GOVERNMENT
OF

THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC HEARING

+ + + + +

WEDNESDAY

OCTOBER 13, 1999

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The Board met in Hearing Room 220 south at 441 4th Street, N.W., Washington, D.C. 20001, pursuant to notice at 9:50 a.m., Sheila Cross Reid, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

SHEILA CROSS REID	Chairperson
JERRY GILREATH	Board Member
ROBERT SOCKWELL	Board Member

COMMISSION STAFF PRESENT:
Sheri M. Pruitt, Secretary, BZA

Beverly Bailey,	Office of Zoning
Mika Dorsey,	Office of Zoning
Paul Hart,	Office of Zoning
John Nyarku,	Office of Zoning

D.C. OFFICE OF CORPORATION COUNSEL:
Janice Skipper, Esq.

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ERIC COLBERT

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

9:46 a.m.

CHAIRPERSON REID: Good morning. The hearing will please come to order. This is the September 13th Public Hearing of the Board of Zoning Adjustment. Joining me today is Robert Sockwell and Jerry Gilreath, and we don't have a member of the — just one second, please — well, let me just wing this, my opening remarks were being redone and they apparently have not been finished properly, so just let me wing it.

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

The order of procedure for special exception and variance cases are statement and witnesses of the Applicant, government reports, including Office of Planning, Department of Public Works, the ANC, et cetera, persons or parties in support, persons or parties in opposition, closing remarks by the Applicant. Cross examination of witnesses is permitted by persons or parties who have direct interest in the case. The record will be closed at the conclusion of each case, except for material specifically requested by the Board, and the staff will specify at the end of the hearing exactly what is expected.

The decision of the Board in these contested cases

must be based exclusively on the public record. The Board, with any appearance to the contrary, will request that persons present not engage with the Board in conversation.

Please turn off all beepers and cell phones at this time, so as not to disrupt the proceedings.

The Board will consider preliminary matters. Preliminary matters are those which relate to whether a case will or should be heard today, due to request of postponements, continuance or withdrawal, whether proper and adequate notice of hearing has been given. If you are not prepared to go forward with the case today, or if you believe that the Board should not proceed, now is the time to raise such a matter. Are there any preliminary matters? Please come forward.

Does staff have any preliminary matters?

MS. PRUITT: Yes, Madam Chair. The first case on your agenda this morning, 16417, in your file there's a request for a postponement to the next first available hearing date.

CHAIRPERSON REID: Okay. Lord knows, I have no problem with it.

MR. GILREATH: Madam Chair, did they give a reason, are they trying to resolve some design difficulties, I presume it was a good purpose or a good reason.

MS. PRUITT: They sort of explained in the letter the issues that they had. This has been an application, you have not heard it yet, but it's been an application that's had some concerns. It's a non-profit, they originally came in requesting relief, they self-

certified, they originally came in, I believe, requesting relief that was not necessary, and not necessarily the correct relief they needed. So, they went back and they actually have counsel now, and they are trying to work to resolve and get everything done, and get a very clean and tight case.

MR. GILREATH: Do a little housekeeping of the proposal.

MS. PRUITT: Right, clean and tight case before they come.

CHAIRPERSON REID: I think they asked for 90 days?

MS. PRUITT: No, it just says the request, that the above application be rescheduled for the next available Board meeting, public hearing.

CHAIRPERSON REID: No, well, wait a minute.

MR. SOCKWELL: They asked for 90.

CHAIRPERSON REID: Where are you reading from, Ms. Pruitt-Williams?

MS. PRUITT: I have a letter dated the 16th.

CHAIRPERSON REID: Well, there's a subsequent letter of September 24th.

MS. PRUITT: Well, the first available hearing date, whether it's 90 days or not, is December 8th.

MR. SOCKWELL: Yes, but they are asking for 90 days.

CHAIRPERSON REID: They want 90 days, so then

that would put it in January, 2000, would it not?

MS. PRUITT: October — yes, it should — yes, the first available one is December 9th, but we can put it for any time in January that —

CHAIRPERSON REID: No, okay, they are not asking for the first available, they are asking for a 90-day postponement.

Then, yes, from today's date, or the date of the September — well, I guess it's from today's date, the date of the hearing, so that would put it at January.

MS. PRUITT: January.

CHAIRPERSON REID: Year 2000.

MS. PRUITT: And, that is available.

CHAIRPERSON REID: All right.

MS. PRUITT: So, let me verify what dates we have for BZA on that. Well, the first available hearing date in January is the 5th, but that's not 90 days, to be 90 days it would have to be on the 19th. That's your second scheduled meeting.

CHAIRPERSON REID: Okay.

MS. PRUITT: So, it's been continued to January 19th, the first case on the agenda.

CHAIRPERSON REID: Thank you.

MS. PRUITT: And, that concludes staff's issues for preliminary matters.

CHAIRPERSON REID: All right.

Please call the first case, the second case I guess it would be, the first case has now been postponed.

MS. PRUITT: Case No. 16493, Application of Exxon Corporation, pursuant to 11 DCMR 3108.1, for a special exception under Subsection 706 to allow the expansion of a formerly operated service station with four new fuel dispensers beneath a canopy with a convenience store on a site in a C-2-A District at premise No. 5 Q Street, N.W. (Square 3100, Lot 48).

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

Please, be seated.

CHAIRPERSON REID: Yes, Mr. Collins.

MR. COLLINS: Good morning, Madam Chairperson and members of the Board. My name is Christopher Collins with Wilkes, Artis, Hedrick & Lane. With me to my left is Sarah Shaw with Wilkes, Artis, and to my right is Terri Levine, a Market Investment Specialist with Exxon Corporation. Continuing on down the table, Mr. Bob Morris, who is a Traffic and Transportation Consultant in this case, and finally Mr. Bhoopendra Prakash, who is with The Plan Source, the consulting engineers for this project.

This is an application for an expansion of an Exxon gasoline station at the northwest corner of N. Capitol and Florida.

CHAIRPERSON REID: Mr. Collins, just one second before you continue. I just want to get an idea as to this case.

Is there anyone here in opposition to this case? One person in opposition. And, in support? One person.

UNIDENTIFIED SPEAKER: And, I have reservations. I am supporting with reservations.

CHAIRPERSON REID: Okay, all right.

All right.

MR. COLLINS: Thank you.

This is an application for expansion of an Exxon gasoline station at the northwest corner of N. Capitol and Florida, N.W., but the expansion is very limited. In this case, as we'll show you later, as we get through the exhibits, the Zoning Administrator has confirmed that the only reason for special exception relief in this gasoline station application is because of the increase in the number of gasoline dispensers from three to four, and that's at page 11 of his statement.

The gas station has been — a gas station has been at this site for almost 60 years. The site is currently vacant. It was last rebuilt as an Exxon facility in 1979, or thereabouts, with a canopy, with three gasoline dispensers and an attendant's kiosk, and a small restroom building on the west side of the site.

The proposal now is to remove all of those improvements and to build a new facility. There will be a new canopy that is smaller than the existing canopy and the kiosk and, therefore, the Zoning Administrator has determined that that does not constitute an expansion of the station and that's permitted.

There's a new convenience store to be located on the west side of the property. The convenience store is a matter of right use in this C-2-A Zone. The Zoning Administrator has confirmed that that's a matter of right.

He has determined, as the letter on page letter that he

confirmed shows, that the expansion from three pumps to four pumps does require special exception approval.

You have the statement before you. We will go through that with our witnesses, but I'd just to review the exhibits with you, if I may. The exhibits, Exhibit on pages seven and eight of the statement, show the maps indicating the location of the property at the intersection of N. Capitol and Florida on the northwest corner, page nine shows the zoning map for the area, page ten is the surveyor's plat of the property, page 11 is the letter that was confirmed by the Zoning Administrator, and if you look at the last sentence of the second full paragraph on the first page of that letter, special exception relief is only required because of the increase in number of fuel dispensers from three to four.

The plans for the project are attached at the beginning of page 13. The prior BZA order for the use of the station from 1961 is attached at page 16. Then the testimony of the witnesses begins at page 22.

At this time, if there aren't any preliminary questions I'd like to go to the witnesses and their testimony.

Any questions? Okay.

The first witness is Terri Levine, who is a Market Investment Specialist with Exxon.

Whereupon,

TERRI LEVINE

was called as a witness by Counsel for the Applicant, and having been first duly sworn, testified as follows:

MR. COLLINS: Ms. Levine, would you please identify yourself for the record and proceed with your testimony?

MS. LEVINE: My name is Terri Levine. I'm with Exxon Corporation, and my home address is 8301 Ashford Boulevard in Laurel, Maryland.

We are proposing reauthorization of the facility at 5 Q Street, and this property, as Chris described, is on the northwest corner of Q, Florida and N. Capitol. We have about 18,000 square feet of property at this location, and it's been an Exxon property since the 1930s.

Currently, the facility is closed down. It's a kiosk with three fueling dispensers. It's a motor fuel only operation, and we would like to modernize and reopen this facility.

Currently, we have a strong emphasis on upgrading our stations in the District of Columbia. We are right now finishing construction at a store on Connecticut and Nebraska Avenue, N.W., and we are beginning construction at another store on Connecticut and Porter Street, also in northwest.

Our proposal is for a convenience store, approximately 2,500 square feet, with four fueling dispensers which will have the capacity to fuel eight cars at any one time, and replacement of the underground storage tanks.

CHAIRPERSON REID: Is that it?

MS. LEVINE: Unless you have any questions.

CHAIRPERSON REID: Okay, thank you.

Board members, do you have any questions so far? Okay.

MR. GILREATH: One additional dispenser, is that going to increase the number of cars significantly pulling in and pulling out in terms of impacting traffic?

MR. COLLINS: That will be addressed by Mr. Morris in his testimony.

MR. GILREATH: Very good, thank you.

MR. COLLINS: The next witness will be Mr. Bhoopendra Prakash, who is the consulting engineer for the project.

Whereupon,

BHOOPENDRA PRAKASH

was called as a witness by Counsel for the Applicant, and having been first duly sworn, testified as follows:

DIRECT EXAMINATION

MR. COLLINS: Mr. Prakash, would you please identify yourself for the record and proceed with your testimony?

MR. PRAKASH: Good morning, Madam Chair, members of the Board. My name is Bhoopendra Prakash. I'm an engineer representing this project. My home address is 12843 Parapet Way, Oak Hill, Virginia.

I request your attention to page 13 of your document. This board represents a blow-up of the store as it exists today, N. Capitol Street northbound, Q Street, Florida Avenue, northwestern quadrant of the intersection.

The existing outline of the property is shown in bold

black, showing only one major building, which is the canopy centrally located on site, under which there is a pay phone or a kiosk.

As per Terri Levine's testimony, we propose to upgrade with new construction as shown on this color board. The new canopy will be approximately in the existing location, with the convenience store situated on the westerly side, or the rear side of the property. All entrances to the site shall remain unchanged.

We propose parking in —

CHAIRPERSON REID: Excuse me. What you need to do is, if you can kind of turn that in such a way that — either turn in such a way that it can be seen here, because I think that this particular citizen had come to get an understanding as to what you were doing, and I don't think she can see. So, if you'd like, you can come over here, and then you can see what they are proposing, because it seems like you are camouflaging the view.

MR. PRAKASH: Continuing, parking will be situated directly in front of the store, and the pump islands under the new and rebuilt canopy.

Keeping the entrances in the existing location, bright lighting will be around the periphery of the site to provide adequate and safe lighting in the interest of improving security.

We further propose that the underground tanks will be reconstructed, new tanks will be installed around the vicinity of the existing location of the tanks, not a significant change. Due to the new configuration, it is essential that the tanks be located or turned somewhat to stay away from the new canopy.

There is an existing stand of mature trees between the proposed location of the convenience store and existing homes to the north side of the property. We further proposed to landscape the green space in front of the property at the intersection of N. Capitol and Q Street.

We believe this application, as presented graphically in this plan, does meet the intent of Section 726 of the Zoning Regulations, namely, the plan was, indeed, submitted and accepted by the Office of Planning. In terms of the required setbacks, the gasoline station component of this development, which is the canopy and dispenser pumps, are, indeed, proposed to be set back 25 feet away from the residential properties.

MR. COLLINS: Mr. Prakash, can you refer to the plan which shows the line, in putting the radius, to indicate the 25-foot setback on the proposed construction?

MR. PRAKASH: First of all, the property line is identified in the solid black lines to the north of the property, setback 25 feet away from this residential property line, and this residential property line, both of which are in the northwestern side of the property. A 25-foot setback line identified on sheet 14 of your document creates a setback envelope out of which the canopy and service station operation is set back, and in that regard we believe we do meet the intent of the Zoning Regulations.

I would defer to —

MR. COLLINS: Excuse me, is this the same set of plans that the Zoning Administrator reviewed in making his

determination of special exception relief?

MR. PRAKASH: Yes, sir, indeed.

MR. COLLINS: Thank you.

MR. PRAKASH: In terms of design appearance, lighting and screening, we do plan to comply with maintaining the existing screening, increasing and improving the landscape presentation in front of the property, and site lighting will be presented along the periphery in a down lit manner, whereby, lighting is not scattered all over the property or beyond the property.

Parking, of course, is accessible to the store, directly in front, in a safe and friendly, customer-friendly manner.

With respect to Section 2302 of the Zoning Regulations, again we believe we comply, or this project complies. Honoring the setback requirements of 25 feet from the residential lot lines, entrances being where they currently exist shall remain effectively more than 25 feet away from the residential properties, entrances are required to be 40 feet or more from the intersection of the street, and we do comply, and there are no grease pits associated with this project.

With that, if you have any questions I would be happy to address them.

CHAIRPERSON REID: Do you have anymore witnesses, Mr. Collins?

MR. COLLINS: Yes, I do, Mr. Morris.

CHAIRPERSON REID: Oh, that's right, one more, wasn't he the traffic consultant? Okay.

Whereupon,

ROBERT L. MORRIS

was called as a witness by Counsel for the Applicant, and having been first duly sworn, testified as follows:

DIRECT EXAMINATION

MR. COLLINS: Mr. Morris, will you please identify yourself and proceed with your testimony?

MR. MORRIS: Good morning, Madam Chairperson and members of the Board. I'm Robert L. Morris, traffic engineer and transportation planner. I have prepared a report, which I believe is in the material in front of you, so I will touch on the highlights, and I'll be happy to expand with any questions you may have.

I've indicated what the existing conditions are at the subject location, and I have shown what the effect would be of the proposed improvement. I would note that this service station is complementary to an existing Exxon station diagonally across the intersection of N. Capitol Street and Florida Avenue. I say it's complementary for this reason, the existing station draws its traffic principally from northbound on N. Capitol Street and eastbound on Florida Avenue. This service station would draw its customers from southbound on N. Capitol Street and westbound on Florida Avenue. So, to that degree, there's no redundancy in service there, they are complementary.

The subject site would generate approximately 35 inbound trips and outbound trips in each peak hour. In response to Mr. Gilreath's earlier question, the addition of one gasoline pump

would not significantly increase the number of trips. There could be a few more trips because the site is more attractive, but it would not add any traffic onto the streets. As the Board knows I'm sure, people go to get gasoline principally as part of another trip purpose. They stop by to get gas on the way to work, or home from work, or some other trip purpose, so the proposed use of this property would have no adverse impact in terms of traffic operations, and from a traffic engineering viewpoint it would be an appropriate use of the property and the expansion of one gasoline pump would be appropriate.

CHAIRPERSON REID: Okay.

MR. GILREATH: Do you calculations include, not only the people pulling up to the pumps, but the people who would be going to the convenience store, so your calculations include all of these people coming in?

MR. MORRIS: That's correct, sir.

MR. GILREATH: Okay, fine.

CHAIRPERSON REID: Mr. Sockwell?

MR. SOCKWELL: I have one first question. Is the diagonal Exxon station on the southeast corner also a company-owned facility?

MS. LEVINE: Yes, sir, that is a company-owned facility, but it is operated by a dealer, it is not operated by Exxon.

MR. SOCKWELL: Okay, but it's an Exxon station owned by the company?

MS. LEVINE: Yes.

MR. SOCKWELL: Okay.

And, your name again is?

MS. LEVINE: Terri Levine.

MR. SOCKWELL: Levine.

Ms. Levine, the principal use of this property, bringing it back on line as a gas station, is to be a gasoline service station, am I correct?

MS. LEVINE: That is correct.

MR. SOCKWELL: And, the convenience store portion is really a subordinate use to the primary use, which is a gasoline service station, correct?

MS. LEVINE: Yes, we consider it to be an ancillary use. It provides additional needs for the customer as they are traveling to our facility.

MR. SOCKWELL: On that basis, I have a difficulty with the interpretation of the ordinance by the Acting Zoning Administrator, in that he stated that, in his letter, that the property is apparently used only, it says here, let's see —

MR. COLLINS: At page 11?

MR. SOCKWELL: — yeah, let me see —

CHAIRPERSON REID: This is Mr. Collins' letter.

MR. SOCKWELL: Oh, no, I'm looking for Mr. Lorenzo's letter. Give me just a second.

Well, actually, what he did was, he signed — he signed — I think Mr. Lorenzo confirmed Mr. Collins' letter on page 12.

CHAIRPERSON REID: Right.

MR. SOCKWELL: And, basically, the convenience

store is a matter of right in a C-2-A Zone, therefore, a special exception lease is not necessary for the convenience store.

On page four of your descriptive, Mr. Collins, you state that the Acting Zoning Administrator has interpreted this requirement to mean that structures serving only as a gasoline service station may not be located within 25 feet of a residence district, unless separated from the residence district by a street or alley, and that the convenience store, further, is a matter of right use ad not required to meet the setback.

In the description that Ms. Levine gave, the primary use of the property is for a gasoline service station. The control, and cash registers, and any sale of antifreeze, motor oil, power steering fluid, will take place in the convenience store portion of the facility, which is, in fact, the office and control point for the gasoline station, am I not correct?

MS. LEVINE: Yes, you are correct. The cashiers operate inside the convenience store. However, gasoline sales can occur at the pump.

MR. SOCKWELL: True, but gasoline sales will also occur, and will be other products generally sold in the convenience store that deal with automobiles, will be sold within the convenience store. And, if the convenience store portion of the operation were to be proven unsuccessful and closed, what would be left would be a gasoline service station, which cannot operate without the part of the facility that is within the building. Am I not correct?

MS. LEVINE: It could be easily adapted to operate

without the convenience store.

MR. SOCKWELL: But, as it is designed, it is not designed to be adapted, it is designed as presented, am I not correct?

MS. LEVINE: That is correct.

MR. SOCKWELL: Okay.

So, what I'm saying is that, if we go to Section 2302.2 of the ordinance, no portion of the structure or premises to be used for any of the uses listed in 2302.1 shall be located within 25 feet of a residence district, unless separated from that residence district by a street or alley. The alley actually does not separate the property, it intrudes upon the property, but in reality it doesn't separate the residence district from the property completely. Therefore, I think that it is not effectively a separation.

And, I believe that the Zoning Administrator has assumed that the convenience store acts independently of the gasoline station function, which it really does not. It is part of the gasoline station function building that is devoted to convenience store use, that building being the principal point of control of the pump activities.

Now, although all pumps allow credit card sales, and some actually allow cash sales, the convenience store is primarily the control building for the facility, and will also operate for the sale of additional automobile-oriented products, as well as the convenience store elements that would be in incorporated within it.

And, just to go a little bit further in definition, Webster's Third New International Dictionary states that premises is a

— can be considered land conveyed by deed, or property and the building on it. And, in Section 2302, the term premises is used specifically within the definition requiring the 25-foot separation. And, on that basis, I have trouble with the Zoning Administrator's interpretation of things, and the design clearly places portions of the building within 25 feet of the residence district. What we don't want to do is have an interpretation of the ordinance that is loose enough to prevent being able to effectively enforce the statute as it is written, in the circumstance where you have a facility that carries a dual purpose, but the primary purpose is in conjunction with the rebuilding of the facility as a gasoline service station. That's my principal comment on that.

MR. COLLINS: May I respond, because what you've raised, Mr. Sockwell, are legal points and I would like to respond appropriately.

MR. SOCKWELL: I would like for you to.

MR. COLLINS: You've raised several issues about the location of the convenience store within 25 feet. If you look at the map at page 14, you will see the outline that Mr. Prakash has described where we inscribed a 25-foot setback line to allow the — make sure that the above-grade improvements met the letter of the regulation.

And, there is an alley which separates this property from the adjacent residential area, and we took the — using a compass with a 25-foot radius, we drew marks around and connected the arcs to create this 25-foot setback. So, we have done what — and

the Zoning Administrator has reviewed this, and has reviewed this set of plans, and has made the ruling in the letter that you've referenced.

The convenience store could be built, we could do this in stages, we could build the convenience store today without even coming here, and we could sell auto products, we could sell anything. There's nothing in the regulations which governs what you can sell in a convenience store. We could build that today. We could then come back here for special exception to add one more dispenser to the dispensers we have today and to decrease the — without even asking you to decrease the size of the canopy.

He has made his ruling that this what we have gone forward with. We have used the certification method for this case, but as we do in all our cases we confirm the ruling with the Zoning Administrator. We must abide by what he tells us.

The language in the regulations is the same language that has existed in the regulations since May 12, 1958, and has been interpreted this way since that time. We did attach two other cases for this that allowed the expansion of this station, two post-'58 orders, order Appeal No. 626936272, and then Application No. 12916.

The relief that we are requesting in here is identical to the special exception relief that we requested, or Exxon requested, back in 1961 and 1979. If, Mr. Sockwell, what you are saying is that because the land is within 25 feet of a residence district then what you are suggesting is that we would also have to apply for a variance, to have a variance from the 25-foot requirement because the land is less than 25 feet from a residence district, unless separated therefrom by a

street or alley, which some of it is.

MR. SOCKWELL: Yes.

MR. COLLINS: You'll notice in the 1979 order, there was no request for a variance, and no application for a variance, and no variance relief granted. In 1961, there was also no variance relief requested nor granted, and the application was approved.

The interpretation of the regulations has been consistent since that time.

MR. SOCKWELL: Mr. Collins, if the regulation states structure or premises, does it not separate the structure and the premises into two elements, not necessarily being one and the same, but being interpreted as inclusive of both structure and land?

MR. COLLINS: The Zoning Administrator is charged by law, it was Reorganization Order No. 55, with interpreting the Zoning Regulations. We must follow what he has interpreted. We have to go with what he said. The regulation for this site has been interpreted consistently since May 12, 1958, including the 1961 approval and the 1979 approval.

MR. SOCKWELL: Okay. Accepting the Zoning Administrator's statement as being correct, would you, as an attorney, by definition, a land-use attorney, believe that structure and premises mean exactly the same thing?

MR. COLLINS: I am bound by the interpretation of the Zoning Administrator.

MR. SOCKWELL: Okay.

MR. COLLINS: If what you are suggesting —

MR. SOCKWELL: Okay, that's fine, Chris, you don't have to go any further.

MR. COLLINS: — let me just go a little beyond that.

If you look at the pattern of the location of gasoline stations, they are usually on arterials in Washington, N. Capitol Street, Florida, Georgia, Wisconsin, all the major arterials. All those arterials have a zoning pattern that has the C-2-As, typically it's a C-2-A Zone that's very shallow, that's one lot deep, with residential behind. It's that way throughout the city.

If what you are suggesting is that we need to apply for a variance every time we put a gas station in place, or expand a gasoline station, you'd have a pattern of asking for the special exception that was designed to apply to gasoline stations, plus a variance.

MR. SOCKWELL: It wouldn't be every single, it wouldn't be applied only to gas stations, but it would be applied to property and designated use. The parking on the lot can't be differentiated between service station uses and strictly convenience store uses, depending upon what one might come there to do, but the way the ordinance is written and, perhaps, the way that it is interpreted, are not necessarily the same, if one tries to take the ordinance in a more liberal interpretation, strictly for the purposes of applying the rule. But, I am just concerned that it tends to allow a use to exist that if changed from the convenience store portion, if the convenience store portion went away, the gasoline station would still be operating out of that building. The cash register would still be

there, the pump controls would still be there, and any other necessary equipment that's not located in an independent kiosk, which could be built on the site if the convenience store building were removed or had not existed at all, and all of that is going to take place in a building that physically extends to within less than 25 feet of the separating alley, if we choose to call it that.

MR. COLLINS: I'll be the first to admit that the Zoning Regulations are not a model of clarity.

MR. SOCKWELL: True.

MR. COLLINS: And, that's really the reason that zoning lawyers exist.

MR. SOCKWELL: True.

MR. COLLINS: And, here we have consistent interpretation from the Office of the Zoning Administration going back through any number of holders of that position throughout the last 41 years.

MR. SOCKWELL: Well, at least the several cases that you cited were consistent with your argument. I don't know that under the Zoning Ordinance in the last 41 years they've all been decided that way —

MR. COLLINS: No.

MR. SOCKWELL: — but I'm sure that you know more about that than I.

MR. COLLINS: The most recent holder of the position before Mr. Johnson has certainly interpreted it that way. Mr. Johnson has only been in office for about 45 days and has not had, to my

knowledge, a case involving a gasoline station.

However —

MR. SOCKWELL: And, Mr. Lorenzo's primary expertise was that of engineering, not of zoning.

MR. COLLINS: However, he was the Acting Zoning Administrator.

MR. SOCKWELL: At the time.

MR. COLLINS: And, had the authority to make that decision.

MR. SOCKWELL: And, as Mr. Johnson, who has been there for hardly any time at all, would be then the designated authority, whether he understood the Zoning Ordinance or not.

MR. COLLINS: At the time his decision was made, Mr. Johnson was not with the District of Columbia government.

The building — let me get back to the building, the building does meet the setback requirement that you have suggested. It is separated by a street or alley from the adjacent residential district.

And so if — but, I do agree with you — if the convenience store were to shut down and Exxon were to build service bays in that building, Exxon would have to come back to this Board, there's no question about that.

MR. SOCKWELL: And, even if they didn't build service bays, they just have one big office.

MR. COLLINS: They had one big vacant structure, and they had the — I don't think, and I can ask Ms. Levine to look into this, but I don't think that if for some reason the convenience store

shut down and became totally vacant that Exxon cash register operation would expand to fill that whole building. I just don't think that would occur.

CHAIRPERSON REID: All right.

MR. SOCKWELL: Where are the cash registers located within the building, by the way?

MS. LEVINE: The cash registers are fairly central to the building.

MR. SOCKWELL: Okay.

CHAIRPERSON REID: All right. Let me see, you may sit back over there now. All right.

Do you want to go back now so that I can bring up the other people?

Is there anyone here from the ANC, and I don't think we have any government reports. I don't think so.

MR. GILREATH: Madam Chair, if we can anticipate that in the future OP may be able to start giving us reports? I presume this is a result of being short staffed.

CHAIRPERSON REID: I hope so, and I've been assured by the Zoning Director that with the new, more efficient policies, and computers, and people being put in place, that we would be able to start getting them.

