to exercise down there. And the third letter in front of you is from the president of the Tenant's Association.

CHAIRPERSON HINTON: Thank you.

MS. KING: Did you need a copy of these?

MR. BELL: No, I have a copy. I just got one for each of you.

CHAIRPERSON HINTON: Okay. Board members, we can make a decision.

MS. KING: I move that we grant this application. It seems to me that it is definitely

in the interests of the residents in Marbury Plaza, that they have such a facility. There seems to be no opposition to it. Clearly it's not going to have an adverse impact on the community. It is in the basement and will not create noise or confusion, anything of that nature.

And therefore, I would -- that's it.

CHAIRPERSON HINTON: And will not impair the intent or --

MS. KING: Will not impair the intent --

CHAIRPERSON HINTON: -- integrity of the zone --

MS. KING: Definitely not. In fact, it would be a great asset to the people who live in that extremely large facility.

CHAIRPERSON HINTON: Okay, I second. Anything to add, Ms. Reid?

MS. REID: Well, I'll just add that it appears to be in compliance with the Subsection 3541 zoning regulations.

CHAIRPERSON HINTON: Okay, very good. We've have a motion to grant. All those in favor?

(Chorus of ayes.)

Opposed?

(None.)

MS. ROSE: Staff will record the vote as Ms. King, Ms. Hinton, and Ms. Reid to grant. Ms.

Richard's not present; not voting.

CHAIRPERSON HINTON: Summary order --

MS. ROSE: Issuance of a summary order.

MS. GLENN: Thank you so much. My 21 years at the Plaza, my residents thank you, and I can go home in peace.

MS. KING: And you should have your order what, in two week's time?

MS. GLENN: In two weeks time?

MS. KING: Approximately.

MS. GLENN: Okay. In the meantime, in that 12-week session, I will not be able to open or anything. I'll have to wait for that, is that right?

CHAIRPERSON HINTON: That's right.

MS. GLENN: Okay. Thank you.

CHAIRPERSON HINTON: And then you have to get whatever -- certificate of occupancy or whatever else is needed -- you would need to get those.

MS. KING: From the Department of Consumer and Regulatory Affairs, which is where you started this.

MS. GLENN: That's where I started. Thank you very much, again. Have a great evening.

CHAIRPERSON HINTON: Thanks. Okay, we're done. We're adjourned.

(Whereupon, the Public Hearing of the

Board of Zone Adjustment was adjourned at 4:45 p.m.)