MR. GILREATH: It would be helpful —

CHAIRPERSON REID: Yes, it would

MR. GILREATH: — in cases like this.

CHAIRPERSON REID: I agree.

Yes, sir.

Whereupon,

JAMES BERRY

was called as a witness by Counsel for the Applicant, and having been first duly sworn, testified as follows:

DIRECT EXAMINATION

MR. BERRY: Good morning. My name is James Berry, I'm the Chairman of ANC-5C. I should say to you that the ANC-5C considered this and other matters on Saturday, October 9th at a public meeting. Unfortunately, we lost our quorum, due to an emergency situation on the part of one of our members just before we were going to vote on this matter.

So, I'm not so sure if now is the appropriate time for me to testify on behalf of the ANC, but I wanted to testify for my single-member district and also as the President of Bates Area Civic Association.

CHAIRPERSON REID: Well, at this time — well, I guess you can do both at the same, but basically this is the ANC and as a single-member district representative you may testify.

MR. BERRY: Okay.

Well, I wanted to say generally that we had, as I said, ANC-5C considered this matter and we had a good deal of debate about it, and largely our concerns involved the public safety concerns, lighting, what we thought might be a situation of loitering and those kinds of issues.

We were also concerned about the — actually, the

prospect of alcohol being sold at that location. There were certain concerns raised about that, and we have — since that meeting I talked with Mr. Collins and others and we've been assured that those won't be issues.

I should also say that about ten years ago I was a part of a group that opposed a similar action on the Exxon station on the southwest corner, southeast corner, the one about which we spoke, and at that time we were concerned about loitering, we were concerned about the drug activities, we were concerned about traffic, we were concerned about economic development, and just a whole range of issues. We lost.

But, I must say to you that Exxon was responsible in adhering to all of the commitments that they made to us in terms of maintaining the place, making sure that the lighting was appropriate, making sure that the convenience store, which we thought was going to be an attraction to drug dealers and open to drug users and others with people hanging out, I mean, none of that happened.

And, I say that to say that we approach it with the same faith that they will be serious and committed to the goal of making this work, and making it work in a user friendly way, not just for the customers, but for those of us who live around it.

But, I just wanted to lend my support to the efforts, although I know that we didn't meet the minimum requirements with great weight, I wanted to share that experience with you and hope that it might inform your decision.

CHAIRPERSON REID: Thank you.

MS. PRUITT: Excuse me, sir, could you identify the civic organization you are with again, please?

MR. BERRY: I'm sorry, I'm the President of the Bates Area Civic Association.

MS. PRUITT: Base?

MR. BERRY: Bates, B-A-T-E-S.

MS. PRUITT: Bates.

MR. BERRY: Bates Civic Association, which is bounded by Florida Avenue, N. Capitol Street, New Jersey Avenue and New York Avenue.

CHAIRPERSON REID: And, you are testifying in support?

MR. BERRY: Yes, essentially.

CHAIRPERSON REID: On behalf of the Bates Civic Association —

MR. BERRY: Yes.

CHAIRPERSON REID: — as well?

MR. BERRY: Yes.

CHAIRPERSON REID: Now, do you have anything from the association that authorizes you to speak on behalf of that organization?

MR. BERRY: I don't have anything in writing, I can do that. I'm the President of the organization.

CHAIRPERSON REID: Okay, I would appreciate that, because we need something in writing for the record.

MR. BERRY: Sure, we can do that.

CHAIRPERSON REID: And, since the next segment would be persons or parties in support, then I guess you just ditto that for the Bates Street Civic Association —

MR. BERRY: Sure.

CHAIRPERSON REID: — is that correct?

MR. BERRY: Yes.

CHAIRPERSON REID: All right, thank you.

MR. BERRY: Okay.

CHAIRPERSON REID: Any other persons in support of the application, please come forward. I'm sorry, sir, can you please come back up, Mr. Sockwell had a question.

MR. SOCKWELL: You are the single-member district representative, ANC single-member district?

MR. BERRY: 5C-01.

MR. SOCKWELL: 5C-01.

And, as your experience the facility at the southeast is more than well run?

MR. BERRY: That's my experience, yes.

MR. SOCKWELL: Uh-huh.

MR. BERRY: And, I was going to add there, one of the things we were concerned about at that time also was the loss of mechanical services. I mean, that was one of the few places where they had — where you could get a tire changed, da, da, da, da.

But, they've really done, I think, an adequate job of maintaining and addressing the concerns that we raised, and previously before the Gasoline Advisory Control Board at that time.

MR. SOCKWELL: Okay.

That was my only question.

CHAIRPERSON REID: Okay.

Persons or parties in opposition to this application, please come forward.

MS. ROBINSON: I'm not speaking for or against, do I just speak after him?

CHAIRPERSON REID: You can come up right now and speak, you are in between, so I'll let you speak between the support and the opposition.

Whereupon,

was called as a witness by Counsel, and having been first duly sworn, testified as follows:

DIRECT EXAMINATION

MS. ROBINSON: Good morning. I am Ms. Florence A. Robinson, a D.C. taxpayer and voter, who have lived on Florida Avenue, N.W., for many years, and will object to Exxon's application to operate a convenience store on Square 31, Lot 48, known as 5 Q Street, N.W., if, and I repeat, if alcohol — if Exxon plans to sell any kind of alcoholic beverage.

CHAIRPERSON REID: Ms. Robinson, first give us your address.

MS. ROBINSON: I'm sorry, beg your pardon?

CHAIRPERSON REID: Give us your address.

MS. ROBINSON: I'm sorry, 45 Florida Avenue, N.W.

CHAIRPERSON REID: Okay.

Now, Ms. Robinson, in looking over your letter, basically, the issue was in regard to them selling alcoholic beverages and I think that the single-member district representative established for us that he had had conversation with Exxon and they had assured them that that would not be the case.

MS. ROBINSON: Right, and my only reason for wanting to bring this directly before you, hearing Mr. Collins say that they could build the — could have built the convenience store, and also learning that people have come to you for variance, I want this body to know that I personally, and those that I spoke with, feel that at no point, not only Exxon, but no establishment should ever be granted the right to sell any type of alcoholic beverage, be it beer, wine, or any name that has alcohol in it, on the same premises.

CHAIRPERSON REID: Okay.

Now, Ms. Robinson, you are getting into a lot of different things. One is that we are only considering this application and what they intend to do. Okay.

Now, as far as subsequent applications are concerned, and for subsequent uses, then that is something that will be taken up at that time, it cannot be taken up here, and then also, I don't know if — that issue will probably be presented to the ABC Board, rather than the BZA. So, I think that what I'm hearing is that if there is no alcoholic beverages being sold or transacted by this Applicant than you do not have any objection.

MS. ROBINSON: Right, and I also understand they

are taking no additional homes. If those two things don't exist, I have no objection whatsoever.

CHAIRPERSON REID: Thank you.

Thank you very much for your testimony.

MS. ROBINSON: And, thank you for hearing me.

CHAIRPERSON REID: Thank you.

MR. SOCKWELL: Ms. Robinson, if they post — if they ever decide to sell alcoholic beverages, the premises will have to be posted.

MS. ROBINSON: Oh, by the ABC Board.

MR. SOCKWELL: By the ABC Board. So, there would be notice, and I'm sure the ANC would be well aware of it.

MS. ROBINSON: Okay, so I would get the same type of application notice that I got on this if they decide they want to sell it.

MR. SOCKWELL: Yes.

MS. ROBINSON: Okay. Thank you very much.

Whereupon,

LEE ANTHONY BROWN

was called as a witness by Counsel for the Opposition, and having been first duly sworn, testified as follows:

DIRECT EXAMINATION

MR. BROWN: Good morning, my name is Lee Anthony Brown. I'm a homeowner at 16 Quincy Place, N.W., Lot No. 29, Square 3100. My property adjoins the lot right here.

I'd like to bifurcate, I guess, my opposition. I do have very grave reservations for the convenience store, but I am totally

opposed to an additional fuel dispenser, I guess the 706 exception that Exxon seeks.

As I just stated, my house is right next to the lot, and presently I believe that there will basically — I have structural soundness concerns, and I do believe the presence, the construction, the proposed construction on the lot, building the convenience store, demolishing the present asphalt, lifting up the canopy, and certainly rotating the tanks underground, could affect the structure of my house, and certainly the property.

And, you know, as it stands I feel that we should, you know, delay granting any sort of exemption until we can determine, and I guess maybe by an independent engineer or some sort of structural examiner, on whether or not my property is going to be affected by the construction that's going to go on there.

Also, I have noise pollution concerns. There is already an Exxon in the southwest corner of that intersection, and I don't want another, you know, convenience store and gas station in that area, where you are going to have so many people driving in, driving out, you have these cars, these huge radio sound systems, my house is right next to it, and, you know, I think a neighborhood can only take so many, you know, so many gas stations in the area.

Basically, I don't want to be here three years, six years or nine years from now complaining about the noise that this additional convenience store has generated, so I do think that we should, you know, delay granting an exemption until we can find out what's going to go on.

I do question Mr. Morris' concerns that an additional fuel dispenser would create minimal increase in traffic to this area. I dispute that wholeheartedly, simply because you have the N. Capitol thoroughfare, you've got Florida Avenue that leads into New York Avenue, which is 50, and that intersection is roughly three quarters of a mile from New York Avenue and 395, as well as all the other sort of commercial development that's leading through U Street and into, you know, other parts of the city.

So, that's a problem for me. I just don't want to be here three years from now saying, hey, we let them come here, they had — there are a lot of short-term benefits associated with having businesses in our neighborhood, but I think that the Board should exhibit a certain degree of reservation to find out what type of business.

As it stands, we have one, two, three, I think four, possibly five, gas stations within a six-block area. I don't think any of you want six gas stations, four gas station, within your homes. And, you know, I understand that they are business, they can do whatever they want on their land, but I'm totally opposed to an additional fuel dispenser.

You know, and I do have concerns about the type of construction that's going to occur on that lot and how it could affect the structural soundness of my house, more than anything else.

I think that's — and that was one thing I really wanted to say, is that I think the City has made a commitment toward making New York Avenue a technology corridor shall we say, and I certainly

believe that an additional gas station in this area would all but, you know, make our neighborhood the petroleum corridor, if you will. And, you know, I'm just asking you to delay granting an exemption until we can find out, number one, how much more noise are we going to receive, because we are; and then two, you know — well, really, number one, is it going to affect my property adversely, and I'm saying yes, it will affect everyone, including Ms. Robinson, including Lee Brown's property, including everyone who has a lot that is adjacent to that sort of construction that is going to go on. Two, I just don't think it's really the right sort of commercial development that this neighborhood is seeking. I think it would entrench the sort of gas station, truck stop mentality that that neighborhood is presently facing. Right now, there's emerging commercial development within that area, and I think the gas station will just, basically, create a here today, gone tomorrow sort of mentality in that area.

That's it, really.

CHAIRPERSON REID: Okay.

MR. SOCKWELL: What is your name again, sir?

MR. BROWN: Lee Anthony Brown.

MR. SOCKWELL: Mr. Brown.

Mr. Brown, which home do you own, and what is your lot number?

MR. BROWN: It's 31 — the lot number is 29, and the square is 3100.

MR. SOCKWELL: But, your address is —

mR. BROWN: 16 Quincy Place, N.W.

MR. SOCKWELL: Okay, and you abut the property on the —

MR. BROWN: The north side. I don't think I'm due north. There's a utility pole I think on the — there's a utility pole and I believe that corresponds with Lot No. 27, and then there's Lot No. 28, and then there's Lot No. —

MR. SOCKWELL: Twenty-nine.

MR. BROWN: — yes, I think so.

MR. SOCKWELL: So, you are the third house along Quincy?

MR. BROWN: Yes.

MR. SOCKWELL: So, that would make you Lot No. 29, okay.

MR. GILREATH: Could the witness show on that map approximately, are you north of the buffering area, or behind the —

MR. SOCKWELL: It's behind the trees.

MR. BROWN: Right here.

MR. SOCKWELL: So, you are behind, say, the second tree from the right?

MR. BROWN: Yes.

MR. SOCKWELL: Which would be approximately where you are by my estimation.

And, you have the alley between you and —

MR. BROWN: Actually, I think we need to establish one thing. There is a phantom alley, a paper alley if you will.

MR. SOCKWELL: Well, it's obviously land locked, but

—

mR. BROWN: There's no alley. If there was a land lock easement, it doesn't exist anymore, and it's safe to assume that the previous homeowners, my neighbors, and my predecessor, or someone for them, acquired, they basically assumed access. And so, you basically have Exxon's fence, maybe a few inches, maybe 18 inches, I'm not sure, and my fence.

I was doing some work in my yard, and I saw, I guess, a cut-down telephone pole in my yard, kind of right along the line with the corner telephone pole, so I guess it's safe to assume that my lot encroaches on that public space. So, when you start talking about that 25-foot radius, maybe, you know, it should be not at the point of my present lot, but at the point of the end of the alley.

MR. SOCKWELL: Does your — how long have you owned the property?

MR. BROWN: I've owned the property about 45 days, a month and a half, two months.

MR. SOCKWELL: Does your deed appear to include — does your described plat for your deed show that public space?

MR. BROWN: Yes, it does.

MR. SOCKWELL: Okay.

So, you actually do have an encroachment, and probably some of the other neighbors' fences align with your own, which means it's public space, although it may be effectively in your yard, probably still exists.

MR. BROWN: Yes.

MR. SOCKWELL: Okay.

So, as far as from the surveyor's standpoint it's an alley, and it is, therefore, a physical barrier between your property and the Exxon station, regardless of where your fence is.

MR. BROWN: Yes, sir.

MR. SOCKWELL: The other question is, you've had the property only 45 days, so you have no experience with the previous gas station use that was there.

MR. BROWN: I —

MR. SOCKWELL: Not as a property owner.

MR. BROWN: — yes, sir.

MR. SOCKWELL: You may have purchased gas there.

MR. BROWN: I lived about three blocks away previously for five years.

MR. SOCKWELL: Okay, so it wouldn't have made a difference. All I'm trying to get to is that your — two things, your question about the additional fuel dispenser, generally speaking, it would be somewhat difficult to ascertain the increase in traffic that a fuel dispenser would create, because more often than not if a person needs gas he will queue behind whatever cars are at the dispenser, or will go look for another gas station. That may not be a particular problem.

The noise issue is one that they apparently have attempted to deal with by leaving the natural buffer of trees, which they might be in a position to enhance with other lower denser

vegetation, depending upon how they respond to you.

The structural concerns that you mentioned, as an architect I would think the structural concerns that you have are virtually minimal, the reason being that the tanks are well outside of an area of influence if you drew a 45 degree angle from your basement perimeter at the bottom of the basement, so you would find that that is sufficient for WMATA in any construction near metro tunnels and should be consistent with a line of influence for your own property.

The building that would be the convenience store is going to be on a mat foundation, that is a slab on grade. They are not going to be digging anything out of there that's going to destabalize your property.

Do you have a full basement?

MR. BROWN: Yes, I do. Actually, when I bought the house the inspection was contingent, I mean, actually buying the house was contingent upon them filling a sink hole, and, you know, I'm not an architect, I'm not an engineer, and that's the reason why I'm here. That's simply it, really.

MR. SOCKWELL: Those structural concerns probably are minimal.

MR. BROWN: Okay.

MR. SOCKWELL: Unless they decide to put an office building up there in the future, then you might be very concerned.

CHAIRPERSON REID: And, we'll also, since you are not a party to the case, the issue that you raised we'll make sure that when the Applicant comes up for closing remarks that we will further

determine the intent and to have them respond to some of the concerns that you have raised.

MR. BROWN: Well, I think, since we — I don't think we can truly get a grasp on the increase in traffic, but I think we all live in the District of Columbia, and we've gone in and out of the District of Columbia, and we know I think it's probably best to assume the worst when you are dealing with traffic.

So, when you start talking about, you know, allowing for items such as a fuel dispenser that can increase traffic, we are sure to assume the worst. I've lived in that area for five years, and traffic at times is ridiculous, and I can see why. Their building an additional station on diagonal lots is because it's extremely difficult to make a left on N. Capitol if you are going southbound or northbound, and I can see their argument that these are complementary stations.

For myself, you know, as a homeowner in this area, you are saying to yourself, wow, there's a gas station at P and Florida Avenue, okay, it's Amoco, okay, there's an independent gas station on — there's, I think, another Amoco on Florida and Rhode Island and 3rd, there's another one around the corner, and there's another one around the corner, you say, my God, how much gas can you possibly have at your disposal as a homeowner. You know, there are a lot of other people that are coming in and out of this area here, and I'm saying, okay, cool, they can do this, you know, as it stands, let them, if they want to build a new convenience store with three fuel dispensers, let them do it, but don't let them, you know, have an exemption for another fuel dispenser. That's all I'm saying. That's my opposition.

MR. SOCKWELL: mr. Brown, you do not feel that the convenience store itself would be a greater increase — would provide a greater increase in traffic than one fuel island?

MR. BROWN: Actually —

MR. SOCKWELL: The convenience store itself presents an entirely different promotional opportunity and will certainly change the entire appearance of the site from a visible standpoint to oncoming traffic in any direction.

MR. BROWN: — I think you are totally right, but this hearing isn't about opposing a convenience store, correct?

MR. SOCKWELL: No.

MR. BROWN: And, I do think —

MR. SOCKWELL: The convenience store is part of the gas station.

MR. BROWN: — actually, I do think you raised some very valid points, on point of sale, and, you know, if they are going to, you know, build additional fuel dispensers, and if they don't have the ability to have point of sale at the pumps, then, you know, I think the issue that you raised about structure and premises are very valid.

But, I think that the convenience store will increase the number of — you know, the number of persons that will come to that lot, and it, of course, will create greater noise for me and my neighbors. However, they are seeking exemption under 706, and that's the number of fuel dispensers. And, as I said initially, I do have grave reservations about what they are doing, but I am totally opposed to the 706 exemption.

CHAIRPERSON REID: All right, thank you very much for your testimony.

MR. BROWN: All right.

CHAIRPERSON REID: Closing remarks by the Applicant?

Sir, do you have a question? If so, you can ask staff.

MR. CREDIT: Okay, I'm sorry, Madam Chair. I just wanted to know if it was possible, I'm not one of the noted testifiers, but if I could address the body I would appreciate it.

CHAIRPERSON REID: Okay.

Well, what are you, in support or in opposition?

MR. CREDIT: I would probably have to say it's in opposition, in opposition, but I'm open.

CHAIRPERSON REID: All right.

Mr. Collins, I'm sorry, you can come forward. You have a right to speak, yes, definitely.

Sir, you have to be sworn in.

MS. PRUITT: Raise your right hand.

Okay, thank you, please be seated and continue.

CHAIRPERSON REID: Okay, now, when you were asking the recorder, what did he say?

MR. CREDIT: That I needed to address the body.

CHAIRPERSON REID: Right, it's usually to the staff, but okay.

Go ahead.

Whereupon,

KEITH CREDIT

was called as a witness by Counsel for the Opposition, and having been first duly sworn, testified as follows:

DIRECT EXAMINATION

MR. CREDIT: Thank you, Madam Chair, and members of the body. As I had mentioned earlier, I was not a noted testifier to this hearing. My name is Keith Credit, and I'm with the North Capitol Neighborhood Development CDC. Our office is at 1330 N. Capitol Street, just a half a block north of the intersection of New York Avenue and N. Capitol Street.

CHAIRPERSON REID: Were you here for the presentation?

MR. CREDIT: No, ma'am, I was not.

CHAIRPERSON REID: Have you looked at the record?

MR. CREDIT: Have I looked at the record?

CHAIRPERSON REID: Are you aware of the essence of the presentation that was made by the Applicant this morning?

MR. CREDIT: No, ma'am, I was not.

CHAIRPERSON REID: All right. You can go ahead and testify, unless — the purpose of the hearing is, in all fairness, to give everyone an opportunity to be able to present, and it may well have been that some of the testimony made here this morning by the Applicant would have clarified for you some of the issues that you might have. All right.

MR. CREDIT: Thank you, Madam Chair, and I

certainly appreciate the concerns expressed in the short time that I was here, and I am aware of Mr. Brown, although he and I have not met we have had a couple of conversations, I'm fairly new to North Capitol Neighborhood Development, but it's obvious when one travels north on N. Capitol Street towards the intersection that there is a very strong presence of the Applicant.

And, as I had mentioned when you first asked me, was I in opposition, and I maybe waffled a little bit in terms of saying that I am open to some discussion or conversation. And, as you all may know, CDCs in their missions attempt to work with bridging gaps between businesses and residences and the city. And, I would have to say from a personal standpoint I would have a concern about an over abundance of any particular type of use, and, in particular, one such as this, and some of the implications as it would impact on traffic patterns and the environment.

However, I would also like to just leave for the record some thoughts or some suggestions for the Applicant and the body, and I mean this in the spirit of trying to work with you and respecting your rights as a property owner and as an obviously large, viable business in this area.

And, let me just preface it by saying, I would have hoped that there had been some background on the impact environmentally and traffic-wise that occurred in the area when — I'm assuming this now — in the past both facilities were operational. And, if there is any empirical data that would make clear what those impacts are, I would hope and assume that that's clearly stated in the

record.

But, if I were to just look at the two facilities separately, I think there could be an approach that could at least personally satisfy me, and I guess I'm just speaking for myself and in part for the organization, and that pertains to with the southeast corner facility, which is currently operational. I had asked a question of someone else here —

CHAIRPERSON REID: Wait one second, this is the facility.

MR. CREDIT: — concerning the northwest facility.

CHAIRPERSON REID: Right, so we cannot, we cannot, in this particular hearing, be concerned about the other Exxon station on the southeast corner, because this hearing is not for that particular site. We can only, and I mean specifically, deal with the site on the northwest corner for which we are basically addressing at this time, only.

MR. CREDIT: I appreciate that, Madam Chair, and, therefore, I could not make any, even an indirect reference to the currently operational facility? I can deal with them separately on that.

CHAIRPERSON REID: All right.

MR. CREDIT: But, it takes somewhat away some of the concerns that I would express, so I will just leave this simple thought with the Applicant, in light of the extensive presence that you all have in that specific part of the commercial corridor, would there be, has there been consideration for, perhaps, making available or being open to discussion with the existing businesses, the CDCs and

other property owners, means by which that portion of the corridor could be improved from a physical standpoint? And, would you also be open to considering, instead of building a convenience store at the northwest facility, of, perhaps, looking at some of the vacant properties in that block and putting the convenience store there, perhaps, as a joint venture or just stepping out individually?

CHAIRPERSON REID: The question that you are just are kind of like throwing out, because obviously you cannot direct the question to this Board, and that is a matter that I would think that — I don't think that you were precluded from having been able to discuss that with the Applicant prior to this hearing.

MR. CREDIT: Okay.

CHAIRPERSON REID: Is that not correct?

MR. CREDIT: I would tend to agree, Madam Chair, and if I'm speaking out of order I —

CHAIRPERSON REID: Before or after, but that is, again, that is not the issue before us today. We are only dealing with the site, the site on the northwest corner, and issues that are germane to that particular site. And, anything else you certainly have a right to discuss with them outside of this hearing, but that does not pertain to the hearing.

MR. CREDIT: Okay, and I will certainly take that and hopefully can continue some dialogue with the Applicant, and, again, I appreciate the indulgence of the Commission, and I apologize if I went beyond the scope of the hearing.

CHAIRPERSON REID: Thank you.

MR. CREDIT: Thank you.

CHAIRPERSON REID: Okay.

Closing remarks by the Applicant?

MR. COLLINS: Madam Chairman and members of the Board, you have heard the testimony of the Applicant, specifically, how the application meets all the enumerated requirements for special exception approval, including everything in Section 706 and Section 2302 from the Regulations.

We have spoken, I have spoken and other members of the team have spoken, with Mr. Berry from the ANC by telephone. Also, I want it to be known that Mr. Brown, who spoke earlier, did represent a different position to us on the telephone. I spoke to him twice on the telephone, and Ms. Levine spoke to him once on the telephone. His opposition is based upon, today, the additional fuel dispenser and the increase in traffic that that might have. That was never once expressed to us in the several conversations that we had. In our conversations with Mr. Brown, he expressed concern about structural integrity of his property, in that he had sink hole in his backyard and was concerned about any excavation that we might have on our property that might have an impact on his property.

After checking with Ms. Levine, I called him back and assured him that as Mr. Sockwell mentioned on the convenience store there will only be footers going down several feet, we are not digging a below-grade cellar there. We are replacing and turning the tanks somewhat, but as Ms. Levine mentioned to me, and having checked with her structural people, that anything short of blasting in that area

would not have an impact on Mr. Brown's property. I called him back and offered that we would take photographs of his property, like before and after, that we would have the geotechnical people get in touch with him to discuss this issue, that there was an existing chain link fence along the property line there, that we would replace that with a board on board fence to shield the view.

I do want to point out several things. This is a major intersection of two major arterials in the City. It is in a C-2-A Zone, and the definition of the C-2-A in the Zoning Regulations is that the C-2-A Zoning District is designed to provide facilities for shopping and business needs, housing and mixed uses for large segments of the District outside the central core. The C-2-A Districts permit development to medium proportions and are located in the low to medium-density residential areas with access to main highways or rapid transit stops. This is the epitome of a C-2-A Zone.

The C-2-A Zone permits a whole host of retail uses, including anything from a dry cleaners, to a car wash, to all sorts of retail uses in the zone. Those could be put as a matter of right without even coming before this Board. There are a number of uses that are more — would have more potential adverse impact with no requirement for any type of the treatment that we are providing on this site.

The site, as was pointed out, is right down the street from Florida Avenue and New York Avenue, the intersection, another major arterial. This is a major business area of the City. It's a major transportation area of the City.

The only issue that would be, I guess, before this Board that Mr. Brown mentioned was the additional fuel dispenser. You have expert testimony in the record on this case from Mr. Morris concerning the lack of adverse impact from traffic. The record indicates, his testimony indicates that, and in partial response to Mr. Credit's testimony or suggestions, the traffic that is drawn to this station will be principally from southbound N. Capitol and westbound Florida, which is wholly different, entirely different from the traffic that will be drawn to the station diagonally across the intersection.

So, there is — you have expert testimony on the traffic and transportation issues. You have testimony on all the other sections of the Zoning Regulations and how we meet those sections of the Regulations.

Anything that happens on this site will require construction. We are not putting up a camping area. Anything that we do will require some construction. This will require very little below grade construction, replacing tanks and putting footers in.

CHAIRPERSON REID: Mr. Collins, how long do you anticipate that taking?

You have to come forward and get on the mike, please.

MS. LEVINE: Total construction takes typically between three to four months.

CHAIRPERSON REID: And, during that time period, are you saying that the disruption or the noise — do you seek to minimize that?

MS. LEVINE: Absolutely, we do take efforts to minimize it, do the majority of our louder activities in the afternoon hours, rather than in the morning or evening, when people are trying to get some sleep, or when children are sleeping.

CHAIRPERSON REID: What hours — well, give me the times, please.

MS. LEVINE: Most work, they typically mobilize around 7:00 a.m., and conclude work around 5:00 p.m.

CHAIRPERSON REID: I thought you just said not early in the morning.

MS. LEVINE: Well, they'll mobilize in the morning, hold their meetings, and then the heavier construction begins typically around 9:00, after people have left for work.

CHAIRPERSON REID: Oh, because that's what I wanted to know, the construction part starts at around 9:00?

MS. LEVINE: Correct.

MR. SOCKWELL: Madam Chair, the Applicant will be bound by the requirements of the building code on hours of construction and would have to apply for evening construction as a separate allowed condition of their permit.

CHAIRPERSON REID: You didn't — Ms. Levine, did you say evenings? I think you said end at 5:00.

MS. LEVINE: Yes, we will not be applying for evening construction.

CHAIRPERSON REID: Okay.

MR. SOCKWELL: You said something about not

affecting people's sleeping, and that gave the impression that you might be applying for night construction.

MS. LEVINE: No. We will not be doing any construction during that time.

CHAIRPERSON REID: What other things are you doing to try to mitigate any adverse impact during the construction period?

MS. LEVINE: Well, we will be following all regulations. As part of that, we will apply sediment and erosion control to keep the site clean, make sure that our construction is limited to our property, and not imposing on anyone's adjoining properties or the streets.

CHAIRPERSON REID: Okay.

MR. SOCKWELL: And, all of that is required under the building permit as well, those are not anything that you are offering, those are just your specific requirements to build.

MS. LEVINE: That is correct.

CHAIRPERSON REID: So, basically, you are going to just be in compliance with the existing municipal regulations in regard to construction, correct?

MS. LEVINE: Yes.

CHAIRPERSON REID: And, not necessarily offering anything more than that.

MS. LEVINE: We are not offering anything in addition. The regulations in place are fairly strict, and require that we do respect our neighbors.

CHAIRPERSON REID: But, you will adhere to that.

MS. LEVINE: Yes, ma'am.

CHAIRPERSON REID: Okay.

Mr. Collins, I understand that there has been some discussion with you, and with the ANC, and some of the other neighbors, in regard to alcohol —

MR. COLLINS: Yes.

CHAIRPERSON REID: — being sold or made available at that particular site.

MR. COLLINS: Yes. As a matter of fact, I met Ms. Robinson for the first time this morning, and she expressed that concern and handed me a copy of her letter, and I mentioned to her that as Exxon has stated in the past they will not be selling alcoholic beverages at this site.

CHAIRPERSON REID: Is there any station where there is alcoholic beverages actually sold at the gas station?

MR. COLLINS: I'm not familiar with any.

CHAIRPERSON REID: I mean, Ms. Levine, are any of your stations, that you know of, set up to dispense alcoholic beverages?

MS. LEVINE: None that I'm aware of.

CHAIRPERSON REID: Okay.

Do you have further remarks, Mr. Collins?

MR. COLLINS: Madam Chair, we simply state that we have — we believe we've met all the requirements for special exception relief and request approval of the application.

Thank you.

CHAIRPERSON REID: Did you not say that you had agreed to, you met with Mr. Brown, Mr. Brown, that you had agreed to replace the chain link fence with a wood on wood fence, so as to be able to give greater privacy?

MR. COLLINS: I offered that after discussing it with Exxon, in my telephone conversation to him I did offer that. We offered to monitor the property during construction by taking photographs of the property, so you'd have a before and after type situation which is not unusual in a construction scenario.

CHAIRPERSON REID: And, what was the response to those proffers that you made?

MR. COLLINS: Well, my impression from that conversation was that he was satisfied, and then I offered to have Ms. Levine contact him for some specifics, and she did.

CHAIRPERSON REID: No, my question was, when you offered to do these things, was that made a part of an agreement, that you are going to, or he didn't say, oh, well, I don't think that's necessary, or what was the outcome of that after you proffered?

MR. COLLINS: My impression was that he accepted that offer and we were simply going to follow up. There was nothing in writing. There were several conversations, and my impression from the second conversation was that he was satisfied with what I told him.

CHAIRPERSON REID: Well, I guess, Mr. Collins, what I'm trying to get to is, do you intend to, is that your intention, is that part of your plan, to replace the chain link fence with a wood on

wood fence on the back perimeter, so as to give additional camouflage, I guess, to the — privacy to the persons or people whose properties their backs abut the subject property?

MR. COLLINS: Yes, we offered it, and we will not rescind the offer.

CHAIRPERSON REID: Okay.

And, are you also going to take pictures, do you think that's necessary?

MR. COLLINS: Only if — we can only do it — if he thinks it's necessary we'll do it, but we can't do it unless he lets us on his property.

MR. SOCKWELL: Mr. Collins, one question, on the — what is the exact width of the alley or public space behind?

MR. COLLINS: I believe — let me just check, I think I know but I don't want to hazard a guess.

MR. SOCKWELL: Sure.

It looks like somewhere between eight and ten feet, maybe.

MR. COLLINS: I think that's correct. I'm checking, I'm looking at the maps attached to the application from pages eight and nine, but it appears to be somewhere between eight and ten.

MR. SOCKWELL: Yes, but the issue is really that Mr. Brown's fence and Mr. Brown's actual separation from your property are two different items, because he said his fence is about 18 inches off of your property, but his property actually ends maybe ten feet away from your property.

MR. COLLINS: That's right.

MR. SOCKWELL: So, there may be a use issue with regard to its proximity, but the actual proximity is greater than it appears.

MR. COLLINS: Yes.

MR. SOCKWELL: The distance is greater than it appears.

MR. COLLINS: That's correct. The fence that we spoke of we will put on our property line.

CHAIRPERSON REID: In addition to that, you also have indicated those four trees, or four shrubbery, are they trees, what exactly are those going to be?

MR. COLLINS: Those are existing trees.

CHAIRPERSON REID: Oh, I see, they are already there.

MR. COLLINS: Yes.

CHAIRPERSON REID: Those trees also help to kind of buffer the impact, I would assume.

MR. COLLINS: Yes.

MR. SOCKWELL: Are they that substantial as Mr. Prakash has shown, or are they, you know — yes?

MR. PRAKASH: My estimate is from my visual inspection, is that the trees are in the order of 25 feet high.

MR. SOCKWELL: Okay.

CHAIRPERSON REID: Okay.

MR. GILREATH: The height of the fence, assuming

that the other party agrees to it, would that be a stockade fence, about eight feet, or will that be negotiated with him what the height will be?

MR. COLLINS: We are talking about a six-foot fence. The limitation in the building code does not allow an eight-foot fence.

MR. GILREATH: It will go six feet, okay.

MR. SOCKWELL: But, the building code will allow seven on the property line, ten, or anything more than ten feet in from the property line or an interior lot line, you can have — that's more than ten feet off the lot line, can be of any height.

MR. COLLINS: Right. We are fairly limited on how far we can go.

MR. SOCKWELL: Right, so you can give him seven if you have to?

MR. COLLINS: If we have to.

CHAIRPERSON REID: You don't have to, I mean, it's up to —

MR. SOCKWELL: If you want to.

CHAIRPERSON REID: — if you want to. You don't have to give them seven if you don't want to, we just have to ascertain the height of the fence.

MR. COLLINS: The terrain goes up at that point, and there are some retaining walls in that area that essentially would on top, where the retaining walls exist the fence would be on top of that.

CHAIRPERSON REID: So, we are saying six?

MR. COLLINS: And, we thought six was sufficient.

MR. SOCKWELL: So, six feet of crude oil stays high,

or seven feet of crude oil prices stay high, six feet if it goes down.

MS. PRUITT: Excuse me, Madam Chair, just for point of clarification. Would the fence go along all the property owners along that side or just Mr. Brown's?

CHAIRPERSON REID: I thought that we indicated, my question was, the lot lines —

MS. PRUITT: Well, I wasn't clear, that's why I wanted to be sure.

CHAIRPERSON REID: — my understanding was it was to be the lot lines that abutted the neighbors whose backs were at the property line, and maybe we need to clarify exactly how far — the existing fence, whatever the existing fence is what you were saying you'd replace, right? And, the existing fence, looking at the page, what is it, 13?

MR. SOCKWELL: That's correct, page 13.

MR. COLLINS: Seven gives you a good idea of the properties.

CHAIRPERSON REID: Page seven? Okay, page seven.

MR. COLLINS: Well, Mr. Sockwell, page 13 shows the existing condition plans.

MR. SOCKWELL: Okay.

MR. COLLINS: And, I'm sorry for interrupting, but what we are doing is replacing all the chain link with stockade.

CHAIRPERSON REID: And that is, where is the chain link fence?

MR. COLLINS: If you look on page 13, you'll see on the western property line, on the left-hand side of the page, you'll see, and, Mr. Sockwell, if you could assist with your expertise here, you'll see the location of the chain link fence going north.

CHAIRPERSON REID: Right.

DOCTOR CARSON: And then, going east along the line.

CHAIRPERSON REID: That's what's going to be replaced.

MR. COLLINS: Yes, that's right.

CHAIRPERSON REID: All right.

MR. SOCKWELL: And then, runs to there, but it doesn't go all the way to here.

CHAIRPERSON REID: Okay, so then, basically, it is — it will be replaced as reflected, as the chain link, you will replace the chain link as reflected on page 13 in your drawings.

MR. COLLINS: Exhibit E, page 13.

CHAIRPERSON REID: Exhibit E, okay. All right, good enough.

So, do you want a summary order, bench decision, is what you are asking, Mr. Collins?

MR. COLLINS: Yes, please.

CHAIRPERSON REID: Okay.

MR. GILREATH: Madam Chair, I think that the Applicant has adequately met the burden of proof. We are certainly appreciative of the concerns of the property owners. However, I feel

the trees and the stockade fence and so forth, plus this theoretical alley and what have, is sufficient to not pose any real hardship. This property has been used as a filling station before and so forth, it's major arterial, and the zoning and so forth, I feel that we can allow this additional dispenser, because that's really what — the other is a matter of right, as I understand it, so I recommend that we approve the application.

CHAIRPERSON REID: All right.

Mr. Sockwell?

MR. SOCKWELL: While I have my reservations as regards the Zoning Administrator's interpretative powers in this issue, I will not disagree with the fact that the neighborhood has been previously impacted for many years with both gas stations, that having used the Exxon station to the southeast I know that Exxon Corporation has apparently, at least through its dealer at that station, kept it very much clear of undesirable traffic and issues.

I think that one additional fueling island is not going to make or break any traffic continuums, and I do believe that the neighborhood impacts will be minimized visualized by the stockade fence, which will certainly provide a light barrier.

I think that the Applicant has met the requirements to be able to establish or reestablish the gasoline station use with the convenience store.

CHAIRPERSON REID: Were you going to second?

MR. SOCKWELL: Yes, I'll second.

CHAIRPERSON REID: I concur with my colleagues. I

feel that they have met the burden of proof, and that while we have been proffered today with concerns by community members I feel that the Exxon Corporation, the Applicant, has moved to tried to dispel the perception of adverse impact in regard to noise or trash, litter, loitering around the facility. The aspect that they are not serving any alcohol, or selling any alcohol, has been established that they will not, nor does any Exxon station actually sell alcoholic beverages, and I think that we can, within the aspect of the application and order, we can then condition it so that the construction would be in compliance with the typical D.C. construction, is it code, and that, now the hours we can — I don't think that — okay, so then we can basically condition the construction hours to be from 9:00 to 5:00 Monday through Friday?

MR. COLLINS: I think Ms. Levine mentioned that they arrive on the site at 7:00, and that the heavy construction —

CHAIRPERSON REID: No, no, I said construction. Now the meeting time, I was not adding that as construction time. My understanding from Ms. Levine was that they would mobilize at 7:00, and have meetings, what have you, but the actual construction itself, the construction work itself would not start until 9:00, and that's what I was specifically trying to address.

MR. COLLINS: I just want to make sure that there's no future misinterpretation if there's a condition in the order that says construction between 9:00 and 5:00, that if they mobilize at 7:00 someone might say that, no, that means you can't be here until 9:00.

MR. GILREATH: Madam Chair, I think that can be clarified by saying heavy construction will not begin until 9:00.

CHAIRPERSON REID: Okay.

MS. PRUITT: Madam Chairman, you have the building code permit that will supercede, so in one sense I believe it's already taken care of, and if we start conditioning it it makes it a little bit more confusing and difficult.

MR. SOCKWELL: Yes, under the building code, I believe that the end of construction would be 6:30 p.m., and you would have to apply separately for night construction. I think the beginning construction is probably allowed at 7:00 a.m., it's either 7:00 or 8:00 a.m.

MR. COLLINS: It's 7:00.

MR. SOCKWELL: Yes, so you'd be bound under the building code, but if you wished to be neighbor friendly you would probably want not to initiate excavation and heavy noise-making construction before at least 8:00 a.m.

CHAIRPERSON REID: Well —

MR. SOCKWELL: And, 9:00 a.m., would be preferred probably, but we don't want to — I don't know that we can condition that, because the building code does bind them under the permits that are issued, unless we change that.

CHAIRPERSON REID: Previously, we have had construction plan where the Applicant has proffered to us what, in fact, they would be amenable to doing, particularly in an environment where there's opposition. And, even though they are allowed to start at 7:00, if they willingly agree to not start heavy construction until 9:00, I don't think there's a problem with putting that as a condition.

MS. PRUITT: The concern is not to have too much ambiguity, and what Mr. Collins raised, that the community may say, well, I've read the — you know, you say this, and you are here earlier, and it may cause more problems.

CHAIRPERSON REID: Right, heavy construction not to start before 9:00, and you said you would terminate at 5:00, even though you can terminate at 6:30, that's certainly would signal to the community that you are making accommodations to them, you know, to be good neighbors, and I think that would be great if you are agreeable to that.

And, the other issue was the chain link fence, that you would install, you would replace existing chain link fence with a six-foot wood on wood fence, as reflected on page 13 of Exhibit —

MR. COLLINS: E.

CHAIRPERSON REID: — E.

Now, with regard to the pictures before and after, I don't think that I will — I would suggest putting that as a condition, that's up to you if you want to do that, or if Mr. Brown wants you to do that, you'll have to work that out, but I don't want to make that a condition of this order.

Anything else?

Okay, all in favor?

(Ayes.)

CHAIRPERSON REID: Opposed?

MS. PRUITT: Staff will record the vote as 3/0 to approve, motion made by Mr. Gilreath and seconded by Mr. Sockwell.

Is this a summary order, Madam Chair?

CHAIRPERSON REID: Summary order, you should have it, your order out in about two weeks or three weeks.

MR. COLLINS: Thank you.

CHAIRPERSON REID: Next case, please.

MS. PRUITT: The next application is 16494, application of Exxon Corporation, pursuant to 11 DCMR 3108.1 for a special exception under subsection 706 to allow the expansion of a gasoline service station with convenience store on a site in a C-2-A District, at premise 5515 South Dakota Avenue, N.E., Square 3760, and Lots 812 and 814.

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

Please, proceed.

CHAIRPERSON REID: Is there anyone here to testify in opposition to this case? Are there persons here in support of the case? Okay.

Mr. Collins, in this particular case, you are it, just the Applicant is here today, so we can basically expedite and you can give us the highlights of your application, and we'll ask questions. Basically, we've read the materials that have been submitted, and if there is anything that we need to clarify we'll just question the witnesses.

MR. COLLINS: Thank you, Madam Chairperson and members of the Board. My name is Christopher Collins with Wilkes, Artis, Hedrick & Lane. Seated behind me is Sarah Shaw, also of our

office. To my right are the three witnesses in this case, Terri Levine, a Market Investment Specialist with Exxon, Bob Morris who is our traffic and transportation expert witness, and mr. Bhoopendra Prakash from the Plan Source, who is the consulting engineer in this application.

Being mindful of your opening statement, Madam Chairperson, we will attempt to move this along as quickly as possible. This is an expansion of an existing Exxon service station. This expansion will include the acquisition of adjacent property that was originally built as a fast-food restaurant and it was converted subsequently to a veterinary clinic, and is presently vacant. That site is around the same size of the existing site, a little bit smaller. Exxon was given the opportunity to purchase that site to expand their existing location, and this is all at the corner of South Dakota Avenue and Kennedy Street, N.E.

The site was zoned C-1, and then through the Comprehensive Plan and the zoning Consistency Project from the Zoning Commission it was rezoned to C-2-A. It presently is a C-2-A Zone.

There's an existing three-bay facility at the corner, and then to the north of the site is the vacant building I mentioned, the veterinary clinic. The idea is to consolidate both sites, to remove all improvements and to build a matter of right convenience store with a canopy and six dispensers.

The special exception approval is necessary because of three things. We are expanding the site of the gas station. We are expanding the number of dispensers from four to six, and we're

putting up a canopy where there presently is none.

Unless there are any specific questions of me, I'd like to go to our first witness, Ms. Levine.

Whereupon,

TERRI LEVINE

was called as a witness by Counsel for the Applicant, and having been first duly sworn, testified as follows:

DIRECT EXAMINATION

MR. COLLINS: Ms. Levine, would you please identify yourself for the record and briefly summarize your testimony?

MS. LEVINE: My name is Terri Levine. I'm with Exxon Corporation. My home address is 8301 Ashford Boulevard in Laurel, Maryland.

Madam Chairperson and members of the Board, as Chris described we are proposing to modernize our facility at the northwest corner of South Dakota and Kennedy.

Our current property is approximately 16,000 square feet with a three-bay facility and four multi-product dispensers. We've recently acquired the additional property, which is an additional 14,000 square feet, giving us a total of approximately 30,000 square feet.

We'd like to utilize this property to modernize our facility with a new convenience store, approximately 3,200 square feet, and six new dispensers under a canopy which is not on the site currently. We plan to reuse our existing underground tanks. They were recently upgraded in 1990 and replaced.

Mr. Bhoopendra Prakash will give you some further

description of our site plan. If you have any questions I'd be happy to entertain them.

CHAIRPERSON REID: Ms. Levine, what would be the hours of operation?

MS. LEVINE: We are requesting 24-hour operation at this site.

CHAIRPERSON REID: Okay, is that in this application, hours of operation?

MR. COLLINS: It does not mention that.

CHAIRPERSON REID: Okay, and, as well, to refer back to the previous case, it didn't specify there either.

MR. COLLINS: No, that's correct.

Exxon is prohibited by law from dictating the hours of operation to its dealers.

CHAIRPERSON REID: I thought that was a station that was owned by Exxon.

MR. COLLINS: Exxon owns all the facilities, but the dealer owns the business, and that's governed by a specific law in the City. Companies are not allowed to own stores in Washington, D.C.

CHAIRPERSON REID: Oh, okay.

MR. SOCKWELL: So, that means Exxon has no control.

MR. COLLINS: Of the hours of operation?

MR. SOCKWELL: Or anything else of an operational nature.

MR. COLLINS: That's correct.

MS. LEVINE: If I can address that.

MR. SOCKWELL: Yes.

MS. LEVINE: We own the properties. We have a lease agreement with the dealer that operates the facilities, so that we are not both an owner and an operator of the property.

However, we are under contract with our dealers, and we do have some legal rights to maintain high operational quality of the site. We have yearly audits that we participate in to make sure that the sites are being maintained, they are being operated properly. We have a regional territory manager that acts as a counselor to each one of our dealers in the District.

MR. SOCKWELL: But, that is primarily for the maximization of revenue, is it not?

MS. LEVINE: It's for brand consciousness, to maintain quality facilities, clean facilities. It is not simply to receive rent, it is an actual counselor for operations.

CHAIRPERSON REID: So, this facility is wanting a 24-hour operation, and the previous one was as well?

MS. LEVINE: Yes, ma'am.

MR. SOCKWELL: Excuse me, the South Dakota and Kennedy facility was a 24-hour operation?

MS. LEVINE: I believe it is.

CHAIRPERSON REID: No, no, I'm sorry, Mr. Sockwell, what I was referring to was the previous application, the one on N. Capitol and Q Street, that that was also — and, it dawned on me when I was asking about this particular application and its hours of

operation that I did not remember hearing any specification as far as the hours of operation on the previous one, and she just basically answered that in both instances they are 24-hour operations.

MR. SOCKWELL: I didn't ask the question on the previous one, because I assumed it to be 24 hour, it had been in the previous operation, and as is the southeast corner operation there.

CHAIRPERSON REID: Okay. All right.

MR. SOCKWELL: It was not a concern for that location.

CHAIRPERSON REID: So, this is a proposed 24-hour operation of the gas station.

Is there, let's see, I'm trying to think of that intersection, is there another — any other 24-hour gas station there on Riggs Road across the street?

MR. COLLINS: Riggs Road is up. This facility is actually at the beginning of the ramp if you are going —

CHAIRPERSON REID: Right, I know where that veterinarian hospital was sitting there for many years.

MR. COLLINS: Right.

CHAIRPERSON REID: That's where it is.

MR. COLLINS: Right, exactly.

CHAIRPERSON REID: Yeah, I know where it is, but it seems to me that there was, right on that diagonally across there's a shopping center, and I thought that I remembered there being a gas station right there.

MR. SOCKWELL: There's one right at the line, at

Riggs and Eastern.

MR. COLLINS: Yes, there's one at Riggs and Eastern. That's a Gulf station.

CHAIRPERSON REID: Just a little further up. Okay. All right.

MR. COLLINS: At least it was a Gulf Station.

MR. GILREATH: I need a little clarification. You said something about four bays, do you mean automotive repairs take place there, too?

MR. COLLINS: A three bay, right, automotive repair, right.

MR. GILREATH: So, there will be repairs.

MR. COLLINS: No, there will not be repairs.

CHAIRPERSON REID: The bays are for what?

MR. COLLINS: We're eliminating the repair bays.

MR. GILREATH: Oh, they are being eliminated?

MR. COLLINS: Yes.

MR. GILREATH: So, it's just gas dispensing and the convenience store.

MR. COLLINS: Exactly.

MR. GILREATH: Very good.

CHAIRPERSON REID: Oh, okay. All right.

Go ahead, proceed.

MS. LEVINE: To reply to one of Mr. Sockwell's additional comments, we also have a program called "Commitment Tax Lots," where we offer our dealers a rebate, a reimbursement

program for high-level performance in the neighborhoods, additional landscaping, plantings, cleanliness, lighting, noise control, any sort of recommendations that they receive from their local neighbors in addition. So, we do have a program actually to encourage, not just to enforce, good behavior on our sites.

CHAIRPERSON REID: Okay.

MS. LEVINE: Are there any additional questions at this time?

CHAIRPERSON REID: I have none.

MR. SOCKWELL: Nothing further.

MR. COLLINS: The next witness is Mr. Bhoopendra Prakash, who will review quickly for you the existing and proposed conditions.

Whereupon,

BHOOPENDRA PRAKASH

was called as a witness by Counsel for the Applicant, and having been first duly sworn, testified as follows:

DIRECT EXAMINATION

MR. PRAKASH: Madam Chairperson and members of the Board, my name is Bhoopendra Prakash. I live at 12843 Parapet Way, Oakhill, Virginia, engineer representing the project.

The site being located in the northwestern quadrant of the Kennedy Street/South Dakota intersection, there are two principal buildings on site separated by a lot line. We propose to reconstruct the site with a canopy and fuel islands on the easterly side of the property, with a convenience store I the order of 3,000 square feet

situated on the northwesterly side of the store.

Entrances along South Dakota Avenue will be modified. There are currently four entrances, two of which shall be consolidated into one to provide, I believe, a safer access to the station.

Landscaping will be improved at the intersection for better visibility. The store will be constructed of glass in front for visibility and safety, peripheral down lit, down-focusing yard lights will be placed for a better appearance, and safety, and security. Setbacks will be honored from the residential zone, in the order of 25 feet.

In summary, in terms of filing with the Office of Planning, honoring the setbacks, presenting a better coordinated plan for design appearance, some screening and lighting, maintaining entrances set back safety from intersections and residential areas, I believe this project meets the intent of the Zoning Regulation, Section 726, as well as Section 2302.

I thank you. If you have any questions, I'll be happy to answer them.

MR. COLLINS: I have one question, Mr. Prakash. Will there be any grease pits or hoists associated with this?

MR. PRAKASH: There will be no grease pits associated with this project.

MR. SOCKWELL: Mr. Prakash? Mr. Prakash?

MR. PRAKASH: Yes, sir.

MR. SOCKWELL: The building to the right, to your right, that one, what is in there?

MR. PRAKASH: This is a canopy.

MR. SOCKWELL: That's just a canopy.

MR. PRAKASH: Aerial in nature, with pumps under.

MR. SOCKWELL: Okay, so that's just a canopy.

The previous gas station was oriented so that all of the activity and the principal illumination was along the South Dakota Avenue frontage, and the service bays were entered to the left side of the — the service bays for the operation, yeah, were entered to the left side of the building, or in that case I guess that's facing north or something, anyway, yeah, they were in this corner over here of the building, and most of the parking was done along the left edge or along the right side there.

Now, your new facility design — first, and also the lighting was fairly limited in intensity, and the facility was not operated as a 24-hour facility, in fact, at night I think it closed probably at 9:00 p.m. Does that sound pretty reasonable to your recollection, Ms. Levine?

MS. LEVINE: Yes, it does, the bays were not open 24 hours.

MR. SOCKWELL: Right.

And, it almost invariably had two or three MGBs or a Triumph TR-6 under repair at any given time.

The new facility, as shown in your photograph, is going to be oriented to present a lot of light in the direction of the residential homes on the opposite side of Kennedy Street, as well as it may tend to bleed a great deal of light toward the residential

properties in the — I guess that's the south, southern, eastern, whichever, where is your north arrow.

MR. PRAKASH: Northeastern.

MR. SOCKWELL: Yes, northeastern direction then, and you mentioned that down-facing lights would be provided. What type of fencing are you providing at the perimeter of the site?

MR. PRAKASH: Because the residential property is higher —

MR. SOCKWELL: Which it is.

MR. PRAKASH: — then the — this property, an opaque fencing, in my opinion, is not necessary, and —

MR. SOCKWELL: You don't think that the visual impact of a gasoline station, as one looks across one's property, is a significant change to the view of the rear of a building, which is what was generally the view previously, and a much smaller facility, in fact.

MR. PRAKASH: Mr. Sockwell, I believe because the line of site is going to be higher than a six or an eight-foot fence, from the residential property, I believe opaque fencing is not as important as the need for a regular fence that prevents pedestrian access between the two sites, or the two sets of properties.

CHAIRPERSON REID: Thank you.

MR. PRAKASH: Thank you.

MR. COLLINS: The next witness is Mr. Morris.

Whereupon,

ROBERT L. MORRIS

was called as a witness by Counsel for the Applicant, and having been

first duly sworn, testified as follows:

DIRECT EXAMINATION

MR. COLLINS: Mr. Morris, will you please proceed with your testimony?

MR. MORRIS: Good morning, Madam Chairperson, members of the Board. I am Robert L. Morris, traffic engineer and transportation planner. My home address is 9109 Rouen Lane, Potomac, Maryland 20854.

I have prepared a traffic analysis, which I believe you have in front of you.

CHAIRPERSON REID: Mr. Morris, before you continue, did you have a replacement for the page 23 that gave basically your — no, I'm sorry, your page four, that outlined your conclusions, because they are blurred.

MR. MORRIS: Oh, dear.

MR. COLLINS: Oh, yeah.

CHAIRPERSON REID: I couldn't garner what, in fact, you were laying out for us, the effect of the improvement.

MR. MORRIS: I have the original here. I can — if somebody can copy that, or I can read it to you, it's very short.

CHAIRPERSON REID: Well, I'll tell you what, why don't you just highlight it and then give it to staff so that we could have a clear copy for the record.

MR. MORRIS: I'd be happy to do that, certainly.

CHAIRPERSON REID: Thank you.

MR. MORRIS: What I have shown there is that

typically with the improvement that is proposed on this site, that you could expect about five to seven more cars entering the site during the peak hours, and I have noted that the great majority of trips coming to a gasoline service station are pass-by trips, and that, therefore, the additional five to seven trips wouldn't have any impact on existing conditions, and even if they were all new trips you would still have an A level of service at the intersection of South Dakota and Kennedy, and the bottom line was that from a traffic engineering viewpoint that would be an appropriate use of the property.

And, I'll be happy to supply this for copies to be made.

I would note further, Madam Chairperson, that while there could be additional trips coming to the site, as I mentioned, these will probably be all or the great majority pass-by trips. The previous use as a veterinary clinic, would have had all primary purpose trips, so actually the proposal that's before you represents a net trip reduction from what existed in the past with the veterinary clinic.

CHAIRPERSON REID: Repeat that again, please.

MR. MORRIS: The veterinary clinic that existed on the lot where the convenience store will now be located, would have had all primary purpose trips. People don't just happen to stop in a veterinary clinic because they are passing by.

CHAIRPERSON REID: Right.

MR. MORRIS: Whereas, with the convenience store they will. So, that on the proposed use would represent a net reduction in total trips.

CHAIRPERSON REID: I understand.

MR. SOCKWELL: So, you are saying that there would be fewer people coming to the convenience store than would have come to the veterinary clinic?

MR. MORRIS: No, I didn't say that, sir.

MR. SOCKWELL: What are you saying?

MR. MORRIS: I said that the trips going to the veterinary clinic would all be primary purpose trips, that people —

MR. SOCKWELL: Right, I understand what you meant.

MR. MORRIS: — would be added to the street system because they are going there. People going to the convenience store, they stop by, they get gas, and as they are getting gas they pick up whatever purchase, a loaf of bread or whatever it may be, get back in their car and leave. People don't normally drive from home to go to a convenience store in a service station and then go back home again. It's not a primary purpose trip. So, it doesn't add traffic to the street system.

MR. SOCKWELL: That's interesting because I do, and —

MR. MORRIS: You are the exception.

MR. SOCKWELL: No, I'm not, and my neighbors do.

MR. MORRIS: And, you don't get gas at the same time?

MR. SOCKWELL: No, go there specifically for two purposes. This convenience store, one of the purposes I'm sure you

are going to have in your convenience store is you are going to operate a lottery ticket facility, will you most likely, or your dealer will. Almost every Exxon station has one, which means that you suddenly become a primary purpose facility for the purpose of picking up lottery tickets. As well, you will be selling milk, bread and certain other staples which make that facility a primary purpose facility.

Not necessarily can you just arbitrarily assume that all customers are coming to that facility for gas and occasional essentials, as they come for gas. You can't do that, because you have to know what's going in there.

MR. MORRIS: May I respond, sir?

MR. SOCKWELL: Please.

MR. MORRIS: I did not arbitrarily assume it.

MR. SOCKWELL: Did Ms. Levine give you the specifics of what would be operated there?

MR. MORRIS: No, sir.

MR. SOCKWELL: So, you took a general case.

MR. MORRIS: Based on experience, I have dealt, in the past 40 years that I've been in business, I've with many, many gasoline stations, and I talk to gasoline service station operators and owners, and this is what they tell me.

They tell me that typically if you put in a convenience store, you will increase your patronage by ten to 15 percent.

MR. SOCKWELL: Have you ever stopped at a gas station at 7:50 p.m., or at 8:50 p.m., on a weeknight?

MR. MORRIS: I'm sure I must have.

MR. SOCKWELL: At those times, those are the times when the lottery closes its drawings, that's when all the cars are parked around the convenience store, none of them at pumps, all of those people are lined up inside the store for one purpose, and one purpose only, and that's to get their last-minute lottery tickets.

MR. MORRIS: It's also not the peak hour.

MR. SOCKWELL: It can be a peak hour for their activity, but what you basically stated is that you've discounted that there's any primary purpose there, that's all, and I don't believe that that is a fair assumption. And, the other thing is that it's, the convenience store is located in a residential neighborhood, where the convenience becomes very important.

CHAIRPERSON REID: Thank you, Mr. Morris.

All right, Mr. Collins, does that conclude your presentation?

MR. COLLINS: Yes, it does. I'd just like an opportunity for closing remarks.

CHAIRPERSON REID: Okay, there does not appear to be anyone here. I don't think that we received a letter from the ANC.

MR. GILREATH: We received a letter from someone.

CHAIRPERSON REID: We have some letters of opposition, and I'm going to get to that, but right now the ANC did not weigh in on this particular application, so when they don't we conclude that they have no objection, because if so they would be here, or they would write and let us know.

No government reports. We did receive no letters of support, but we did receive two letters of opposition, and the issues that were raised primarily were those of an anticipation of noise and traffic, and a problem with there being an increased probability of there being traffic accidents, and specifically this was cited from Ms. Herman Beecher and Inez — I'm sorry, Belcher. Can you address those concerns?

MR. COLLINS: Mr. Morris, I'm handing you a copy of the letter from Mr. & Mrs. Belcher, would you just take an opportunity to scan that letter and provide any comments you might have?

And, while he's doing that, I'd just like to state for the record that in terms of the ANC, we did reach out and contact each of the ANCs, there's more than one involved in this application, several across the street, and we received no response. At what point, someone did mention that they would contact the appropriate person and get back to us, but we did do what we could do.

CHAIRPERSON REID: But, to your knowledge, Mr. Collins, the ANC did not object.

MR. COLLINS: We don't know, if anything, the ANC took any action at all. We tried to contact them and, you know, get on their agenda, and we never received any word from them one way or the other.

CHAIRPERSON REID: Okay.

MR. MORRIS: The comments here refer to the increase in traffic that would be generated by the proposed facility, and the dangerous condition of the existing intersecting of South

Dakota and Kennedy Street. As I testified previously, the service station draws its customers principally from people passing by. The same would hold true for the convenience store. I don't argue with Mr. Sockwell on that issue, I merely point out that experience has shown that most of the people going to the convenience center are pass-by trips, whereas, the previous use were all, not most, but all primary purpose trips, and I cannot quantify the difference between the primary purpose trips that Mr. Sockwell refers to for the convenience store with the number of trips going to the veterinary clinic, but I would submit that the very slight increase in traffic that would be generated by this proposed use, which as I say ten to 15 percent, is not going to aggravate the existing conditions. And, my bottom line holds that this is an appropriate use of the subject property from a traffic engineering viewpoint.

MR. SOCKWELL: One thing that I might say is that the fact that no business has lasted in that adjacent building for more than year, as long as I've lived in Washington, from Bar and Q back in the '70s, the trips obviously were very insignificant for that particular building, over most of its life.

CHAIRPERSON REID: I think there was a KFC at that building at one time, too.

MR. SOCKWELL: It didn't last a year.

CHAIRPERSON REID: Yes, I remember.

Mr. Morris, to your knowledge, and when you do your research of a particular site, is there an indication of there having been traffic accidents there, several, an unusually high amount of traffic

accidents?

MR. MORRIS: This is not one of the high accident locations that is published by the Department of Public Works periodically, but I don't question what the neighbors say, that there are accidents that occur at this intersection.

The point I make is that there's no significant increase in traffic as a result of this proposed use, and there's no reason why there should be any increase in accidents. There is certainly —

CHAIRPERSON REID: But, wait a minute, Mr. Morris, if you are aware of the fact that there is a high probability of accidents being there, would you not make recommendations in your report to — methodologies that would help to abate that kind of occurrence, in that it would occur to me that from the applicant's standpoint it would certainly increase their liability, that corner. And so, if there are a lot of accidents, I'm not a traffic analyst, but if there are a lot of accidents on any particular given corner, then there's typically something that's driving that. Has any research that you delve in trying to find out what may have been causing that problem, and to make suggestions to the Applicant as to what they can do to try to mitigate that particular adverse impact, location-wise?

MR. MORRIS: Well, obviously, I can't answer your question with any specificity, because I haven't made an analysis of what causes — what the reasons are for the accidents.

I think I can state with confidence, without getting specific data, that you have a whole lot more accidents at the intersection of N. Capitol Street and Florida Avenue than you have at

this location.

I, frankly, don't know what a gasoline service station could do to mitigate accidents at an intersection, unless there is some indication that the accidents are caused by vehicles entering or leaving the gasoline station, and that's normally not the case. The accidents that typically occurred at intersections are between vehicles colliding going on different paths on the intersecting streets.

MR. SOCKWELL: Mr. Morris.

MR. MORRIS: Yes.

MR. SOCKWELL: With great respect for your abilities and long years of involvement, I can tell you from personal experience what may cause the accidents in that vicinity. Coming off of Riggs Road, turning south from the eastern direction, most cars exceed the speed limit coming down the ramp onto South Dakota Avenue by, I would say, ten to 20 miles per hour.

Now, should someone want to stop at the bottom of the ramp to make a left turn, to get into the gas station, because of the convergence of lanes there's a good chance that an accident could occur, especially in a much more well-lit gas station with a convenience store.

On the other side going in the north direction on South Dakota Avenue, because there is a left-turn light to take you onto Riggs Road going west, people tend to speed up to make that light before it changes, which means that because they are accelerating for someone to slow down to try to get into the gas station could cause accidents at that intersection. These are things

that have been going on for many years, and it is a condition of the down slope going to the south and the fact that people want to get through the lights that are further down the street, and on the fact that the left-turn light, which is to control for people going on to Riggs Road west, is a factor.

The possibility would be, and it has been proposed in other projects seeking to build more intensive use facilities with turnouts, is that an evaluation could be done at the end of a given period and signalization would be one of the solutions that could be recommended, i.e., if there are accidents — if the accidents increase, then signalization would be the solution, signalization wold normally be paid for by the Applicant and not by the City, based on their previous history, but that's what's been recommended and has occurred in several instances.

MR. MORRIS: Mr. Sockwell, with great respect I disagree with you.

MR. SOCKWELL: Well, I can give you some cases.

MR. MORRIS: Well, if you will permit me to respond. Traffic signals can reduce accidents between vehicles going across paths, they increase accidents with rear-end collisions. And, when you are talking about people speeding up to make a green light when they want to make a left turn at Riggs Road, that's where you get the accidents. People try to go too fast and then suddenly stop and the car behind them hits — strikes them.

So, your solution to the accident situation is not necessarily addressed by a traffic signal.

MR. SOCKWELL: So, you don't believe that staged traffic signalization has any impact on accidents?

MR. MORRIS: I'm sorry, staged?

MR. SOCKWELL: Yes, traffic signals are usually coordinated.

MR. MORRIS: Oh, you are talking about interconnected signals?

MR. SOCKWELL: Yes. You don't believe the traffic signals would have any impact on that, you don't think that stop signs would have any impact on that?

MR. MORRIS: You have a stop sign on Kennedy Street, obviously.

If you installed a signal and interconnected it, as you are suggesting, you know, we are dealing with hypotheticals, neither you nor I know what the accidents are at this intersection, what causes the accidents.

MR. SOCKWELL: Right.

But, the question would be raised, if an approval of the proposed project had a stipulation in it that the number of accidents occurring at that intersection increased significantly over the period of, say, 12 months, that the Applicant would be bound to look into specific solutions, such as traffic signalization.

MR. MORRIS: It would depend on what kind of accidents, if the accidents are coming in or out of the gasoline station.

MR. SOCKWELL: Yes.

MR. MORRIS: I would note, Mr. Sockwell, that we are

improving the safety conditions by eliminating one of the driveways into this site.

MR. SOCKWELL: But, the driveway is being eliminated because of the change in the site plan. It has absolutely nothing to do with anything else. The site plan for the original building allowed a way in and a way out, and a way to wrap around that building.

In this case, your change is really based upon the site plan. I wouldn't want to try to put a very good site planning design to scrutiny for some obviously unrelated reason.

MR. MORRIS: Of course, access relates to the site plan. The point is that instead of four places of conflict you would now have three, and that clearly is a safety improvement.

As far as putting a traffic signal in, as I'm sure you know there's a Manual on Uniform Traffic Control Devices which state what the warrants are for a traffic signal, having to do with accidents, and the mere fact that you have a certain number of accidents does not warrant the installation of a traffic signal. It's only warranted when the traffic signal would actually reduce the number of accidents because of the types of accidents.

MR. SOCKWELL: Or might prevent accidents, or might better channel the traffic.

MR. MORRIS: No. No, sir, I'm sorry, those would not be warrants according to the manual that the Department of Public Works specify.

MR. SOCKWELL: No, they didn't go by it in other

cases, that certainly doesn't mean that it's the panacea for solutions.

MR. MORRIS: Okay.

MR. GILREATH: Madam Chair, I — certainly safety is something that we should be mindful of, but I'm not sure that we should burden the Applicant. If, indeed, there's some kind of potential safety problem there, this DPW, there's some kind of the City after the analysis making a determination. To simply say they are responsible, I think maybe that we are exceeding appropriate limits. They can certainly cooperate with the City in studying it, but —

CHAIRPERSON REID: Well, at this point, I think we are just putting it out on the floor. We have not made any motions or anything.

MR. GILREATH: Well, as long as we don't unduly burden them saying it's their responsibility, the safety of this intersection.

CHAIRPERSON REID: Well, no, we have not gotten to that point.

MR. SOCKWELL: This is just a discussion of whether the use itself may or may not.

MR. GILREATH: Okay.

CHAIRPERSON REID: Just, basically, addressing the concerns from one of the letters of opposition that I guess Mr. Sockwell wanted to try to find out, and I did too, if, in fact, this could be addressed, are there any means or ways to be able to try to mitigate the problem, or just to kind of get an idea where his mind was in regard to this issue.

The other letter —

mS. PRUITT: Excuse me, Madam Chair, may I follow up with a question?

CHAIRPERSON REID: Sure.

MS. PRUITT: Mr. Morris, what's the level of service at the nearest intersection?

MR. MORRIS: A.

MS. PRUITT: A, and will that change as a result of the gas station, do you believe?

MR. MORRIS: No, it will not.

MS. PRUITT: Thank you.

CHAIRPERSON REID: Okay.

The other letter was in regard to trash, and litter, and loitering, and I think that this is basically an anticipation of the gasoline station being put there and probably they are not aware of the track record that Exxon has as far as what we have heard here today in regard to the manner in which they keep their facilities in terms of cleanliness, and in terms of trash removal, or discouraging loitering. So, I don't think that that is something that is of paramount importance in this issue. But, nonetheless, it had been raised so we thought that we would bring it to your attention, that this was something indicated by Ms. Shirley Bryant, and if you could just, for the record, indicate what — you know, what your usual procedures are then that would address that particular issue.

MS. LEVINE: Madam Chairperson, in response to the issues of trash and collection on site, the first thing I would bring to

your attention is that with the current bay facility we have a lot of storage of cars, storage of tires, used auto parts, and by removing those service bays that storage will no longer be necessary.

So, the trash that we are now really talking about is more going to be related to wrappers, some packaging, that might be disposed of, quickly consumable items on the property, soda bottles, candy bars. To that end, what we do is we will provide trash receptacles outside of the convenience store, inside of the convenience store, and at every fueling dispenser, so that we provide a lot of opportunities for the customer to go ahead clean up after themselves and throw out their trash in an appropriate manner.

CHAIRPERSON REID: Is the site monitored periodically to make sure that the customers are — you've probably seen, as I have, somehow throw a candy wrapper right beside a trash can.

MS. LEVINE: And, I understand that as well, but the sites are monitored. One thing that —

CHAIRPERSON REID: How often?

MS. LEVINE: — they are monitored throughout the day by the cashiers and by the operators of the facility. On a global basis, Exxon does, as I previously mentioned, audit the stores to make sure that that's being maintained.

CHAIRPERSON REID: Continuously monitored.

MS. LEVINE: To make sure that that's being maintained, we offer incentive programs to encourage that type of compliance, but we really do employ quality operators that understand

that they need to respect their neighbors, that understand the image that Exxon would like to portray to the community. And, as a result, we do typically have daily monitoring, constant monitoring, of our sites.

MR. SOCKWELL: Madam Chair, to the best of my knowledge Exxon has always had clean stations.

CHAIRPERSON REID: Okay.

MR. SOCKWELL: At least the ones that I've been to have always been clean.

CHAIRPERSON REID: All right.

So now, we have closing remarks from Mr. Collins, please.

MR. COLLINS: Thank you, Madam Chairperson, members of the Board. We do believe that we have met all of the requirements for special exception approval. We have gone through, by testimony and by written submission, all of the requirements for special exception approval for this gasoline station. It is in the C-2-A zone.

We are removing, by consolidating two sites into one, we are removing, for the life of this gas station, an opportunity for someone else to develop the adjacent site where the veterinary clinic was, into some other use which itself may become, or might have been otherwise, a primary trip generator. We are removing the additional curb cut along South Dakota Avenue that otherwise might have served that other use, so that we are consolidating the number of curb cuts along South Dakota from three to two.

Mr. Morris has testified that there will be an increase of approximately five to seven cars in the peak hour, and if the peak hour is 60 minutes that means one additional car every nine to 12 minutes, which is not a significant increase in the number of vehicles. He had testified that the level of service at this intersection would remain at level of service A, which it is right now, which is the lowest level of service measurable.

In terms of trash, you have heard Ms. Levine just now talk about all the measures that Exxon can take, and will take, and has taken in all its other stations to make sure and ensure that its stations are very clean and orderly. The point that this will be a change from a bay facility with the repairs to a non-bay facility will significantly increase the cleanliness of the site. Also from an environmental protection standpoint, you will not have cars dripping petroleum products on the surface, which may get washed into the streets while they are awaiting repairs, and otherwise rusting, and otherwise cluttering of the site.

So, for all the reasons we think this will be an improvement over the existing condition on both properties. It will return the now vacant lot to a productive use in the neighborhood, and it represents a significant economic investment by Exxon on this site. And, for all those reasons, and the reasons we stated in our testimony, we would request that you approve this application.

Thank you.

MR. SOCKWELL: Mr. Collins?

MR. COLLINS: Yes, sir.

MR. SOCKWELL: You approached the Advisory Neighborhood Commission you said, who was the ANC Commissioner that would be the chair of that ANC that you submitted to?

MR. COLLINS: Actually, it was Ms. Shaw who called the ANC offices, and alerted them. You look in the phone book, you look at the ANC, we don't call the chair, we call the office, and the ANCs were all contacted, and in one of the ANC's, please forgive me, I have a memo to the file which I can refer to. Excuse me for a second — it was ANC-4B, which is the primary ANC, Ms. Shaw left a message with the SMD, Single member District Commissioner, Amy Hatcher, on the 27th of September, and then also spoke with Mr. Frank Jackson on that, and they informed us that — actually, Mr. Jackson mentioned that he does not see that this would be a problem, thinks it would be an improvement to the site, and he said the ANC might not even need to consider it. That was on the 27th of September.

MR. SOCKWELL: Thank you.

CHAIRPERSON REID: Mr. Collins, again, are you looking for a bench decision, summary order?

MR. COLLINS: Yes, please, Madam Chairperson.

CHAIRPERSON REID: All right.

MR. GILREATH: Madam Chair, this is somewhat similar to the other case in terms of the use and so forth. I feel the Applicant has adequately met the burden of proof. I think that by eliminating the automotive repair, the grease pit, the parked cars and so forth, it probably is an improvement, and the building that was there

before this clinic was a vacant building, I presume, so that will be eliminated.

So, overall, I think the situation would be better. In terms of the lottery use, I agree with Mr. Sockwell, I think that will increase a bit but will not be during peak hours. This seems to occur, as I understood Mr. Sockwell, in the evening, so that does not really impact the traffic, and I feel that they've adequately met the burden of proof and that I recommend that we approve the application.

MR. SOCKWELL: Let me ask one more question briefly, that is, telephones outside of the convenience store and/or along the site, where are they to be located and how many?

MR. PRAKASH: As proposed, two telephones are to be located in northeastern side of the property, shown by that outline.

MR. SOCKWELL: The telephones are usually the point at which any illicit activity will take place, especially if they are placed remotely from a control point. Is it possible that the telephones could be relocated to the left or right front of the convenience store building where they would be more in a controlled location, more visible, where the activity that takes place at those phones would be more visible?

MS. LEVINE: Yes, sir, we'd be willing to relocate the telephones, if that was a request of the Board.

CHAIRPERSON REID: Okay. That was one of the issues that was also raised, that I failed to mention, in one of the letters, I think the Belcher letter, that they were concerned about the telephones attracting illicit activity and loitering.

MR. GILREATH: Madam Chair, one of the things I failed to mention, I gather that, perhaps, there is a safety problem in this area, I'm not sure who takes the initiative, whether the ANC, is DPW the appropriate body that investigates areas where they have a high rate of accidents? I think it should be looked at by the appropriate governmental authorities of the District of Columbia, but we should not put the burden on them, but hopefully they would cooperate in any kind of analysis and so forth and any measures that could reasonably be taken to reduce the accident rate there, if, indeed, there is. We don't even know that.

MR. SOCKWELL: Well, the police department would probably have reports on the collision accidents, those that had been reported, and pedestrian or other, or injury accidents.

MR. GILREATH: Well, is there somebody or some office whereby ANC or if, indeed, Exxon felt that there was undue safety problems there, they could request an analysis be made? Someone has to be able to come out, analyze, dig up the data, and determine whether or not there's a real problem, if there is, what measures should be taken to alleviate it.

MR. SOCKWELL: Mr. Morris, that would probably be Bureau of Traffic Services, wouldn't it?

MR. MORRIS: Yes, sir, it would.

MR. GILREATH: Now, who should take the initiative I don't know, but maybe the ANC, or you could use your good auspices to encourage them. First of all, we need to determine, I guess, whether or not there's a real accident safety problem. Maybe it would

be analyzed and say it's no worse than the others, it's within acceptable limits, everything considered. How that should be addressed, I don't know, but ideally someone should look into it.

MR. SOCKWELL: Since we don't have any data, and apparently none was presented as to any accident history in the vicinity of the inter —

CHAIRPERSON REID: Did you second this motion?

MR. SOCKWELL: — yes. Well, I can.

CHAIRPERSON REID: Please, do.

MR. SOCKWELL: I'll second the motion.

CHAIRPERSON REID: Okay.

I concur with my colleagues. I feel that the Applicant has met his burden of proof. They have shown how they are in compliance with Section 706 and Section 2302 of the Zoning Regulations. I feel that granting them relief is in harmony with the general purpose and intent of the Zoning Regulations and map, and that it would not adversely affect the use of the neighboring property.

All in favor?

(Ayes.)

CHAIRPERSON REID: We didn't want any conditions.

MS. PRUITT: I was just going to ask, was there a condition that telephones be relocated to the front?

MR. SOCKWELL: Yes, the condition is that the telephones be relocated to the face of the —

MS. LEVINE: Convenience store?

MR. SOCKWELL: — convenience store building.

MS. PRUITT: Will those phones also be outgoing calls only, or —

MR. SOCKWELL: No, they are probably going to be either Bell or somebody, whoever pays them the most to put them up there.

CHAIRPERSON REID: Well, when you say outgoing phones, there —

MS. LEVINE: There are some public phones that don't allow you to receive calls.

CHAIRPERSON REID: — well, I think that would probably be helpful.

MS. LEVINE: And, the reason they don't do that is so that you don't have people hanging —

CHAIRPERSON REID: Hanging around waiting for calls.

MS. LEVINE: Right.

MR. SOCKWELL: The restriction would be a revenue issue, albeit it minor, to Exxon, but I don't know whether we can restrict them from outgoing.

MS. PRUITT: Well, I know there's a lot of gas stations and a lot of public telephones do have that restriction.

CHAIRPERSON REID: Do you have any problem with that, Ms. Levine?

MS. LEVINE: I would appreciate the opportunity to allow incoming calls.

CHAIRPERSON REID: All right, well, let's see what we can do to compromise here, you have a complaint about the incoming — I mean, about the telephones, and the loitering, and the attraction of illicit behavior, illicit activity, you have two telephones, we have two telephones, right, so what about having one telephone, if you are going to allow incoming calls, and why, what's important to you about the incoming calls because it seems to me that if in Washington this is a method by which property owners and proprietors have been able to dissuade illicit activity, you know, them coming to the site and using that as their outpost of their office to receive calls or conduct business, I'm speaking of the illicit drug people, or prostitutes, or whatever, then is there some reason why you specifically would like to have incoming calls at a telephone booth?

MR. SOCKWELL: It's a revenue issue, I'm sure.

CHAIRPERSON REID: I don't think that Exxon is really hurting in terms of one telephone.

MR. SOCKWELL: Madam Chair, let me just say this, we live in the day of the beeper, and virtually every individual that we would want to restrict from using the incoming call privilege would probably have a beeper available to him or herself, and I think that it really is a limited value restriction today.

CHAIRPERSON REID: What, having incoming calls?

MR. SOCKWELL: Not having — taking the incoming call capability away from the phone, because all they have to do is get their beeper and then call from wherever.

CHAIRPERSON REID: Oh, a cell phone, most

everyone today has a cell phone.

MR. SOCKWELL: If they can call out, once they know who to call, they can call back out using the phone.

CHAIRPERSON REID: Yeah, I just wanted to find out what rationale you had for wanting to have the incoming calls.

MS. LEVINE: As Mr. Sockwell said, we do live in an age of technology right now, and most people do own beepers, and cellular phones. However, for the customer that does not, in the event that they needed to page someone, for example, and receive a return call that might not have a cellular phone, or whose battery might have run out, it does provide a service to allow that phone call to come in.

You know, again, we are not offering service facilities other than those that might be minor in nature that a cashier could help with, and in the extent that they might have to call AAA and wait for a return call, their battery died, their cell phone is not working, it just provides an additional service. It really is not a revenue stream.

MR. SOCKWELL: Well, sometimes, it depends on who you are renting from.

CHAIRPERSON REID: What about one phone, rather than two phones.

MS. LEVINE: I would be acceptable to one phone. We would just like to have the service available to our customers.

CHAIRPERSON REID: All right, then why don't we condition it to move the phones to the front of the convenience store, one, and two, one phone rather than two.

MR. GILREATH: Madam Chair, I can visualize a

situation whereby that it's raining and one person is trying to use — one person is using the phone, and you are standing there waiting and this person has a long conversation and what have you. It seems maybe one or two, I don't think is really that significant, I think two provides some convenience to give the second person an opportunity.

If you have a situation whereby you are at a filling station waiting to use the phone —

CHAIRPERSON REID: I agree, but then you can also envision two phones, two people on the phones and someone standing in the rain waiting in long conversations, but I think that what I'm concerned about is that particular area, Mr. Gilreath, is one that is generally notorious for illicit activities. Right there coming off Kennedy Street is one of the most notorious in the City, and I think that's where the apprehension of the neighbors is coming from, they don't want to give these —

MR. GILREATH: People.

CHAIRPERSON REID: — people, give these persons license to then take up right there at that gas station, because it's a new place, it gives them another place to be able to hang out, and that's what I was just trying to see, if we could mitigate that. And, even though it may cause situations where there are two people standing, or another person standing, and a person is on the telephone, I think that that's better than having those people take up at that particular gas station, and they will.

MR. GILREATH: Okay, as long as Ms. Levine has no problem with it, and as I understand it you are talking in terms of

public safety and so forth —

CHAIRPERSON REID: Right.

MR. GILREATH: — so, I will go along with that.

CHAIRPERSON REID: Right. I think that's the only reason why, other than that there would be no reason to limit the telephone to one, and I highly don't agree with the idea of not allowing any incoming calls, so I'll go along with incoming calls if it's only one telephone.

MR. GILREATH: I accept that.

MR. SOCKWELL: Since we got on public safety, we might as well take it to the limit. In some of your stations I know you have a, or at least some companies, I believe that Exxon does it, has sort of a special police department decal for them to know that they can use that station for certain things, community services type connection, how do you work that?

MS. LEVINE: It is typically up to the individual operator, in all honesty. That's not something that we enforce, it is something we encourage. Often times, we'll have basic office center facilities available inside the store, a fax, a copy machine, and we will typically even encourage the local police to come in, use the facilities, offer them a cup of coffee or a glass of soda, so that they can have a presence on the site, but it's not something that we enforce, it's really done on a store-by-store basis.

MR. SOCKWELL: And, it's all dealer controlled?

MS. LEVINE: Correct. It's not something we can require our dealers to do, but it is something we encourage, and if the

local police are in favor of it, and they would like to, you know, have those facilities available to them, we do offer that up.

MR. SOCKWELL: It sounds like being an Exxon dealer gives one a lot of freedom to operate one's facility as one sees fit.

MR. COLLINS: In accordance with the agreements.

CHAIRPERSON REID: All in favor?

(Ayes.)

CHAIRPERSON REID: Opposed?

MS. PRUITT: Staff would record the vote as 3/0 to approve, motion made by Mr. Gilreath, seconded by Mr. Sockwell, with the condition that one telephone be relocated to the front of the convenience store.

CHAIRPERSON REID: Okay.

Next case, please.

Mr. Collins, your order should be out within about two, two or three weeks, hopefully, about two weeks.

MR. COLLINS: Great, thank you very much.

MS. PRUITT: The next case on the agenda is 16495, application of Alma Newsome, pursuant to 11 DCMR 3108.1 for a special exception under subsection 333.1 for the construction of a new principal storage structure on an alley lot of an existing structure in an R-4 District at premises 1140 Morse Street, N.E. (Square 4065, Lot 802).

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

Please, be seated, sir.

Whereupon,

was called as a witness by Counsel for the Applicant, and having been first duly sworn, testified as follows:

DIRECT EXAMINATION

MR. WASHINGTON: Good morning, Madam Chair and members. My name is William Washington. I'm acting as the agent for my client. My address is 10101 Lintford Terrace, and that's Lanham, Maryland.

Madam Chair, my client, Ms. Alma Newsome, she lives at 1140 Morse Street, N.E., and at the rear of her property she owns a lot, and which is called an alley lot, and at the rear of that property, when they first purchased, her and husband, there was a garage there. And, after several years, the garage had erosion and was falling down.

In lieu of that, her husband built a storage shed. Now, I grant you Ms. Newsome's husband did not follow the procedure and get a permit for that, but prior to that Ms. Newsome, she'd been getting several letters and complaints from an inspection board. They've been coming by saying that you have to get a permit for the shed that they erected in the back of her property.

And, you know, today we just want to know if we can have favor, or if we can be granted to proceed with the process to get a permit so she can be issued the storage shed.

And, we have a letter from neighbors, you know,

concerning this issue, and we have a list of 17 nearby property owners signing this document, you know, stating that, you know, they signed and they agreed that the shed is in the back of her property, it is not a nuisance. By the way, she has the area fenced off, and she grows vegetables and all kind of stuff back there, so we just want to know if, you know, the Board would grant her wish that she can proceed with the permit for a shed.

CHAIRPERSON REID: The petition that you said that you had, did you submit that as part of the record, because I didn't see it.

Those are from property owners?

MR. WASHINGTON: Yes.

CHAIRPERSON REID: Give it to staff, property owners who are in support of your application.

MR. WASHINGTON: Right.

CHAIRPERSON REID: Okay.

And, you say that she wants — she also has a garden on this land?

MR. WASHINGTON: Yes, there's a garden.

CHAIRPERSON REID: And, she wants to convert this now to a —

MR. WASHINGTON: Storage shed.

CHAIRPERSON REID: — a storage shed.

Here's my question, I'm a little confused here because it looks like you have steps, and a window, and a door, and does anyone live there?

MR. WASHINGTON: No.

CHAIRPERSON REID: Has anyone ever lived there?

MR. WASHINGTON: No.

MR. GILREATH: Is there an air conditioning unit there? Is this used for a work area as well?

MR. WASHINGTON: The Applicant, it was a storage shed, but he also did some office work in there too, so he had a chair and table and all that kind of set up in the storage shed, too.

MR. SOCKWELL: Mr. Washington, is there any plumbing in this building?

MR. WASHINGTON: No, it's not.

MR. SOCKWELL: So, there's no running water?

MR. WASHINGTON: No, it's not.

CHAIRPERSON REID: No heat?

MR. WASHINGTON: Yes, it's got heat.

CHAIRPERSON REID: Air conditioning. Heat and air conditioning.

MR. WASHINGTON: Yes.

CHAIRPERSON REID: Okay.

So, you are asking for a storage shed, but the use is actual for other than storage, is that what I'm hearing?

MR. WASHINGTON: Well, no, we are asking for a storage shed.

MR. GILREATH: You are saying it was previously — may I ask, is the, I guess if you will, the husband is deceased now, he used it and this lady here is simply saying she now wants to use it

solely for storage, is that what you are asking?

MR. WASHINGTON: Right, that's correct.

MR. SOCKWELL: When was it constructed?

MR. WASHINGTON: It was constructed, she told me, ten years ago.

CHAIRPERSON REID: See now, just one second, give me one second — what we were looking at, Mr. Washington, is on your computation sheet, this sheet right here —

MR. WASHINGTON: Uh-huh.

CHAIRPERSON REID: –- can you pull it out, please?

MR. WASHINGTON: I don't have that before me. I don't have it.

CHAIRPERSON REID: You don't?

MR. GILREATH: He can use mine, if he wants.

CHAIRPERSON REID: Okay.

MR. WASHINGTON: Thank you.

CHAIRPERSON REID: Okay. Your application says storage building right here.

MR. SOCKWELL: but, it says, "Proposed: one dwelling unit," and that would mean that you are asking for a residential unit as that storage building.

CHAIRPERSON REID: Who filled this out?

MR. WASHINGTON: That must have been a mistake.

MS. PRUITT: That's what is submitted to DCRA, which then triggers it to us.

CHAIRPERSON REID: No, but who filled it out is my

question.

MS. PRUITT: Oh, I'm sorry, I didn't hear that.

CHAIRPERSON REID: Did you fill it out, Mr. Washington?

MR. WASHINGTON: Let me see.

CHAIRPERSON REID: Come and take a look at it.

MS. PRUITT: It's the application you gave to DCRA.

MR. SOCKWELL: It's this, that yellow part, he's asking for a dwelling unit.

MS. PRUITT: I know, I read that, I understand exactly your concern.

CHAIRPERSON REID: Did you fill that out?

MR. WASHINGTON: No, I didn't fill it out, but I was there present when I tried to submit this for permit.

CHAIRPERSON REID: So, were you aware of the fact that they had put in here that —

MR. WASHINGTON: No, I didn't, I wasn't aware that they put down one dwelling.

MR. SOCKWELL: Okay, it makes it seem that the storage building is being requested as a residential unit, rather than as a non-residential storage building.

MR. WASHINGTON: Well, that was an oversight on my behalf, but it's not used as a dwelling.

CHAIRPERSON REID: Okay.

Mr. Washington, your application is being submitted under Regulation, I think it's 333, 331.1, did you — I did not see in

your application where you addressed that, how you comply with 333.1. Are you familiar with that regulation?

MR. WASHINGTON: No, I'm not.

CHAIRPERSON REID: All right, then let's take a look at it. All right, here, come forward and look at 333.1, each section, you have one, two, three, four and five, and look at each one and then tell us how you — or if you are in compliance with that particular subsection.

MR. WASHINGTON: I think we followed all the agreements on it, sections on here.

CHAIRPERSON REID: Mr. Washington, what I'm asking you to do, first of all, it should have done before you came, okay, so what we are trying to do is to assist you in making your case, and what I need you to do, I will give you the regulations, look at each one, and tell us how you comply with each one of those four or five that I just gave you, after reading each one, and tell us about it.

MR. WASHINGTON: I need some time to look at this so I can state the case. I need some time to review each one of them and look at my file and see how it presents that case, because I can't just go before and read this.

CHAIRPERSON REID: We can do it now.

MR. WASHINGTON: Okay.

CHAIRPERSON REID: It's not as complicated as you might think. Basically, it's asking you, 333.1, storage of wares or goods, parking lot, parking garage or public storage garage not otherwise permitted under provisions of the chapter, or an alley lot, so

referred on the records of the lender, reported on the records of the District Finance Office, on or before November 1 — shall be permitted in the R-4 District if approved by the BZA. You are here, so you are complying with that, correct?

MR. WASHINGTON: Right.

CHAIRPERSON REID: Number two, 333.2, no storage use authorized in the section shall be located in a building containing more than 2,500 square feet of gross floor area. Does your building contain more than 2,500 square feet?

MR. WASHINGTON: No, it's less than 2,500.

CHAIRPERSON REID: All right.

MR. SOCKWELL: I think it's approximately 400 square feet.

CHAIRPERSON REID: Four hundred, so it's no where near, okay, so you meet that requirement.

MR. WASHINGTON: Okay.

CHAIRPERSON REID: Number 333.3, any use authorized in the section shall not be likely to become objectionable because of noise, traffic or number of employees. You submitted the petition, basically from your neighbors, so it's saying they have no objection, as a matter of fact they support your application.

MR. WASHINGTON: Okay.

CHAIRPERSON REID: So, you comply with that.

Then 333.4, the alley upon which the use is to be located shall be readily negotiable by any trucking necessary for the proposed operation.

MR. SOCKWELL: You've got 20 foot and 15 foot alleys all around it.

CHAIRPERSON REID: So, he complies with that.

MR. SOCKWELL: So, he complies with that.

CHAIRPERSON REID: 333.5, the hours of active operation shall be arranged so as not to prove disturbing or otherwise objectionable to persons residing around the perimeter of the square in which it is located.

MR. SOCKWELL: And, what is Ms. Newsome going to do in the building, basically?

Whereupon,

ALMA NEWSOME

was called as a witness by Counsel for the Applicant, and having been first duly sworn, testified as follows:

DIRECT EXAMINATION

MS. NEWSOME: Just store —

CHAIRPERSON REID: Give your name and your address, ma'am.

MS. NEWSOME: — oh, my name is Alma Newsome, and I live at 1140 Morse Street, N.E.

We are just going to store like household stuff that we got rid of, getting ready to throw out, stuff like that.

MR. SOCKWELL: And, you'll probably — because you have an air conditioning unit in there, you'll —

MS. NEWSOME: Well, at that time when my husband put the air conditioning unit it, because he used to be out there, but

he's dead and gone so nobody is out there now.

MR. SOCKWELL: Okay.

CHAIRPERSON REID: Okay.

MR. GILREATH: Just a hypothetical, but suppose that one of your children or your grandchildren wanted to move in with you and wanted to use this as an office, should we place some kind of restriction, say this is just a storage area?

CHAIRPERSON REID: We can do that.

MR. GILREATH: As long as it's used for storage, I have no problem with it.

MR. SOCKWELL: Storage and related activities.

MR. GILREATH: Okay, fine.

MS. NEWSOME: Basically, that's what I want it for, just for storage. It's not going to be used for an office.

MR. SOCKWELL: We are not going — nobody is going to be upset if you want to move your sewing machine out there.

MS. NEWSOME: No.

CHAIRPERSON REID: All right.

So, moving on, the ANC has not submitted a report, so we —

MR. GILREATH: Yes, they did.

CHAIRPERSON REID: — they did?

MR. GILREATH: It's right here. They have no objections.

CHAIRPERSON REID: Okay, we are just hot off the press, we'll just have to waive our record to accept this into the record,

will this go by consensus?

MR. SOCKWELL: Yes.

CHAIRPERSON REID: All right, then the ANC-5B is saying that there was a unanimous decision on the application, there was no opposition, and let's see if there was a quorum present — well, it says a unanimous decision, but it doesn't say there was a quorum present, but, nonetheless, obviously they are in favor of your application. Okay.

MS. PRUITT: Excuse me, Madam Chair, they do say proper notice — on D it says, "Six members of the ANC constitute a quorum."

CHAIRPERSON REID: Oh, I'm sorry, there was a quorum present.

MS. PRUITT: Okay, so you can give it great weight.

CHAIRPERSON REID: And so, therefore, your application will be given the great weight to which it is entitled.

And, Mr. Washington, don't leave without giving us back our page, okay?

MR. WASHINGTON: Okay.

MR. SOCKWELL: Yes, that's my personal page.

DOCTOR WASHINGTON: Okay, thank you very much.

CHAIRPERSON REID: And, there are no letters of opposition, but we do have support. We have a petition with 27 signatures, 17 signatures of neighbors who are in support of the application.

No persons have appeared here in support nor in opposition. So, we are getting down to closing remarks by the Applicant. At this time, basically, you have an opportunity to give us your last remarks.

MR. WASHINGTON: Okay.

First of all, we received a letter from a neighbor, they said, due to the Newsome's property in the back, with the fence around it, it's been keeping old cars, loitering, people drinking, because she has that area surrounded fenced in, and they feel as though with the shed in the back it's not causing any kind of nuisance to the area.

And, given granted that we can have this, you know, apply for this permit for the shed, I think Ms. Newsome would be very appreciative, because it seems like she's been going through an ongoing battle trying to acquire this permit so she can have the shed in the back.

And, I think it would be a memorial type thing, since her husband built it, and it's something, a memory left from him.

So, I would just thank the Chairperson for giving us a grant so we can proceed with the permit process.

CHAIRPERSON REID: Okay, all right, thank you very much. Excuse me one second.

All right. Would you like to have a bench decision, summary order, which means you get a response today?

MR. WASHINGTON: We'd like to get a response today.

CHAIRPERSON REID: Okay.

Board members, I would move that we approve this application. I think that the Applicant has demonstrated that they have met their burden of proof under Subsection 333 of the Zoning Regulations. There does not appear to be any adverse impact. The community has basically supported them with a petition. The ANC is also in support of this application. I think that the only — we can condition the special exception with a stipulation that it be used for storage only —

MR. SOCKWELL: And related uses.

CHAIRPERSON REID: — and related uses, and I feel that it does not impair the intent or harmony of the Zoning Regulations or map.

Did I hear a second?

MR. GILREATH: I second the motion, and if at some future time, here again, if your grandchildren, one of them wanted to open it and make this be used as an office, they'd have to come back in and get a special exception. So, it would have to be used for storage and related uses. And, any kind of office use, would that be correct, Ms. Pruitt, that if, indeed, there was the intent to use this for an office at some other time it would be necessary to come back in and ask for relief from us.

MR. WASHINGTON: Okay.

MR. GILREATH: I second the motion.

CHAIRPERSON REID: All in favor?

(Ayes.)

CHAIRPERSON REID: Opposed?

MS. PRUITT: Staff would record the vote as 3/0 to approve, motion made by Ms. Reid and seconded by Mr. Gilreath, with the condition that it be used for storage and related uses only.

CHAIRPERSON REID: Okay, thank you, and you should have your response, your order back, in about two weeks.

MR. SOCKWELL: Don't forget to go for that building permit and continue that process.

MR. WASHINGTON: Oh, yes, so I'm going to have to get the order from you all first.

MR. SOCKWELL: Right.

MR. WASHINGTON: Okay.

MS. PRUITT: Correct, so once the order — we will actually mail it to Ms. Newsome, and then from there we then send the file to DCRA so that you can get your permit.

MR. WASHINGTON: Okay.

CHAIRPERSON REID: That concludes the morning session for the Board of Zoning Adjustment for September 13, 1999.

MR. GILREATH: What time are we going to reconvene?

CHAIRPERSON REID: We will reconvene at —

MR. GILREATH: 1:15 maybe?

CHAIRPERSON REID: That's fine with me.

1:15, is that — Ms. Pruitt-Williams, Mr. Hart?

MS. PRUITT: That's certainly your call.

CHAIRPERSON REID: Okay, we'll resume at 1:15.

Does that give you enough time? John?

MR. SOCKWELL: The sooner we get out of here this afternoon the happier I'll be.

MR. GILREATH: I'll go along with that.

(Whereupon, the hearing was recessed at 12:44 p.m., to reconvene at 1:15 p.m., this same day.)

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

1:30 p.m.

CHAIRPERSON REID: Good afternoon, ladies and gentlemen. The hearing will please come to order. This is the October 13th Public Hearing of the Board of Zoning Adjustment of the District of Columbia. My name is Sheila Cross-Reed, Chairperson. Joining me today are Robert Sockwell and Jerry Gilreath, representing the National Capitol Planning Commission.

Copies of today's hearing agenda are available to you. They are located to my left near the door.

All persons planning to testify either in favor or in opposition are to fill out two witness cards. These cards are located on each end of the table in front of us. When coming forward to speak to the Board, please give both cards to the reporter who is sitting to my right.

The order of procedure for special exception and variance cases are, one, statement and witnesses of the Applicant, two, government reports, including Office of Planning, Department of Public Works, ANC, et cetera, three, persons or parties in support, four, persons and parties in opposition, five, closing remarks by the

Applicant.

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

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

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

Please turn off all beepers and cell phones at this time, so as not to disrupt these proceedings.

The Board will now listen to any preliminary matters. Preliminary matters are those which relate to whether a case will or should be heard today, such as request for postponement, continuance or withdrawal, or whether proper and adequate notice of the hearing has been given, if you are not prepared to go forward with a case, or if you believe that the Board should not proceed, now is the time to raise such a matter. Are there any preliminary matters? Does staff have any preliminary matters?

MS. PRUITT: Yes, Madam Chair, the staff has two. We'll start with the easy one, 16499. You have before you a letter from the Applicant withdrawing this application.

CHAIRPERSON REID: We do?

MS. PRUITT: Yes, it should have been given to you this morning, it came very late last night from Mr. Gell.

We can get you an extra copy if you can't find your's.

CHAIRPERSON REID: Do you have it, Mr. Sockwell?

MR. SOCKWELL: No.

MR. GILREATH: I don't have it either.

CHAIRPERSON REID: We don't have it. We have not been given it yet.

Steven Gell, is he here?

MS. PRUITT: No, Mr. Gell is not here.

CHAIRPERSON REID: The attorney is not here?

MS. PRUITT: No.

CHAIRPERSON REID: All right, this is a request for withdrawal on an application for two special exceptions for the Jewish Primary Day School at 5000 14th Street, to permit a private elementary school and a child development center, and that's it. This is a withdrawal.

MS. PRUITT: Correct, that's what I stated, we have a question of withdrawal.

CHAIRPERSON REID: Oh, I thought — I don't know why I was thinking you meant a postponement.

MS. PRUITT: No, we get so many of them, I know. This is very simple, it's a request for withdrawal.

CHAIRPERSON REID: So, do we have to move to accept the withdrawal?

MS. PRUITT: I believe, I'm not sure if this man is speaking in reference to this case.

CHAIRPERSON REID: Are you in reference to this

case, No. — what's the case number?

MS. PRUITT: 16499.

CHAIRPERSON REID: Okay.

So, there's no one here that is involved with or has had any participation with that particular case? All right, there are residents here who came to testify in regard to the —

MS. PRUITT: It's the Jewish Primary Day School.

CHAIRPERSON REID: — the World Affairs Executive Council/Jewish Primary Day School, this case has been withdrawn.

The only information that we have, ma'am, is that there is a request for withdrawal. There is nothing else, there is no — we don't know anything more than that. So, any questions I suppose would be directed directly to them, and we move to accept their withdrawal.

MR. SOCKWELL: I second the motion.

CHAIRPERSON REID: All in favor?

(Ayes.)

CHAIRPERSON REID: Opposed?

MS. PRUITT: Thank you.

CHAIRPERSON REID: Please call the next case.

MS. PRUITT: Actually, there's another item.

CHAIRPERSON REID: All right.

MS. PRUITT: I took the easy one first.

CHAIRPERSON REID: Okay.

MS. PRUITT: Silly me.

On the first application, 16496, it's really more of a clarification, and the notice was written a little confusingly because we got some very confusing information from the Zoning Administrator.

CHAIRPERSON REID: Okay.

MS. PRUITT: It is advertised, we have advertised for a special exception and a variance both, so in the case of notice that we are adequate and okay with that, it's just that you are looking for a special exception from 354.1 and a variance from 354.4.

MR. GILREATH: Has the Applicant expressed any — do we have to use both of these, or we can approve only one?

MS. PRUITT: Yes, you have to approve both of them.

MR. GILREATH: Oh, I see, both are required.

MS. PRUITT: Both are required. You have two letters from Mr. Nunley, the Zoning Administrator, stating that one was only required, subsequent to that he sent another one stating it could be done in the alternative.

After actually talking with Corp. Counsel, it is believed, and I think the Applicant will concur, that they have no problem with the special exception end of it, special exception for the use, and a variance from the frontage — I'm sorry, I don't have my regs directly in front of me.

CHAIRPERSON REID: The window.

MS. PRUITT: The window, yes, so that's how this case should be proceed.

MR. SOCKWELL: By the way, the first letter was actually signed for Mr. Nunley by Mr. Bello.

MS. PRUITT: Right.

MR. SOCKWELL: So, that may have had something.

MS. PRUITT: Yes, I'm not sure, we weren't able to track that down, but it's, for the most part, clear as mud right now.

CHAIRPERSON REID: Are you referring to this July 15th letter, because that letter specifies there to be a special exception and a variance, from Nunley, the Nunley letter.

MS. PRUITT: Right.

Staff had several communications with that office, and a couple of letters, so what I just wanted to be clear is that what has been advertised for is acceptable and we can correct the application to reflect the exact sections that are needed. But, a special exception and a variance are both needed, just not the ones that were initially cited.

CHAIRPERSON REID: Okay.

MS. Pruitt, I'm sorry, Mr. Sockwell was talking to me, we are going to — this case will involve a special exception under 350.4.

MS. PRUITT: Correct.

CHAIRPERSON REID: And a variance under 354.4.

MS. PRUITT: Correct.

CHAIRPERSON REID: All right, we are all on the same page then. Okay.

MS. PRUITT: Right.

CHAIRPERSON REID: All right.

MS. PRUITT: That concludes staff's preliminary

matters. Thank you.

CHAIRPERSON REID: Do you want to call the case, please?

MS. PRUITT: Yes.

The first case on the agenda is 16496, application of H and M Enterprises, pursuant to 11 DCMR 3108.1, for a variance from Subsection 354, and a variance under 3107.1 under Subsections 354.4 to allow a retail florist shop within an apartment house in an R-5-D District at premises 1629 Columbia road, N.W. (Square 2589, Lot 476).

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

Please, be seated and start.

CHAIRPERSON REID: Give your name and address, please.

Whereupon,

PATRICIO LAVERDY

was called as a witness by Counsel for the Applicant, and having been first duly sworn, testified as follows:

DIRECT EXAMINATION

MR. LAVERDY: The address is 1629 Columbia Road, N.W. My name is Patricio —

mS. PRUITT: No, we need your home address and your name.

MR. LAVERDY: Oh, okay. My name is Patricio Laverdy, the address is 9916 Hemlock Woods Lane, Burke, Virginia

22015.

CHAIRPERSON REID: Okay, go ahead.

MR. LAVERDY: We are here to request the approval from the Board of Zoning and Adjustment so that I may operate a retail flower shop on the lobby level of this apartment building on 1629 Columbia Road, N.W.

I have been told by the Zoning Review Branch that I may not get Certificate of Occupancy unless BZA approves a special exemption to allow a commercial use in an apartment building, Section 354, and a variance to allow the commercial end use to be visible from the sidewalk.

The building that is called the Park Plaza has eight floors and five sections and 276 apartment units. The central section, first floor has the lobby, and on the left side are administrative offices for the building. On the right side is a small 280-square foot room in which I hope to have my flower shop. This is a good location for my business there, because there are so many people living there in the building. Most of my customers will come from the building, and though I hope that some people on the outside will come and use my business. I also want to get my business license so I can be part of the FTD system.

I include a map of the building to show my space. The room I want to use is a very small room, it could not be used for an apartment. It could be used as an office, but H and M Enterprises, the owner and manager of the building, already had an office there in the lobby so it's not necessary. The room is a good place for business

with not many customers going in and out of there, and I do not think that this business will hurt the building or the community. It is something that we need, and we will provide good service.

My flowers come from Ecuador, and they are roses and lilies of many unusual types that you cannot get everywhere in the City. It is true that my business has a window that faces the street and is visible from the sidewalk, and it looks like it's a window of a large apartment building, it is hard to see into the window because of the reflection and things cannot be seen from the outside, so I do not think this is a very big problem.

The variance will not be necessary if I cover the window, but what will not look good inside, the outside would not look good of the building. The photos that are with the statement show that you cannot see from the window that much.

Some other businesses have been approved by the Board of Zoning Adjustment to operate in a building. There's a retail pet food store there, the number is, the BZA number is 16381, a processing and dry cleaning station was approved, BZA number 8550, and a deli is there, the approval is number 8527, and I included copies there of these orders, and I hope that you can approve my flower shop business.

Also, this is work that I can do very well to support my family, and this is good for the neighborhood, and I will not cause any harm.

Thank you.

CHAIRPERSON REID: Questions?

MR. SOCKWELL: Mr. Laverdy, you stated that the building has 276 apartment units and is an eight-story building, and you expect to derive most of your business service from the residents of the building.

MR. LAVERDY: Yes, sir.

MR. SOCKWELL: In providing the service to your shop, in other words, flowers and accessories entering and exiting in bulk as you stock your shelves, where will that come from?

MR. LAVERDY: There is a large sized alleyway in the back of the building, as you can see on the illustration there, there's plenty of room there, and we do have a parking space and there's a service elevator going up there.

MR. SOCKWELL: Thank you.

MR. GILREATH: One question, you said the building has had other businesses, the only other commercial activity now is the pet shop, these other uses occurred earlier? So, if I were to go in the building now, what retail activities would I see other than the pet shop?

MR. LAVERDY: Right now, if you go there, there's a deli store down the bottom, down in the basement, and the pet shop is there, and the dry cleaning there.

MR. GILREATH: Dry cleaning, all three of those then.

MR. LAVERDY: There's three up there.

MR. GILREATH: Okay, fine, thank you.

CHAIRPERSON REID: For your variance, what you need to do is to be able to demonstrate that you have met your burden

of proof in regard to a three-prong test, such that you would be granted a variance, and I don't think I've heard that so far. What is it about your property that is unique or different, such that it would cause you a practical difficulty to comply with the existing Zoning Regulations?

MR. LAVERDY: Well, we require the business license, so we need to go through paperwork with the City. Is that what you are asking?

CHAIRPERSON REID: Well, what is it — no, what is it that is unusual about your property, this particular site, that it could not be used for a matter of right use?

MR. LAVERDY: Well, it can't be an apartment, because it's too small. They have a management company there, they have these offices there, they have two offices instead of one.

CHAIRPERSON REID: That's what they had?

MR. LAVERDY: They had right there next to the — next to — at the other side of the building in the same lobby here there is two offices there. So, the place, I don't think they can use it as an office, because it's a very small place.

CHAIRPERSON REID: Okay.

MR. SOCKWELL: I think what staff is getting ready to say is that, Mr. Laverdy, you stated that you would not need the variance if you covered your window, the window that faces the outside of the building, correct, because your entrance —

MS. PRUITT: And, it's existing.

MR. SOCKWELL: — and it's existing — your

entrance, or the entrance to your shop, is from the interior lobby of the building.

MR. LAVERDY: Yes, sir.

CHAIRPERSON REID: Well, wait a minute, let me understand this. Even though he is saying that he doesn't think he needs a variance, I think that —

MS. PRUITT: But, it's a variance from this one particular part, which is that no part of the adjunct or existing entrance to the adjunct shall be visible from the sidewalk.

CHAIRPERSON REID: I'm sorry, just one second, please.

Okay, MS. Pruitt-Williams, help us out here, because in the agenda it says a variance from Subsection —

mS. PRUITT: that's what I said, don't look at that, because it was confusing, that was done 40 days ago, or more than 40 days ago, when we had cursory information from the Zoning Administrator. So, what you need to look at is, it's a special exception from Section 354.1, which states, "Sale of the following convenience, commodities and services as accessory uses and appropriate adjuncts to an apartment house which are designed to serve tenants' daily living needs shall be permitted in an R-5 District if approved by the BZA." That's your special exception section.

The variance is from Section 354.4, "No part of the adjunct or the entrance to the adjunct shall be visible from the sidewalk."

CHAIRPERSON REID: Okay, so, basically, the

agenda is incorrect and should say special exception.

MS. PRUITT: Yes, that was the whole preliminary issue I was trying to address.

CHAIRPERSON REID: All right, but, you know what, I didn't —

mS. PRUITT: It's very confusing, I agree.

CHAIRPERSON REID: Yes.

Okay. Now, so we don't need — right here we just need a special exception.

MS. PRUITT: You need a special exception from Section 354.1 and a variance from Section 354.4.

CHAIRPERSON REID: Okay.

The variance from 354.4 —

mS. PRUITT: And, that states that, "No part of an adjunct or entrance ..." —

CHAIRPERSON REID: That's what we need to address.

MS. PRUITT: Right.

CHAIRPERSON REID: However, Mr. Sockwell just pointed out that the Applicant has stated that he didn't feel he needed a variance.

MS. PRUITT: I believe his statement was he didn't need a variance if he covered the window, but he would prefer not to for aesthetic, and business, and —

CHAIRPERSON REID: But, the point I'm making is that, here what we have before us is a variance, so —

mS. PRUITT: I'm sorry, I'm not meaning to speak, but I believe that he's stating that if he were to cover it he wouldn't even be here, but he wants to leave it open.

CHAIRPERSON REID: Okay.

MS. PRUITT: So, therefore, he needs a variance.

CHAIRPERSON REID: All right.

MS. PRUITT: Is that correct, sir?

MR. LAVERDY: Yes, ma'am.

CHAIRPERSON REID: All right.

MR. GILREATH: Can we take this in two parts, dealing with the special exception first, then the variance?

CHAIRPERSON REID: Sure.

MS. PRUITT: I believe you've dealt with the special exception.

MR. GILREATH: Oh, we already dealt with it.

MS. PRUITT: And now you are moving on to the variance.

CHAIRPERSON REID: Well now, at first we were doing 350.4 as a variance, but now with that clarified here, I guess we can deal with the first relief that's being requested, and that is the 350.4 special exception.

All right. Now —

MR. GILREATH: I think we should try to get through that and then see where we come out on the other one.

MR. SOCKWELL: It's 354.4.

CHAIRPERSON REID: No, 350.4 is the special

exception.

MS. PRUITT: 354.1.

MR. SOCKWELL: 354.1.

CHAIRPERSON REID: No.

MS. PRUITT: Yes.

CHAIRPERSON REID: As the special exception?

MS. PRUITT: Yes.

MR. SOCKWELL: Yes, 354.1.

MS. PRUITT: 354.4 is the variance.

CHAIRPERSON REID: Okay, 354.4 is the variance and the special exception is 3 —

mS. PRUITT: 354.1.

CHAIRPERSON REID: I see, so we are not dealing with 350 anything.

MS. PRUITT: Correct.

CHAIRPERSON REID: Oh, all right.

MR. GILREATH: It seems to me the special exception will require less weighty proof and we are ready to deal with that, and get through that, we get through that successfully, then we can go on to the other.

CHAIRPERSON REID: Okay, all right.

So, he demonstrated that the use is an adjunct use, and that this is why you are here before the Board of Zoning Adjustment.

Okay. Now, for the variance, for the 354.4, and I think that specifically for the one that relates to the signage, right?

MR. LAVERDY: Right.

CHAIRPERSON REID: You want to keep the signs, keep the window.

MR. LAVERDY: Yes, ma'am, that would help a great deal.

MR. GILREATH: Do you want to put some kind of sign in the window that says florist shop, so people can see this from the street?

MR. LAVERDY: That would help, yes, sir, that would help for the people in the building, you know, and —

MR. GILREATH: Well, is your preference then, you would like, ideally, rather than covering the window, what have you, to actually have a sign there that says your florist shop, so people walking by the sidewalk say I can go in there and buy flowers, is that what you are — or can you forego any kind of sign in the window?

MR. LAVERDY: No, yeah, hopefully, we can put up a small, very small sign there, at least for the wiring system, the FTD system, that's all we are required.

MS. PRUITT: Excuse me. Mr. Laverdy, this window is not the primary, on the same side as the primary entrance to the building, is that correct, is not?

MR. LAVERDY: No, it's not.

MS. PRUITT: Okay, I just wanted to ask for clarification, it's on the side street.

And, it's an existing window?

MR. LAVERDY: Yes, ma'am.

MS. PRUITT: And, is it covered now? I mean, what is in that space now?

MR. LAVERDY: Well, just office stuff.

MS. PRUITT: So, it's exposed now and it's like an office?

MR. LAVERDY: Yeah, it is, this building has been there since —

CHAIRPERSON REID: Okay.

Now, in order for us to grant you this variance, the special exception I don't think we have a problem with, I think that we've kind of agreed with that, but the variance aspect of it, in that you want — your window is visible from the sidewalk, one, and two, you have not — I have not heard yet you demonstrate to us how — what it is about your particular store, that particular parcel at that particular, is it an apartment now?

MR. LAVERDY: Well —

CHAIRPERSON REID: What is it about the space that is unusual or unique such that it would cause you some type of practical difficulty to comply with the existing Zoning Regulations, in other words, for a matter of right use?

MS. PRUITT: It's not a use.

MR. LAVERDY: It's not a use.

MS. PRUITT: This is an area variance, it's considered an area, it's not a use variance, so it's a different standard.

CHAIRPERSON REID: Okay.

Did I say area?

MS. PRUITT: No, you said use, and use, the criterion for a use variance is different.

CHAIRPERSON REID: I don't mean use, I mean area.

MS. PRUITT: Right, exactly, but I just wanted to clear the record.

CHAIRPERSON REID: Okay.

MR. SOCKWELL: Would you restate the —

CHAIRPERSON REID: But, he still has to demonstrate how —

mS. PRUITT: The practical difficulty of how the window poses a practical difficulty, that's what he needs to address.

CHAIRPERSON REID: Okay, all right, that's better wording than just how is it that it poses a practical difficulty.

MR. LAVERDY: Well, I would think that to comply with the Zoning Board we would, you know, put up a small sign, I don't know, it would be helpful for us to — it's a very small place, and there's a door that faces to the lobby, and just a window there. The window is outside, it's been there for years, if we can put the small sign that would help.

CHAIRPERSON REID: It would help what?

MR. LAVERDY: It would help on our business. The primary is serving to the people in the building.

CHAIRPERSON REID: Right.

MR. LAVERDY: And, you know, people from the outside on Columbia Road, if they wanted to buy flowers from our

flower shop, they are welcome too. So, that's not, you know —

MR. GILREATH: It sounds like the Applicant really is wanting a little bit of advertising, this FTD sign in the window, to let potential patrons outside know about it and would come in, so we are really talking about an advertising sign in the window.

MR. SOCKWELL: Mr. Laverdy?

MR. LAVERDY: Yes, sir.

MR. SOCKWELL: What in part you are saying is that you have a window in your space, that window just happens to be part of your space.

MR. LAVERDY: Yes.

MR. SOCKWELL: It's also the way that you will get natural light, and if necessary, is it an operable window?

MR. LAVERDY: Yes, sir.

MR. SOCKWELL: You could possibly get ventilation at some time if it didn't negatively affect things, and if you use the window for its accepted purpose it will provide some visibility into your shop, because you would have to open the blinds in order to get the benefit of the light, and you would have to at least open the window to get the benefit of the ventilation.

So, if all of those things are true, what you are hoping is that you would be allowed to use the window for its intended purpose, and gain some minor added benefit from having access to a sign in that window. Is that pretty much what you are saying?

MR. LAVERDY: Exactly, yes, sir. Yes, sir, exactly.

MR. SOCKWELL: Thank you.

CHAIRPERSON REID: So, the practical difficulty is — okay, you are saying that the practical difficulty is, if you don't have the window you don't have air?

MR. LAVERDY: Well, you know —

CHAIRPERSON REID: Or circulation?

MR. LAVERDY: — right now, for example, the building, the heat is not on so we have pretty warm weather, and sometimes we can use light.

CHAIRPERSON REID: Okay, well that's what — we just need to establish the need for the window, I guess.

MR. SOCKWELL: So, the practical difficulty is that if you have a window it's difficult not to use it for its intended purpose, which is to let light into the space.

MR. LAVERDY: Exactly.

CHAIRPERSON REID: And air.

MR. SOCKWELL: And air, and if it's difficult not to use the window for its intended purpose, it's certainly difficult to be completely invisible as a flower shop that has a window that would be used for its intended purpose.

MR. LAVERDY: Yes.

CHAIRPERSON REID: And, the size of the space is —

MR. LAVERDY: It's 280 square feet.

CHAIRPERSON REID: — which is substandard for other units in that building.

MR. LAVERDY: If you are referring to the size of the

apartments they have there.

CHAIRPERSON REID: Well, yes, I'm referring to other units.

MR. LAVERDY: No, that would be the size of a kitchen in a regular apartment.

CHAIRPERSON REID: That's the whole point I'm making, is that the size of this space is substandard in comparison to the other units in the building.

MR. LAVERDY: Yes, ma'am.

CHAIRPERSON REID: Okay.

MR. GILREATH: Well, Madam Chair, I can see the window, he needs that for lighting and ventilation, so I can see keeping the window available and open and so forth, but I'm having a problem with also putting an FTD sign in the window, which to me crosses the line over into advertising. So, he's advertising from the window.

CHAIRPERSON REID: Well —

MR. GILREATH: If he just didn't advertise, as far as I'm concerned the window isn't a difficulty, and I think he could go ahead and do. But, the advertising is what's causing the problem for me.

CHAIRPERSON REID: Well, look at other things, I wanted to ask MS. Pruitt-Williams, under this 354.4 and .5, that does not take into account the aspect of the business being used by the tenants in the building only?

MS. PRUITT: I'm sorry, can you repeat that?

CHAIRPERSON REID: Okay.

Under 354.4 and .5, that we are talking about a variance from those two subsections of the section.

MS. PRUITT: Actually, the Zoning Administrator didn't cite 354.5, so you are really only looking at 354.4 only.

CHAIRPERSON REID: Oh, so we are not even dealing with a sign at all.

MS. PRUITT: Correct.

CHAIRPERSON REID: So, we can't even entertain that.

MS. PRUITT: Well, I guess the point is, when the Zoning Administrator looked at it, there was no indication that signage would be in the window, so there was no need for him to then look to seek a variance.

CHAIRPERSON REID: When you applied, when you sent in your application, sir, did you indicate that you wanted to put that little sign in the window?

MR. LAVERDY: No, I did not. I didn't indicate anything.

CHAIRPERSON REID: Okay, so since you didn't ask for it, then he didn't indicate that you needed to have a variance from the subsection as well, and verbally you are asking us to allow that, but we can't.

MR. GILREATH: What would be the problem with having advertising?

MS. PRUITT: Well, you can amend a — Janice and I,

our Corp. Counsel and I, were speaking about this earlier, you can amend, at least the regs allow you to amend appeals, and we were still trying to get a determination on the actual application.

MS. SKIPPER: Well, the particular provision does not cover applications, it was you have the ability to amend appeals, and this is not an appeal. I would say at this point it should not be accepted.

CHAIRPERSON REID: Well, in other words, if the sign is important to you, then you are going to have to go back and get a read from the Zoning Administrator, at least in regards to if you can get a variance from the provisions of Subsection 354.4, that pertains to signage. That's not what you are appearing today for.

MR. LAVERDY: No.

CHAIRPERSON REID: That's not even —

MR. LAVERDY: The sign is not — it will help, but it's not really important. It will help for the —

CHAIRPERSON REID: Okay, well, we can't deal with the sign at all.

MR. LAVERDY: Okay.

CHAIRPERSON REID: Now, your services are going to be primarily for the tenants in the building.

MR. LAVERDY: Yes, ma'am.

CHAIRPERSON REID: Okay, but you also stated here today that you intend to, or you'd like to try customers other than those that reside in that building, right?

MR. LAVERDY: Yes, ma'am, yes.

CHAIRPERSON REID: Okay.

MR. GILREATH: Madam Chair, the Zoning Administrator, he said he wanted the sign, and the Zoning Administrator quoted the other — if he had told the Zoning Administrator he wanted a sign in the window, what within the provision part of that, there's no point in him going back.

CHAIRPERSON REID: 354, that's not what this is referring to.

MR. GILREATH: What does it say, because there's no point in going back —

CHAIRPERSON REID: It says, "No sign or display indicating the existence of the adjunct shall be visible from the outside of the building."

MR. GILREATH: Well, that requires a variance now? Can you read that again, make sure — what I'm saying is, there's no point in him going back to the Zoning Administrator and getting it if we felt we could not respond favorably. That would just be an exercise in futility.

CHAIRPERSON REID: Then he has another one regarding the 354.8, where he's saying that he would stipulate that the adjuncts authorized under this section are intended to supply tenants of the apartment house with commodities or services supplementary to those established in commercial districts, but in order to protect the value and stability of these visitors the Board shall give consideration to the following: for extending to the commercial district, adequacy and convenience of parking spaces, adequacy and scope of commodities

and services provided with those commercial districts, and the size compared to the apartment house, since the tenants of the apartment house will be expected to furnish potentially all of the financial support of the requested adjunct.

But, what I'm saying is that, he's testifying here today that he intends to go outside of the building, so he'd have to have a variance from that subsection as well.

MR. SOCKWELL: Well, the sections are not so specific that they don't allow —

CHAIRPERSON REID: You can?

MS. PRUITT: Yes.

MR. SOCKWELL: — yeah, the only —

MS. PRUITT: It's an adjunct, it's in addition to the commercial district, it's supposed to supplement it. I mean, it's not to say that he can't draw people from the surrounding community, but should primarily serve as or be a convenience to the apartment building, but you cannot limit it only to people within the apartment building. There are quite a few apartment buildings in that area that have services on their first floors like that, little delis, dry cleaners, I mean very convenient stores that are servicing that apartment building but are used by other people.

MR. SOCKWELL: Yes. I mean, Section D under 354.8 specifically states that the size of the apartment building is a factor. We are talking about a 274-unit apartment building, which is by almost all standards a very large building. And, while it might not be able to support his business 100 percent, it's a lot larger than a ten, a

15, or 20, or 50 or 100-unit building.

CHAIRPERSON REID: And also it says, "... or substantially all of the financial support of the requested adjunct."

MR. SOCKWELL: Right.

CHAIRPERSON REID: So, perhaps, the operative word here is substantially.

MS. PRUITT: And, these are commodities and service supplementary to those established in commercial districts. So, it's not that it can't — it's exclusive of it, it's supplementary to the district.

CHAIRPERSON REID: Okay.

MS. PRUITT: So, you know, if you have one in there it doesn't mean you can't have another somewhere else.

MR. SOCKWELL: And, Madam Chair, if we refer to the matter of right aspects of convenience stores in apartments, since you didn't ask for a variance from 354.5, which states that, "No display or sign advertising your business shall be visible from the outside of the building, you would be forced to comply with that anyway, so you are really restricted on your outside advertising. I mean, it doesn't restrict you from putting flyers on cars, or meeting with the adjacent establishments that might use your business, but it does state that you can't show from the outside of the building that your business exists within the building in a sign or display manner.

CHAIRPERSON REID: Visible from the outside.

MR. SOCKWELL: Visible from the outside. It just specifically states that.

CHAIRPERSON REID: But, he can have an interior sign —

MR. SOCKWELL: To the lobby, or whatever is allowed by your management, and certainly you can use any other means of advertising your business that isn't a display or sign that would not affect the specifics of the regulations, which are that you can't have anything showing that's like a display sign, placard, billboard, et cetera.

MR. GILREATH: So, actually what we are saying that you would not be able to put that FTD sign in your window, it would have to go elsewhere, not an exterior sign. Do you have any alternative, can you do it in the lobby or some other place other than the window?

MR. LAVERDY: No, sir.

CHAIRPERSON REID: Well, the people in your building would know, one, and then I guess as Mr. Sockwell said, I guess you would be confined to flyers, or paper, can he advertise in the paper?

MS. PRUITT: Yes.

CHAIRPERSON REID: Newspaper advertising, or local store — I mean, local advertising like at the Safeway, or, you know, various grocery stores, they have, you know, billboards and bulletin boards and things of that nature. But, you just couldn't put a sign — you'd just have to find a more creative way of letting people know where you are.

MR. LAVERDY: Yes, well, my guests will do, yes,

ma'am.

CHAIRPERSON REID: Okay.

Now, the other thing is, adverse impact, would approving your application cause any adverse impact in regard to noise, traffic, any type of nuisance whatsoever to the surrounding tenants in the building, I guess?

MR. LAVERDY: No, ma'am, peoples in the building they are happy that we're there.

CHAIRPERSON REID: So, you haven't gotten any complaints?

MR. LAVERDY: No, ma'am.

CHAIRPERSON REID: Okay.

MR. SOCKWELL: What will your hours of operation be and days?

MR. LAVERDY: It will be from 9:00 to 6:00 Monday through Friday, and 9:00 to 4:00 on Saturdays. We probably will be closed on Sunday.

MR. GILREATH: When you go into the lobby of your building, is there a sign that says there's a delicatessen in a certain place, and a pet shop, is there kind of indication so that the tenants of the building will know where to go for this service?

MR. LAVERDY: In the lobby entry to the building, no, there are not, sir. There are huge signs on the Harbor Street side of the building, there's a deli, and a large grocery store there, and the pet food shop there, the dry cleaners, the same building. So, what happened is, it happened that a little spot up there is in the lobby area,

so that's why all this trouble is coming.

MR. GILREATH: Well, do you know at this point whether the owner of the building or the manager would permit you to have some kind of sign in the lobby so that all the tenants in the building would know that you provide that service?

MR. LAVERDY: Oh, certainly, yes, Mr. Bernstein has been, the owner, has been very, very nice to us, and, you know, give us the opportunity to be there.

MR. GILREATH: Well, do you think if, indeed, you kept the sign to someplace in the interior of the building and using advertising, say in the neighborhood newspapers or whatever, this would be viable, you would make it a viable thing? We don't mind, at least I have no problem approving this, on the other hand if you feel that your business would not be viable I'm not sure you want to go forward unless you have — if you have to have that FTD sign in the window there, you know, I could not support that, but if you feel your business can make a go of it without that, then I, for one, am supportive.

CHAIRPERSON REID: You know, what occurred to me is, and Mr. Sockwell you probably know the answer to this better than I, the sign that stated florist, or whatever — what's the name of your florist shop?

MR. LAVERDY: Park Plaza Florist.

CHAIRPERSON REID: Park Plaza Florist, okay, so isn't a sign typically a business sign? Now, the FTD, is that like a little decal?

MR. SOCKWELL: It's a flying Mercury guy.

MR. LAVERDY: It's a Mercury guy.

CHAIRPERSON REID: Yeah, isn't it like a decal? It's not a sign.

MR. SOCKWELL: It can be a sign illuminated, or it can be a decal.

MR. GILREATH: They often are neon, at night you can see it from the window with different colors, it catches your eye.

CHAIRPERSON REID: Because I'm wondering if, like I said, I don't know, but if it's a decal that could be put on the window, and this is not a business sign, it's a decal, FTD decal —

MR. LAVERDY: May I say something?

CHAIRPERSON REID: Yes.

MR. LAVERDY: Yeah, it sure is a small decal there, but if I don't — I don't really have to have that, you know. I don't really have to have that logo there.

CHAIRPERSON REID: I don't have a problem with that. We are not saying that we would give you permission to do that, but I'm just saying I personally don't have a problem with that.

MR. GILREATH: Well, I think a decal is still advertising, and it's making an appeal to the people on the street. But, if he can put some kind of interior sign in the lobby or what have you for the tenants of the building, it's a very large building, and that would keep most of the business, and then advertising and letting people know about it, I wouldn't have any problem with something like that.

MR. SOCKWELL: I think maybe, because we can't override the regulation in an effective way, and certainly we want to help you with what you are doing, but I think that your best and most likely opportunity is to put something very attractive as a floral display in the window, and along with the other things that you put out as flyers, and leaflets, and advertising other than signs and billboards, you'll be getting people to look to see where in the building this florist shop is. And, when they see your floral display in the window, they'll probably make that assumption. We would hope so, but we can't grant you a sign.

MR. LAVERDY: Well, that will be fine. I'll agree with you on that matter. I will put something in the lobby, you know, for that. We have a very small budget, so hopefully this takes off.

CHAIRPERSON REID: Okay.

MR. GILREATH: I agree with Mr. Sockwell, that the window, there's nothing to prohibit you from putting several types of flowers, I mean, as long as you don't say what it is, this would be your own interior decoration.

CHAIRPERSON REID: Floral arrangements.

MR. GILREATH: Any kind of floral arrangement, as long as there is nothing to say you are advertising. As far as you are concerned, it is just interior decoration, but you are free to put any kind of floral display in there as long as there's nothing to indicate you are soliciting business from the outside.

MR. LAVERDY: Sure.

CHAIRPERSON REID: Okay.

Thank you.

Is there anyone else here today who is here for this particular case, 16496? Okay.

Do we have a letter from the ANC? I don't remember seeing one. The ANC, it's 1C, I think, did not, to my knowledge, has not submitted anything, so typically we assume that they don't have any objection.

And, we don't have any government reports, no one is here in support, no one is here in opposition, so could we have your closing remarks, sir?

MR. LAVERDY: I would thank you for what you are doing, and also just to show you the faith these people had in us, we collected some signatures there, mostly the people in the building that signed it all.

MS. PRUITT: That was submitted earlier and was copied.

CHAIRPERSON REID: Oh, okay.

MS. PRUITT: It was just submitted today, this morning.

CHAIRPERSON REID: Okay. Well, we'll make note of the fact that you do have a petition from — these are people who all live in the Park Plaza who are in support of your particular application?

MR. LAVERDY: Yes, ma'am.

CHAIRPERSON REID: Okay. All right.

Would you like to have a summary order, bench decision, which means that you get your response today?

MR. LAVERDY: Oh, certainly, go ahead.

CHAIRPERSON REID: All right.

MR. GILREATH: Madam Chair, I feel the Applicant has made his case that this florist enterprise can function appropriately without any kind of detriment or conflict with the regulations and so forth, as long as he does not put advertising in the window and, therefore, I recommend that we approve his application.

CHAIRPERSON REID: Both, the special exception and for the variance, correct?

MR. GILREATH: Well, what's the variance for?

MR. SOCKWELL: The variance is a visibility issue with regard to the window.

MR. GILREATH: Oh, just the window, okay.

CHAIRPERSON REID: Right.

MR. GILREATH: Okay. My motion includes both the proposed special exception and the variance.

MR. SOCKWELL: Second.

CHAIRPERSON REID: Okay. I agree, I think that the Applicant has met his burden of proof, that he's demonstrated that his particular application could be approved without any adverse impact, and as a matter of fact he has quite a bit of support from the tenants who live in the building, and that he has shown that there's a practical difficulty predicated upon the size of the space that he would like to use for the florist shop, and that giving the relief would not impair the intent or purpose of the Zoning Map or the Zoning Regulations.

All in favor?

(Ayes.)

CHAIRPERSON REID: Opposed?

MS. PRUITT: Staff would record the vote as 3/0 to approve, motion being made by Mr. Gilreath, seconded by Mr. Sockwell, with hours of operations from 9:00 to 6:00 p.m., Monday through Friday, and 9:00 to 4:00 on Saturday.

MR. LAVERDY: Yes, ma'am.

CHAIRPERSON REID: Okay.

Before the next case, we need to take a short three-minute recess.

(Whereupon, at 2:18 p.m., a recess until 2:21 p.m.)

MS. PRUITT: The next case on the agenda is 16497, application of 2125 S Street, LLC., pursuant to DCMR 3107.2, for a use variance under Section 320.3 to allow the renovation and conversion of a vacant private school and church into an eight-unit condominium which exceeds the lot occupancy requirements; and an area variance from Section 2001.3(a)(b)(c) to allow an enlargement and an addition to a nonconforming structure in an R-3 District at premises 2125 S Street, N.W. (Square 2532, Lot 49).

All those planning to testify, could you please stand and raise our right hands?

Thank you, please be seated.

CHAIRPERSON REID: How many people are here that are in opposition to this application? How many are in support of the application? All right, thank you.

MR. COLLINS: Good afternoon, Madam Chairperson

and members of the Board. My name is Christopher Collins with Wilkes, Artis, Hedrick and Lane. Seated to my left is Sarah Shaw from our firm. To my right is Larry Smith from Cranberry Hill Associates, who is a developer for the project, and to my far right is Rachel Chung with the firm of Sorg and Associates, the architects for the project.

This is an application for use variance and area variance relief to convert a former school building to a condominium apartment building in an R-3 Zone. While the relief may appear complicated and certainly our statement is fairly thick, the case is quite simple. The relief is necessary for two main reasons. Number one, we are turning an old school building into an apartment house in an R-3 Zone where apartment houses are not located, but where there are other apartment buildings, and we'll talk about that a little bit later. Secondly, there are two additions to the building that are being added in order to allow this building to be used as an apartment house with on-site parking, and the addition of these two improvements, these two small minor additions, generates several different variance requirements. The building is a nonconforming structure and certain conditions are permitted, but because this building is nonconforming in so many respects these small additions generate variances from each one of those subsections, 2001.3(a)(b)(c).

The building was built in 1905 as the Holton Arms School, the original site of the Holton Arms School, a school for girls, and was used as such until 1963. In 1966 it was occupied by the Institute for Modern Languages, until 1973, and then in 1974 through

1995 was owned and occupied by the founding Church of Scientology. The Church of Scientology moved out in '95, and relocated to a site just off Connecticut Avenue on R Street.

This is an application for variance relief, and the tests for variance relief are set forth in our statement. The building has a unique or exceptional situation or condition, it is the first school building built in the Sheridan-Kalorama area specifically for school use. The strict application of the use regulations would impose an undue hardship, and strict application of the area regulations would impose a practical difficulty, our witnesses will go through that in a bit. And, we believe that relief can be granted without substantial detriment to the public good.

I'd like to review quickly the exhibits with you that are attached to our statement. At pages ten and 11 of our statement are the based and Sanborn maps. You can see the site is just west, approximately half a block west of Connecticut Avenue on the north side of that street. The zoning map on page 12 indicates the property in the R-3 Zone. Page 13 has a 1919 photo of the site when it was the early days of the school. Page 15 is the rendering o the building, also on the easel before you now is that same rendering.

The prior certificates of occupancy for the building are at pages 16 through 27. You can see that it was, in addition to the school, the Institute for Modern Languages. George Washington university had a certificate of occupancy for use of the building for about six months, then the Church of Scientology had it for the most recent occupant.

There was a BZA Order No. 11872, dealing with an appeal challenging the Church of Scientology's occupancy of the building, that was determined in favor of the Church of Scientology. I simply add that for your informational purposes.

There was a fire in the building in early 1996, which created half a million dollars of damage, and we include the fire investigation report, page 40 to 42.

This case has also been before the Historic Preservation Review Board on several occasions, and the most recent HPRB staff report dated July 22, 1999, appears at pages 43 and 44.

The Sheridan-Kalorama Historic District nomination form appears in pertinent part at pages 45 through 47, and that is the part which indicates that the building was the original Holton Arms School and it was the first school building built for school purposes in the Sheridan-Kalorama area.

I did mention that there are other apartment houses in this R-3 Zone. This north side of S Street in the R-3 Zone is quite unusual, in that the majority of the uses on the north side of S Street are not single-family, row-dwelling uses. The majority of them are uses that are either use variance uses or uses permitted by special exception. There are several schools, the Kingsbury School, the Institute for Modern Languages, and there are three apartment buildings, the BZA orders in include three apartment buildings to the east, the immediate east of this site, all having gone through this Board seeking the same type of approval, including one building that was formerly a school building.

Pages 71, 72 and 73 are the outlines of testimony of our three witnesses. I did introduce two, we have a third witness who will appear through affidavit. He is currently in California, and I would like at the appropriate time to introduce that affidavit.

And, unless you have any questions, at this time I'd like to go to the witnesses.

CHAIRPERSON REID: Questions?

MR. COLLINS: Okay. The first witness, I'd like to introduce the affidavit of Mr. Lee O'Hara. Mr. O'Hara is the — or was the real estate agent working on behalf of the Church of Scientology, and if you could please — we just submitted ten copies of that affidavit right now, and if you could just please take a minute to review that affidavit and I'd be happy to attempt to answer any questions of the other members would be happy to attempt to answer any questions you might have.

MR. GILREATH: Do we need some kind of response on this, or do we say we accept it?

CHAIRPERSON REID: No, unless you have any questions.

MR. GILREATH: I don't have any questions on it.

CHAIRPERSON REID: All right.

Okay. Now, are you going to make any statement or are you just basically submitting this as your testimony?

MR. COLLINS: That is the testimony of Mr. O'Hara, who is not able to be with us today. He's in California.

CHAIRPERSON REID: Oh, okay, I'm sorry, I thought

that this was Lee O'Hara.

MR. COLLINS: No, no, Mr. Lee O'Hara, I'm sorry — this is Sarah Shaw from our office.

CHAIRPERSON REID: Oh, okay, all right, so this is — the reason why you — okay, he's not here.

MR. COLLINS: He is not here.

CHAIRPERSON REID: Okay.

I had a couple of questions of him.

MR. COLLINS: Although it wouldn't be testimony, perhaps I could answer the questions. I did speak extensively with him.

CHAIRPERSON REID: Well, I wanted to know, it was indicated there were five contracts on the property, and I wanted to ask him what happened to those contracts.

MR. COLLINS: After the study periods they determined not to move forward.

CHAIRPERSON REID: Why, that's what I wanted to find out, what was it about — I mean, five contracts and all of them to peter out, it just struck me as unusual and I wondered what was it about the due diligence period that caused them to pull out?

Yes, give your name and your address, please.

Whereupon,

LAWRENCE SMITH

was called as a witness by Counsel for the Applicant, and having been first duly sworn, testified as follows:

DIRECT EXAMINATION

MR. SMITH: My name is Lawrence Smith from 328 Border Road, Concord, Massachusetts. I'm the developer for this project. I've been a licensed real estate broker since 1977 and a developer since 1980. I've testified before the Board on the Phillips Road, our other project in Georgetown, rear yard variance and conversion of the Phillips School to condominiums in Georgetown.

I do know that the other contracts were all contingent on zoning. Our's was the only contract that did not require the contingency of zoning approval, so we purchased the property and that's why the Church of Scientology went forward with our's versus the others.

CHAIRPERSON REID: Thank you. Okay.

MR. COLLINS: If there are no questions based on the affidavit, I'd like to then go to our next witness, Mr. Lawrence Smith.

Mr. Smith, would you continue, you've identified yourself for the record, would you please proceed with your testimony?

MR. SMITH: Yes.

In 1998, I was asked to take a look at the Holton Arms School as a potential acquisition for a company called the Ibis Company, which is a Dutch real estate developer. The property was — we performed our due diligence, we purchased the property in July of '98 under 2125 S Street LLC. We initially looked at the — we hired the firm of Sorg and Associates and initially looked at the possibility of converting the structure to the home or the headquarters of Phi Beta Kappa, which would be by special exception.

We took that proposal before the ANC, the ANC overwhelmingly denied that use. They did not want to see a commercial use. They did not want to see anything that was non-residential use. That was one setback. We also found that in the inspector's report, or the fire report in 1996, there was a supplement from the inspector that basically would require any upgrading of the facility to commercial code application, so the structure, the electrical, the life safety, everything would have to be brought up to the current code, and he even referenced the ADA requirements.

Any commercial use, therefore, was going to require the floor loading structure to be double joisted up and significant improvements, an elevator put in, handicap accessibility, et cetera, and it basically made the commercial undertaking almost uneconomic in this project.

So, after hearing from the ANC as far as the use, and looking at the economics, we pursued a residential conversion of the structure to condominiums.

I might add, we did look at the possibility of selling it as a single-family residence, but it's just not what the market would evolve. This is a 16,000 square foot structure, the market doesn't have any indication that houses or single-family units over 6,000 square feet would be at all marketable.

We looked at some of the other matter of right usages and felt that they were not feasible for a return on the investment.

We then proceeded to have Sorg and Associates design the building for the maximum number of units that we could get

with compensatory parking. We've come up with eight units, we have five parking spaces. There are five two bedroom units and three one bedroom units. We'll be marketing the two bedroom units with a parking space in the structure.

I might add that there is not a parking requirement in this district.

We met four times with the ANC. We brought the residential project back to the ANC actually three times, and we've just gotten the ANC to — well, they've submitted a letter which speaks for itself, but we feel that the ANC was in support of our project.

The HPRB has reviewed the plans and they have approved our project as we've presented it.

I would like to address the letter that the ANC submitted. The first two pages of the ANC letter, you know, we've agreed to everything that was referenced that we've been in agreement with. On the third page of the ANC letter it talks about the two issues that were subject to or that we had not agreed to. I'd like to address those two points now.

The first point dealing with the removal of trees and planting of trees in the area, we are in agreement that that would be acceptable, but it is subject to the D.C. Public Space Department, so Mr. Beck, who basically tells us where he wants us to plant our trees, it's really subject to his approval. I suspect with this letter he would allow us to do that, so, again, it would be subject to a D.C. Public Space permit.

Closing the alley, point two, I talked with our

contractor and we don't have any problem with everything that's written here, with the exception is we wanted to allow five days notice as opposed to ten days notice. Five days is a little bit more reasonable when you are with a contractor, ten days is an awfully long time to schedule work out ahead. So, they just amended that to — or we'd like to amend it to, say, five days.

Everything else in the letter is acceptable, and, you know, we've appreciated the dialogue we've had with the ANC.

Finally, I'd just like to add that, you know, we are ready to proceed. We are anxious to proceed, as are the neighbors, with the conversion of this building. It's really been sitting since 1986, since the fire, and it's in poor condition and we'd like to see it under construction as soon as possible.

CHAIRPERSON REID: Questions from Board members?

MR. SOCKWELL: I was looking for the statement about trees that you said was contained within the ANC.

MR. SMITH: Yes, the third page.

MR. SOCKWELL: Third page, yeah.

The trees that you are removing are curb trees or trees behind the sidewalk?

MR. SMITH: They are behind the sidewalk but they are in public space, so, again, even that is subject to —

MR. SOCKWELL: Generally, Bill Beck doesn't have any jurisdiction to discuss with regard to trees behind the sidewalk. Trees that are maintained by the City are generally the ones that are

the curb trees.

MR. SMITH: Okay.

MR. SOCKWELL: The ones behind the sidewalk are generally the maintenance responsibility of the property owners that abut the public sidewalk. And, Chris, you can respond to that, I mean I deal with Bill Beck a lot, but you may want to add something.

MR. COLLINS: We will do whatever he tells us to do on this one.

MR. SOCKWELL: Yeah, and he may not tell you to do anything.

MR. COLLINS: Right.

MR. SOCKWELL: He may give you carte blanche on the trees behind the sidewalk, he usually does. So, it may be more your responsibility than you think.

MR. COLLINS: Okay.

MR. SMITH: Well, maybe I can convince him that the Georgetown trees that we took down we could plant them up on S Street.

MR. SOCKWELL: That might work.

CHAIRPERSON REID: Next witness.

MR. COLLINS: Any other questions?

CHAIRPERSON REID: No.

MR. COLLINS: Thank you.

The last witness is Rachel Chung, who is with the firm of Sorg and Associates.

Whereupon,

RACHEL CHUNG

was called as a witness by Counsel for the Applicant, and having been first duly sworn, testified as follows:

DIRECT EXAMINATION

MR. COLLINS: MS. Chung, would you please identify yourself for the record and proceed with your testimony?

MS. CHUNG: Good afternoon. My name is Rachel Chung, 7500 Buena Vista Terrace, Derwood, Maryland 20855. I'm an associate at Sorg and Associates, and as Larry has mentioned he has contracted us to do the design and construction of 2125 S Street.

At this time, I'd like to briefly describe the existing building. Lot 49 consists of this area, and the main building was built, like Chris Collins has stated, 1905 by Whitey Wood in this area. Subsequent to that, there were many additions to the rear. This T-shaped building acted as a gymnasium. This three-story addition actually on Lot 12 was a garage and laboratory, and there were small wood frame structures that connected the main building with the T building that were two story or one and a half stories. The main building is a five-story masonry, wood frame construction. The majority of the add ons are wood frame.

Like I said, this is a five-story structure that was housed to be originally for the Holton Arms School's educational facility mainly for women, or only for women.

Right now I'd like to quickly go over the proposed design. This is a rendering of the original building. What we propose to do is restore the exterior and design a new front facade to match

the original door that was originally designed by Whitey Wood, and when we go into the interior, the entire facility will consist of eight units. Five of the units will be two bedroom and three of the units will be one bedroom, and the two bedroom units will have the parking spaces in the rear. When you enter the first level, there are two units in either side. One will be a one bedroom unit and the other will be a two bedroom unit. The main connector building that houses the vertical circulation, the elevator and the means of egress stairs is a new structure, and the existing structure in the rear will house five parking spaces.

MR. COLLINS: Before leaving that, can you describe, is it correct that the floor plan on the left is the lower level?

MS. CHUNG: Yes, I'm sorry. This is the lower level, which is the lower level of the second unit, which is a two bedroom unit. The lower level will also have the services coming in and additional storage to the rear for the eight units.

On the second and third floor, relatively the same. The main portion of the building will house two bedroom units, and the rear portion will be a one bedroom unit. This will become like a penthouse, the entire floor will be devoted to one unit.

MR. COLLINS: And, that's true for both the second and third floors?

MS. CHUNG: Yes.

And, the last two floors, the fourth floor has two units, both are two bedroom units, and the fifth floor is actually part of the fourth floor units, in that they have lofts into those spaces.

MR. COLLINS: So, on the fourth and fifth floor there's two units, each of which are two stories?

MS. CHUNG: Yes.

The variances that we are trying to get today, as Chris has mentioned, the first one is our use variance. It does meet a special exception. It was built originally as a school facility, and it was, I believe, the first school facility in the Sheridan-Kalorama neighborhood. The existing structure, the load bearing walls and the way that it is laid out implies that it was something other than a residential use. There are large rooms, there is large assembly spaces, classrooms and things like that, that because of the fire and also the load occupancies, the live load and dead load, if we were to design something that was a matter of right we would have to either increase substantially the structure or remove the floor framing system entirely and replace it with new. That's one thing. The other thing, which we did look at that scenario initially, and when we met with ANC they were adamantly opposed to a use besides residential. But, that's the first variance we are looking for.

The second variance encompasses basically two things, it's an area variance. Because we are removing these two stories and one and a half story elements, and providing a new connector building that will house vertical circulation, i.e., the stairs and the elevator, any hallways leading to both levels on either side. We are removing this portion of the building and creating an open court.

Because we are creating an open court, and what is

required for the height or actually the width of an open court, we are exceeding the height limit or we are not meeting the width limit of the open court. If we were to meet the width of the open court that connector building would only go up to the third floor and not the fourth floor, and that would go against building code, not having an egress stair for all the floors to serve. That's one.

Also, the other area variance that is in the rear, right now the building, existing rear building on the first level we are proposing five parking spaces. Because the clear space in between only allows for 17 feet, and the District requires 19 feet for parking, we need to increase that area just on the lower level for maneuverability, for parking space, and for security for these garages that we're providing in the lower level. So, what that will mean is we are removing the alley wall and providing, basically, a shed roof on the first level, and that building, that exterior wall of the shed roof will act as the garden wall that was originally there. That garden wall, or that shed roof, would be not very visible. It will be part of the alley wall that was originally there.

The height of the connector building requires us to have it go up to the fourth floor because of the stair we have. We need to means of egress in this building. We have one here servicing this area, and we have another here servicing this area. If it didn't go up to the fourth floor we couldn't reach the fourth floor apartment, and they would only have one means of egress, and they are required to have two.

So, if we were to only go up to the third floor, which

we would meet the area open court width requirement, we would not meet building code.

I can briefly talk to you about — we've done studies to see if we can design the facility in a matter of right use or special exception use, and on page five of the statement it lists the matter of right and special exception uses, and I'll briefly talk about a few of those and the impracticality and hardship that we would face to meet these requirements.

CHAIRPERSON REID: We've read this.

MS. CHUNG: Okay.

CHAIRPERSON REID: So, if you could just highlight it.

MS. CHUNG: Briefly, as Larry Smith has mentioned, a matter of right single-family row house, quite honestly the 16,000 square feet is extremely large for a single-family dwelling. There are estates, but usually they have grounds, they have drop offs, they have large areas of parking for large vehicles, it doesn't make sense to have something, a single-family dwelling in a row-house situation that has 16,000 square feet.

Regarding converting it back to a school, although currently the structure or the building is laid out in these large assembly spaces or classrooms, the building does not meet code. The floor loads, the dead and live loads, would have to be looked at. More than likely, it would be more economical probably to replace the floor system instead of beefing them up. And, frankly, the way that schools, current school systems work, with their high tech, their AV

equipment, the way that this building is situation it is not suitable for the type of school that we are currently looking at to be housed here.

Regarding child care centers, Sorg and Associates has designed and built numerous child care facilities, and it is very impractical to expect children, infant age to preschool, kindergarten age, to go up and down elevators to go to the different classrooms, the play areas. There is no exterior play area here. There is no drop off for the parents, so we feel it's very impractical to have a child care development center here.

MR. COLLINS: Do you have a similar conclusion with regard to all of the other matter of right and special exception uses, that they are impractical for conversion and wouldn't, in your professional opinion as an architect, wouldn't be a viable use, wouldn't be economically feasible?

MS. CHUNG: Correct. Not only is it not economically feasible, just constructability at this particular setting, it seems very impractical to put anybody but multi-family dwellings here.

MR. COLLINS: Referring to pages three and seven of the statement of the Applicant that was submitted, is it correct that you incorporated in your testimony that these, in fact, are the areas of relief and the reasons that we need these areas of relief, looking first at page three, or the listed variance reliefs there, and then looking at page seven, at the top of the page, to indicate what is required for these different areas of area variance relief?

MS. CHUNG: Yes, I concur.

DOCTOR CARSON: All right, thank you.

You've spoken about the uniqueness of the building, the exceptional situation or condition, you've spoken about the undue hardship which would support the use variance, you've spoken about the strict application of the regulations imposing impractical difficulty if we were not able to add these two small additions to the building. In terms of the width of the open court and the roof extension of the garage, do you have an opinion about whether this would — belief in your professional opinion as an architect, would cause any potential detriment to the public good?

MS. CHUNG: No, I wouldn't. If I can refer back to the prospectus, in the building facade we are proposing to restore it, restore the masonry exterior walls, replace the wood double-hung windows with wood double-hung windows, and repair the roof as necessary.

In the rear, the existing masonry structures that are going to remain, we also intend to restore the exterior facade. The new connector building that you see in gray at the bottom of this area, will not be seen from obviously the front street scape, as well the rear. If you were the neighbor, you might be able to see it, or if you were coming in this courtyard area you will be able to see it, but from the rear facade you probably wouldn't see that either.

Regarding the rear garage extension, we tried to incorporated that with the rear alley. It would all be brick, and within that alley you would see many garages abutting the alley in numerous other properties. So, no, I don't think it will have an adverse effect and, actually, what we are proposing I think will bring that area up to

— you know, it will be kind of wonderful because right now it's vacant, it has a lot of damage.

MR. COLLINS: Do you have any elevations which might indicate how those things would not be readily visible from public space?

MS. CHUNG: This side elevation, which we are looking in this corner, if you can see this key plan.

MR. COLLINS: Looking from the west toward the building?

MS. CHUNG: Looking from the west, correct, on this side is the main building. Excuse me, this side is the main building and this side is the key building where we were housing the single units and the garages below.

On one facade, where the hallway and corridor was, we had a curtain wall system which would let light in through that narrow areaway, or the narrow courtyard, and the other side would be masonry.

It is in the same plane and same elevation as the T building in the rear, so we are protruding above that.

And, regarding the garage, we have an extension on the rear. This would be, the exterior facade of the garage would act as the garden wall or alley wall that was originally there.

And, this is the rear elevation, and you would barely see, actually at street level you would barely see the roof. At the straight-on elevation, what you see is some roof, but when you are walking down the street, or if you are driving down the street, it would

be very difficult to see the roof.

MR. COLLINS: All right, thank you.

MR. SOCKWELL: MS. Chung, you are licensed to practice in the District of Columbia?

MS. CHUNG: I am actually working on my licensing.

MR. SOCKWELL: You made some assertions about the structural issues and beefing up the structure. Quite often, these older buildings, because they use a larger dimension of lumber in their floor systems, actually have a higher structural load capacity then would a modern building.

MS. CHUNG: Correct. We have a structural engineer consultant on board. They are, you know, 2 x 12s or 2 x 14s, and they are larger members. However, live load — combination of live load and dead load for residential and commercial is almost twice as much. Now, to get the quality of the type of units that we are designing, and Larry Smith is trying to sell, we are even beefing up the joists, the existing joist as it is, because of sound, or any creaking, but there is a chance, we have not gone into that investigation, thorough investigation to see extensively how much it would take to bring those up to code.

MR. SOCKWELL: So, you are saying that a residential live load would be greater than the live load of —

MS. CHUNG: No, no, what I'm saying is, commercial live load plus dead load. Dead load, it's similar, but actually the live load is almost twice in certain instances. I know that bedroom areas and, you know, dwelling areas, and corridor areas are slightly

different, but generally, on average, it's almost twice as much in a commercial.

MR. SMITH: A hundred pounds.

MR. SOCKWELL: Versus 40 or —

MR. SMITH: A hundred pounds versus 40, or, you are right, in fact, a lot of the structure does hit almost 60, but it doesn't meet the 100 pound live load for commercial.

MR. SOCKWELL: To what extent is your court deficiency in percentage of what would be required, based on that?

MS. CHUNG: Because we remove that addition and created the new connector building that goes up to the fourth floor, what's required for the width is four inches a foot of height, but not less than, I believe it's six feet. However, we only have about 13 — 12 feet, 7, and what would be required is 18.5 feet.

Now, like I was saying earlier, we would meet the width requirement if it only went up to the third floor.

MR. SOCKWELL: The adjacent property on the court side, where you have your deficiency, is how close to the property line?

MS. CHUNG: It's —

MR. SOCKWELL: Is it abutting?

MS. CHUNG: Yes.

MR. SOCKWELL: Totally abutting.

MS. CHUNG: It's their party wall.

MR. SOCKWELL: But, it's a separate lot.

MS. CHUNG: Yes.

CHAIRPERSON REID: And, you own the sites on both sides.

MS. CHUNG: Yes, we actually own —

MR. SMITH: Yes, we have no objection.

MR. SOCKWELL: That really wasn't the reason for the question. The question was basically looking at the adjacencies and whether or not that affects significantly light and ventilation, privacy issues, for your units.

MS. CHUNG: Right now, the proposed design for this adjacent lot to the east is basically restoration. Because we are removing that, this court will be sharing a court or another open space on either side, so we are not, you know, narrowing that court even more. So, it actually works in our favor, that this is kind of an open court and this is kind of an open court, so there's light coming in.

MR. SOCKWELL: From a fire separation distance standpoint, that doesn't cause you any problems with code?

MS. CHUNG: No. This — no.

MR. SOCKWELL: Remember, you are only allowed, by code, to take the property line, you can't take necessarily the fact that your building adjacent is pulled back. That's not —

MS. CHUNG: Yes, this area you are talking about.

MR. SOCKWELL: Yes, I'm talking really at the property line, between the property line and your interior wall, which is perpendicular to the — which is parallel to the property line, that wall, yes.

MS. CHUNG: Right, correct.

MR. SOCKWELL: Which is the back edge of your elevator shaft wall?

MS. CHUNG: Yes, and that's almost 13 feet away.

MR. SOCKWELL: Okay.

And, you spoke to the impracticality of other uses, although the other uses were not something that you studied, I'm sure, because you intended to convert this to condominiums from the outset.

MS. CHUNG: Well, originally we were contracted, as Larry Smith has stated, the Phi Beta Kappa with the Church of Scientology, to study that use. It was mainly a non-profit office use, and we met along with Larry Smith, and the ANC, and we were adamantly — or, they adamantly rejected our proposal for anything but residential.

MR. SOCKWELL: To what extent was the fire damage to the structural systems of the building?

MS. CHUNG: I believe — I know that it was the third floor, or the rest of the roof on the main portion of the building, because there was fire damage, there was water damage, a lot of the roof was exposed, a lot of water damage obviously went all the way to the lower floors. Currently, they've rebuilt it, but it's basically temporary, it's not a final — they did not rebuild it to meet the building code, I don't think.

MR. SOCKWELL: Nor was it properly quite an in-kind rebuild?

MS. CHUNG: Regarding the roof, the actual finish of

the roof, it probably was, but the structure, the framing, and the roof framing system, no.

MR. SOCKWELL: You said that you have five two bedroom units with parking, and three one bedroom units, I assume, without parking.

MS. CHUNG: Correct.

MR. SOCKWELL: And, let's see here, in that area, since you made a statement specifically that it does not make sense to make a 16,000 square foot single-family dwelling, what is the square footage of the dwellings that are adjacent in the surrounding neighborhood?

MS. CHUNG: There is, actually, a single-family dwelling adjacent at Lot 9, it's about 4,000, 5,000 square feet.

MR. SOCKWELL: And, you and your client have decided — determined that through investigation that you cannot make a financially viable project with matter of right zoning as your restriction.

MR. SMITH: Yes.

MR. SOCKWELL: And the other restrictions that would be imposed upon you.

MR. SMITH: Yes, both matter of right and special exception.

MR. SOCKWELL: What's the approximate square foot sales price of these units, as you've proposed them?

MR. SMITH: Approximately, $400 a square foot.

MR. SOCKWELL: Which is pretty close to — the

market seems to be ranging $350.00 to $500.00, so you are on the upper side.

Okay, I don't have any other questions. Thank you.

MR. COLLINS: That ends our presentation. I'd like to have an opportunity for a closing statement.

CHAIRPERSON REID: Sure.

Government reports, we had a letter that was submitted from the D.C. Historic Preservation Review Board in support of the application, a letter dated, huh, I don't see a date on it, February 13th? No, no, no, this is '89, this is an older one, but we had one — I think we had one for '99.

MR. GILREATH: Page 43.

CHAIRPERSON REID: Page 43, right, which was the most recent one, and that was dated July 25, 1999, and basically, in essence, it states that it's in approval of this application.

The ANC submitted a letter, ANC-1C, and in their letter they come out in support of the application. There was a quorum present, vote taken, and they state that it's our understanding that at the September 22, 1999 meeting the developer agrees to the following request. These are requests in regards to hours of construction and noise abatement, parking, rat abatement, dumpster for construction and removal of the trees.

Now, also closing the alley, was there an agreement drawn up to these issues that were signed by the ANC and the developer?

MR. COLLINS: There is no formal written agreement.

We simply agreed on the record to abide by those. The letter reflects that everything on page two is agreed to, and the letter reflects on page three that there were things that were not agreed to, although Mr. Smith testified today that he has agreed to the items on page three as modified by his testimony.

Specifically, on the issue of the trees we said that we would — Mr. Smith said that he would agree with paragraph number one on page three of the letter, but that would be subject to whatever DPW tells us we need to do.

CHAIRPERSON REID: Sure.

MR. COLLINS: And then on the second item, he agrees with that, but requested the ability to give five days notice instead of ten because of the vagaries of the development process.

CHAIRPERSON REID: Okay.

Well, basically, this will be made a part of the order, not as a condition, just reflected in the order, the conditions that — the terms of the agreement can be —

mS. PRUITT: Can be made conditions, yes.

CHAIRPERSON REID: This is a variance.

MS. PRUITT: You can reflect it in the order, yes.

CHAIRPERSON REID: Reflect it in the order. Okay.

All right, thank you.

And, there's no one from the ANC here? Oh, I'm sorry, please, come forward. I thought I had asked earlier. Okay, were you sworn?

MS. BUMBALO: Yes.

CHAIRPERSON REID: Okay.

Whereupon,

LINDA BUMBALO

was called as a witness by Counsel for the ANC, and having been first duly sworn, testified as follows:

DIRECT EXAMINATION

MR. BUMBALO: My name is Linda Bumbalo, I live at 2103-1/2 F Street, N.W., Washington, D.C., 20008. I am ANC chair for the Sheridan-Kalorama ANC-1D and also the single-member district in which this is located.

I won't read the whole letter, but as you noted we did have a duly noticed public meeting with a quorum, two of the two commissioners present.

The second paragraph of the letter requests that the record be corrected. The record states that this property is in ANC-1C and it is not, it is in 1D, so I would ask that that be done.

And, it was motioned and passed to support the application only if all of the conditions outlined in the letter were agreed to by the developer, and today I believe I have heard that these things are agreeable.

There is one modification that I would ask for in terms of the alley closing, that the notice be five business days, and you will see that also — there are two requests actually in that, one is the notice and one is that the developer provide for trash collection, receptacles on his property when the trash cannot be collected.

I would ask that this agreement be in writing between

the parties. I would like that to be done.

CHAIRPERSON REID: Well, that would be a request to the Applicant.

MR. BUMBALO: Okay.

CHAIRPERSON REID: And then, that could be — once it is drawn up and then it's signed by both entities, it can then be made a part of the record.

MR. BUMBALO: Part of the record, yes.

MS. PRUITT: Yes, but I guess I would just caution that any of the conditions you have to think about how they would be enforced.

CHAIRPERSON REID: Well, we are not putting any conditions in.

MS. PRUITT: Okay, in that sense then —

CHAIRPERSON REID: Yeah, we are not putting any conditions in.

MS. PRUITT: — this would be a private agreement between —

MR. BUMBALO: Rather than conditions as part of the order?

CHAIRPERSON REID: Well, it's a variance, and we can't —

mS. PRUITT: We generally don't.

CHAIRPERSON REID: — generally can't condition a variance, so if you have an agreement that's drawn up between the two entities, then —

mS. PRUITT: It can be made part of the record.

CHAIRPERSON REID: — yes, we will make it a part of the record, and then, of course, if there's a breach then you have other recourse.

MR. BUMBALO: If it's not part — if it's not a written agreement between the two of us, then would it be conditions of the order?

MS. PRUITT: I'm sorry, I'm not sure I understand.

MR. BUMBALO: Well, I thought you said you were going to make conditions part of the order.

CHAIRPERSON REID: No, what I said was, what we said was, we would have these issues reflected in the order, and then you came forward and you said that you'd like to have a separate agreement drawn up. And, I was saying to you that that's not — we would not basically stipulate that you had to do that. If the two entities decided they wanted to do it, sure, you certainly can do that, and that can be submitted as a part of the record. And, if, in fact — we cannot condition, we cannot impose that on the Applicant, however, the idea is, an agreement is an agreement, and if it's written and signed by both entities then you do have recourse in the event there is a breach.

MR. BUMBALO: No, my question was, if there is no written agreement, then what happens to these conditions?

CHAIRPERSON REID: There are not conditions. You didn't — as a matter of fact, they are not even presented to us as conditions. These are — it says that the developer has agreed to the following requests, it did not say that we want to condition the order.

MR. BUMBALO: Well, I said, in the last sentence, there was a motion passed to support the application only if all of the conditions outlined above are agreed to by the developer. That was part of our resolution.

CHAIRPERSON REID: Oh, I see, I didn't really note that. Nonetheless, still the fact remains that with a variance we do not have the authority to condition a use variance.

MR. BUMBALO: Well, I'll have to take your word for it.

CHAIRPERSON REID: Special exceptions we can.

MR. BUMBALO: Okay.

CHAIRPERSON REID: But not a variance.

MR. BUMBALO: Okay.

Well, I would like to go over those, I would like to point out, the drawing of the front of the buildings, there is no building actually at the current time to the west. That's an empty lot that belongs to the developer, and the other side is a townhouse that he intends to renovate. So, as I pointed out in my letter, this probably is at least a three-year project that the neighborhood would be disrupted, maybe longer, I don't know, because I'm not quite sure what the scenario is for the development of this.

But, as I said, we asked for hours of construction and noise abatement be strictly adhered to, and a condition be imposed by the developer on the contractor to prevent any noise whatsoever by trucks or contractors outside of these hours at the site, and on the street, and in the alley by any persons connected with the application, and that there be provision on site for locked work boxes for the

construction workers, so that they do not need access to their trucks, to their vehicles, they can be parked off site and we would encourage that to be a universal garage or any other private garage nearby.

The developer, I believe, has already begun rat abatement and has agreed to continue that. The dumpster would be placed within a fenced area, because he intends to close off the sidewalk and fence in the front of it. It would be covered tightly and secured during non-construction hours and be emptied as soon as it is full.

And then the trees, we've talked about those. Three trees are between the sidewalk and the building, and closing the alley is the major, major issue. There are six to seven different trash private collectors in the city come down that alley, and there are approximately 40 to 50 garages and open parking spaces back there, you know, it is essential that we be given adequate notice, and that provision be made where trash cannot be collected, that the contractor take care of that, or the developer take care of that, by providing receptacles on his site. We are willing to walk there to take our garbage.

Also, subsequent, which is the third to last paragraph, subsequent to the ANC meeting it was learned that Bell Atlantic actually has some kind of relay box or whatever the technical term is located inside the building, and it provides, I checked with the public utilities, and it serves the buildings located at 2119, 2121, which is actually the developer's property, and 2129 S Street, and I just request that there will be no disruption in service or at least that the

developer give those people notice if there is going to be disruption.

MR. SOCKWELL: Well, the phone company actually would not want there to be a disruption in service, because to the best of your knowledge those are the only properties served by that —

MR. BUMBALO: The Office of the People's Counsel investigated that for me, and that's what they — the information that they got from Bell Atlantic.

MR. SOCKWELL: Yes, well you do want to make sure that that's taken care of, because I live in a similar situation where the box is on somebody else's property, and it serves a lot of units.

CHAIRPERSON REID: Okay.

Any other questions for this Applicant, witness?

MR. GILREATH: The witness said that she estimated the construction time to be three years. For the developer, is that a reasonable time, or do you think you'll be doing less time than that?

MR. SMITH: We're hoping to start as soon as we can get the order, actually the demolition center. On the two side lots we've just filed to this Board for two variances on the vacant property, one of them being a height variance, it's a three-story neighborhood and surrounded by four and five story buildings. And, the matter of right renovation on Lot 9, we planned on going forward subsequent to this.

So, it's timetable to be complete by December of the year 2000, so we've got a one-year horizon, it's really just dependent upon how long it takes to get the use variance for the surrounding lot.

MR. GILREATH: That's good to hear, that would

reduce the amount of inconvenience then.

MR. BUMBALO: Yes. We were not clear of the sequence or whether they are sequential, or consecutive, or concurrent or what.

CHAIRPERSON REID: I think those are the tweaking details that you need to sit down and work out with the developer and to make sure that you have them all contained within the agreement.

MR. SOCKWELL: MS. Chung, how far along is Sorg and Associates with construction documents on this?

MS. CHUNG: We are actually in the process of, I'd say about 75 percent of the permit drawings. So, as Larry Smith has purchased the property, not contingent on getting the variance, we've also proceeded with our design and construction documents to this date.

MR. SMITH: We do have demolition plans that are —

MS. CHUNG: Yes, we have demolition plans that are ready to go to the permit office to get a demolition permit this week.

MR. SOCKWELL: And, your —

MS. CHUNG: For the main building.

MR. SOCKWELL: — for the main building.

MS. CHUNG: Yes, or actually, this lot.

MR. SOCKWELL: Yes, so your construction documents are 75 percent complete.

MS. CHUNG: Yes.

MR. SOCKWELL: And, on the adjacent lot that's been —

MS. CHUNG: Both, all three lots, Lot 12, 49 and 9, they are approximately 75 percent complete.

MR. SOCKWELL: Okay.

So, you are well beyond the schematic and design development.

MS. CHUNG: Yes.

MR. SMITH: And, we've already retained a contractor for the work as well.

MR. SOCKWELL: And, the contractor will be amenable to the agreement requirements desired by the ANC?

MR. SMITH: I faxed him a letter as soon as I got it. He is, he is amenable.

MR. SOCKWELL: Okay, thank you.

CHAIRPERSON REID: All right, thank you.

Persons or parties in support of the application, please come forward.

Persons or parties in opposition to the application?

Closing remarks by the Applicant.

MR. COLLINS: Just a few points, Madam Chairperson, members of the Board. This will be, we think, the best solution for this building. It's a residential use, in a residential zone, in a residential neighborhood. The building has had a history of non-residential use, it's been vacant for a number of years, it's boarded up, it's an eye sore, and this is an appropriate solution to bring this property back to a productive use in the future.

The apartments are generous in size and they are

logical in layout. As you've seen through MS. Chung's testimony, there is on-site parking. Parking is not required for this building because it's in a Historic District, it's a change of use. We are providing parking, which is something that is value — off-site parking is valued very highly in that neighborhood. There's a lot of competition for on-street parking.

The additions that we've planned for the building are not readily visible from public space, as MS. Chung mentioned, including the new connector building between the front and rear buildings, and the small extension of the parking garage at the lower level at the rear.

You've heard about the impracticality of other uses, the practical difficulty of other uses, both from a marketing standpoint through the affidavit of Mr. O'Hara, from a design standpoint through the testimony of MS. Chung, and from a development standpoint through the testimony of Mr. Smith. We think for all the reasons stated in our presentation that we meet the requirements for variance relief in this case and we respectfully request that you grant the application.

Thank you.

CHAIRPERSON REID: Mr. Collins, in regard to the affidavit that was submitted by the real estate broker?

MR. COLLINS: Yes.

CHAIRPERSON REID: You were submitting him — proffering him to us as an expert witness to the affidavit?

MR. COLLINS: Submitting through affidavit, I did not

request that he be submitted as an expert, but if you —

CHAIRPERSON REID: I'd like a resume background on his — to reflect his experience with the District of Columbia. The affidavit was signed in New York, and I'd just like to get some information pertaining to his ability to testify as to the real estate market and his experience here in the District of Columbia.

MR. COLLINS: Sure. He was not proffered as an expert, and he's experienced with real estate worldwide. He does work for — he's not with the Church of Scientology, but he does work for the Church of Scientology around the world.

CHAIRPERSON REID: I understand, but I'd just like — I would like to see that, if you wouldn't mind having this submitted to the record.

MR. COLLINS: All right.

CHAIRPERSON REID: Okay.

MR. SOCKWELL: Another question, Mr. Collins, you said that because of the historic status of the building no parking is required for this use, pursuant to Section 2100.5?

MR. COLLINS: Yes, sir.

MR. SOCKWELL: And so, the proper request for waiver of parking and loading —

MR. COLLINS: Will happen during the building permit application process, but these things are typically — it's simply a notation more than it is an approval. We are entitled to it under Section 2100.5 and the paper work will be submitted with the application.

CHAIRPERSON REID: That's a Historic District.

MR. SOCKWELL: Yes.

If you would submit a copy of that document to the record when you — when it's been filed?

MR. COLLINS: Sure.

MR. SOCKWELL: Thank you.

CHAIRPERSON REID: Okay.

Any further questions?

MR. GILREATH: No further questions.

CHAIRPERSON REID: No more questions. Okay.

All right, Board members, I think that I'd like to move that this application be approved. I think that the applicant has demonstrated that he's met the burden of proof and that he's in compliance with the regulations under the District of Columbia as they pertain to a variance.

He cited that the unusual and unique conditions apparently stems from the fact that after a number of years of trying to market the property and to find a user for the property, it was a very difficult endeavor, and that of the five contracts that they received on the property they were not able to get past the due diligence and the contingency for the zoning. And, that is the practical hardship that they proffered to us.

The adverse impact aspect stems from the letter that we got from the ANC, in which they basically stipulated that certain conditions be met before they would give their approval. However, the Applicant and the ANC have met and have basically come to a

meeting of the minds as to this agreement, that they will then submit to the record. It will not be conditioned. We are not allowed to condition the order itself as such, but the issues that were raised will definitely — have been addressed and they will be reflected therein.

There were no other persons that appeared to voice any opposition.

I don't feel that granting this particular application, relief of this application, will impair the intent or the integrity of the Zoning Regulations and maps.

MR. GILREATH: Madam Chairman, I concur. I feel that much of this variance relief is a result of the nonconforming use of a very old building, and to be able to restore this, which is in disrepair now, actually is to the betterment of the neighborhood, and I think they've made their case very convincingly, and I second the motion that the application be approved.

CHAIRPERSON REID: Okay.

MR. SOCKWELL: I feel that the application, from the visual elements, will be a retention of the character of the neighborhood, without substantial impacts from the street side, and with noticeable, but seemingly appearance from the non-street facades of the building.

I do feel that the ANC's issues tended at the conclusion of their negotiations with the developer to be more construction sequence related issues than substantive building issues, and that's a good sign that the neighborhood is in general concurrence with the design that's been presented.

So, I have no concerns about it.

CHAIRPERSON REID: And also, I don't know if I said when I made the motion, that in regard to the uniqueness, that the building had been built specifically to house a school or an academy, and did not, therefore, lend itself to many other uses.

MR. GILREATH: No further comments.

CHAIRPERSON REID: All in favor?

(Ayes.)

CHAIRPERSON REID: Opposed?

MS. PRUITT: Staff would record the vote as 3/0 to approve, motion made by MS. Reid, seconded by Mr. Gilreath.

And, I just wanted to verify that you are requesting that the Applicant submit a copy of documentation of historic designation and, therefore, no parking required for the record, and a copy of — I'm sorry, I didn't catch the person's name, resume?

MR. COLLINS: Mr. O'Hara, Lee O'Hara.

MS. PRUITT: O'Hara, okay. Thank you.

CHAIRPERSON REID: Mr. Collins, you did pretty well today, didn't you?

MR. COLLINS: Yes.

CHAIRPERSON REID: You are batting 100, aren't you?

MR. COLLINS: Right, right, I hope the Red Sox do that well tonight.

Thank you.

CHAIRPERSON REID: He asked for a summary

order, bench decision.

MS. PRUITT: I'm sorry, and it will be a summary order.

CHAIRPERSON REID: Yes.

MS. PRUITT: I just wanted to verify so that —

MR. COLLINS: Yes, thank you.

CHAIRPERSON REID: You are quite welcome.

Excuse me, with that agreement, do you think we should have a full order?

MS. PRUITT: Excuse me?

CHAIRPERSON REID: I said, with that agreement, with those conditions reflected, don't you think we should have a full order?

MS. PRUITT: That's why I was asking.

CHAIRPERSON REID: Okay.

Mr. Collins, in view of the fact that we discussed the agreement, and that was going to be reflected in the order, then that would have to be a full order rather than a summary order, correct?

MR. COLLINS: We could do that, or we could do a summary order and at the provision where you have the ANC discussion, that could be a full discussion of the ANC issue.

CHAIRPERSON REID: Okay.

MR. COLLINS: And, the Board has done that in the past.

CHAIRPERSON REID: You would like that? All right, okay, fine. I just wanted to make sure that we —

mS. PRUITT: We will early expedite everything.

CHAIRPERSON REID: Okay.

MR. COLLINS: And, let the record reflect as my partner said, that I'm not batting 100, I'm batting 1,000. If I was batting 100, I guess I'd have a problem.

CHAIRPERSON REID: Okay.

Please call the last case of the day.

MS. PRUITT: Yes, the last case of the day is 16498, application of 800 8th Street, N.W., LLC, and the Chinese Consolidated Benevolent Association, pursuant to 11 DCMR 3108.1 for special exceptions under Section 774.2 to waive the rear yard requirements; Sections 411.11 to approve the elevator machine room which does not meet the normal setback requirements; and pursuant to 11 DCMR 3107.2 for variances from Section 773.7 to have residential recreation space on a roof with a dimension less than twenty-five feet; and Section 2101.1 to have fewer than the minimum number of required parking spaces; and Section 2117.4 to provide parking access by a car elevator rather than an improved driveway, and finally, Section 2205.3 to have less than the one required loading berth in a DD/C-3-C District at 800 8th Street, N.W., (Square 404, Lots 800 and 801).

All those planning to testify would you please stand and raise your right hands?

Please, be seated.

MR. GILREATH: MS. Pruitt, where it says a variance from 773.7 to have residential recreational space on the roof, that has

been dropped, has it not?

MR. GLASGOW: Yes, it has been dropped.

MR. GILREATH: That's my understanding.

MR. GLASGOW: That has been dropped, Mr. Gilreath.

MR. GILREATH: Did you get that?

CHAIRPERSON REID: No, I didn't.

MR. GILREATH: The requested variance for residential recreation space on the roof, et cetera, of less than 25 feet has been dropped. They are not going to put any kind of residential use up there.

CHAIRPERSON REID: Oh, when did that happen?

MR. GILREATH: It was something — I saw it in one of the letters, I think one that was passed out today.

CHAIRPERSON REID: Oh, it was, I don't have it here.

Mr. Sockwell?

MR. GILREATH: I saw it someplace, it was in the material, I'm quite sure.

CHAIRPERSON REID: I don't think we got anything today from this Applicant.

MR. GILREATH: Reading through, I came across that, it's one of the letters. CHAIRPERSON REID: Mr. Glasgow, hi, good morning, or good afternoon, how are you?

MR. GLASGOW: Good afternoon.

CHAIRPERSON REID: You are the last case of the

day. Thank you for your indulgence.

Mr. Gilreath said that you had withdrawn one of the variance requests?

MR. GLASGOW: Yes, that request is no longer necessary.

CHAIRPERSON REID: Okay, that was for the recreational space.

MR. GLASGOW: Residential recreation space.

CHAIRPERSON REID: Okay, so we are dealing with how many now, three?

MR. GLASGOW: We have two special exceptions and three area variances. We have a roof structure setback special exception, rear yard waiver special exception, number of parking spaces variance, access to parking space variance, and loading berth variance.

CHAIRPERSON REID: Okay.

You don't — there does not appear to be any opposition to your application. I didn't note any in the file, any letters of opposition, so if you'd like you can expedite your presentation.

MR. GLASGOW: Sure, we'd be happy to.

CHAIRPERSON REID: Yes, and we can get through it relatively quickly. And, I suppose you will present it in such a fashion that you can capsule the special exceptions and the variances and demonstrate how you are in compliance with them, and how you meet the burden of proof.

MR. GLASGOW: Sure. I think we can do that in a fairly brief fashion. I assume everyone has a copy of our statement of

Applicant that we filed.

CHAIRPERSON REID: Yes.

MR. GLASGOW: Thank you.

With respect to the — first, we'll start with the two special exceptions and in the statement, all fo the special exceptions and variances are discussed in the statement of the Applicant in pages one through 19. We just wanted to make sure that we had covered all of those for the record, and I will have one of the witnesses just adopt that as his statement.

We have a plat of the property. This case really stems from the small size of the site and the dimensions of the site, and that is going to also go to the uniqueness of the property. We have a C-3-C site that is slightly over 4,000 square feet in size. We have a very small building for the size of the building that we have, it's 120 foot tall building which is only 34,000 square feet in gross floor area, and in looking at the size of the site, which is only 47 feet wide, when you look at the roof structure and the requirements for a roof structure setback we've had several cases that have been before this Board historically, and once you get below about 60 feet in width it is extremely difficult to not request a roof structure setback. And so, we have made the determination that the most appropriate portion of the site for the roof structure to be pushed to is the western frontage, where it butts up against another substantial building, which is the building where the U.S. Mint is located.

We set back from the south, north and east frontages

more than the required setback, so it's only that western frontage where we have the roof structure setback for that special exception.

Then, with respect to the rear yard waiver, there's a series of requirements in the requirements, most dealing with window separation from habitable rooms in residential buildings. There are no residential buildings around us that we impact, and that will be testified to by the architect.

With respect to the variances, what we've determined to try to do, that even normally with this size of site we come in and we ask for a waiver from the parking requirements because it is very difficult to build any type of — in fact, it is economically not feasible to build a ramping system to access the parking spaces, so that instead of just coming in and saying we don't want to provide any parking, we, because of the small size of the building, we do believe that an elevator system is reasonable, we provide two levels of parking, we actually, with the vault space that we have, provide the required number of spaces, more than the required number of spaces, but we do not have the access to them, we do not have the required number of spaces on our own site, so that we need those two variances.

The third is the loading berth, putting a loading berth in a building of this small size is extremely difficult, and it's not practical. What we do have is, we have — you can have loading zones and commercial zones. With a loading zone for this size building we believe that we can readily accommodate any loading that we have with a loading zone at the front door, which is very common in the downtown area and in the commercial districts.

Also, if you look at the rear yard, if we were required to provide a rear yard, depending upon whether we provided the rear yard on the north or the west side of the building, you would lose somewhere around 28 or 21 percent of the entire building area, and given a 34,000 square foot building we do not have 28 or 21 percent to spare.

With that brief overview, what I'd like to do is call our one witness and introduce the compatriots up here on the table, Mr. Dennis Hughes, of the law firm of Wilkes, Artis, Hedrick & Lane seated to my left, Mr. Glenn Golonka, who is the developer of the project seated to my immediate right, and on my far right is Mr. Eric Colbert.

I'd like to call Mr. Eric Colbert as a witness.

Whereupon,

ERIC COLBERT

was called as a witness by Counsel for the Applicant, and having been first duly sworn, testified as follows:

DIRECT EXAMINATION

MR. GLASGOW: Mr. Colbert, have you had an opportunity to review the statement of Applicant?

MR. COLBERT: Yes, I have.

MR. GLASGOW: All right, and do you adopt the statement of Applicant as your testimony with respect to the burden of proof and its description of the areas of relief?

MR. COLBERT: Yes, I do.

MR. GLASGOW: All right.

With that, Madam Chair, we can either go through a

brief description of the project or if there are questions of the Board members, answer the questions of the Board members.

CHAIRPERSON REID: I think that I'd like to do both, a brief description of the project, and then we'll — the Board members will now have an opportunity to ask questions.

MR. GLASGOW: Mr. Colbert?

MR. COLBERT: Hello, Madam Chairperson and members of the Board. My name is Eric Colbert, and I live at 3829 Fessenden Street, N.W., and I'm very happy to be able to present this drawing today because my firm has had a very successful relationship with Ms. Wong, the developer, and Glenn, and we did the other very handsome development with them at 7th and A Street, and Ms. Wong has been very active in the community, you know, improving Chinatown and trying to do a good job of that. And, I think this is a very important project because as you can see, you know, development is encroaching from the west, and the photos I have here show the orientation of the currently being completed Mint building, and as you can see the Mint building has a blank wall that's made out of — and is facing our property. And, we feel very confident that —

CHAIRPERSON REID: I'm sorry, Mr. Colbert, what did you say, a blank wall that's what?

MR. COLBERT: This is the end of the Mint building that's currently being completed, and that's the wall that we are going to be going up against with our proposed development.

CHAIRPERSON REID: Okay.

MR. COLBERT: And, this is a drawing showing the

Mint building coming up to this point, and then this is our building here. So, I think that it's a very friendly business, in the sense that it articulates, you know, provides an end to that block, and is very in keeping with the scale and yet it's actually a diminutive version of the large Mint building. It's different articulated, but the massing of it I think helps to complete the block.

Our penthouse here is lower than the Mint penthouse, and actually our permitted 120 foot height is based on the width of 8th Street, and that's to the bottom of the penthouse, but actually the way we have it designed the 120 foot height is actually to the top of the penthouse. So, we are not asking for any variance in terms of height consideration. As a matter of fact, the building is actually lower than permitted.

This is a drawing of our proposed building, and we've designed this with rich materials, we are going to have cast stone banding to give it a historic look, but with some very subtle Oriental suggestions, but we want the building to have a wide appeal so we've given it a kind fo classical look that we think will fit in with the Mint building and the other older buildings in the area.

This is a site plan, and this is our proposed building. There's considerable yard here that in the future may be developed as different options for public space, including possibly a sidewalk café, but at this point, you know, there is a lot of openness around the building, and then there's an alley here that separates us from the existing church.

And, the restaurant entrance will be on the corner,

and then the office building, I guess, will be on the west side of the building.

As this is a facade that's facing north toward the church, and we fully articulated this, we don't have any facades on the building that we are going to consider to be minor facades that we are not going to articulate. We have windows, and brick, and cast stone on all our orientations.

This is a plan of the garage level. We have two levels. And, as Chip correctly pointed out, even though we are asking for a consideration with regard to parking, we actually provide the required number. This is the edge of our property, and so what we are doing is vaulting so that we are going to create ten spaces per level to provide a total of 20 spaces, and the zoning requirement here is 18, given the current uses.

This is the typical floor plan — oh, this is the first floor plan, I'm sorry, this is the entrance lobby, and then the plan is to have a restaurant that will occupy the remainder of the first floor and also the second floor, and we're going to have an opening so that there will be — we are intending to have one restaurant and there will be openness from the first floor to the second floor, and actually I would like to point out that the Starbucks that is also in the other building that they've just completed a two-story restaurant there, and they've been very successful with that.

This typical floor plan I think can tell you, you know, give you an idea of why it's important for us to have the core on one side. This is — we don't have any opportunity for windows here, and

to make — you know, we are only 47 feet wide, to make an office building work you need to have a layer of offices and then a layer for corridors and support staff and so forth. So, if we were required to push the core to the middle of the building we would probably even need a zoning relief for that, because we probably couldn't get the one-to-one setback required because of the narrowness of the building, and it makes sense to have it on the west side because we are abutting a larger structure and we think that that will be the least impact.

The main visibility for this building is going to be, probably one of the most important vistas is as you come out of the Metro station, people that are going to the MCI Arena and the new gallery, you know, development in that area, and from the Metro you come up and you'll see this, so from that perspective it is important for us to have these elevators set back as much as possible.

This is — in order to not make the building, you know, to help ease the scale of the building, the top floor, as Chip mentioned, is going to be set back, so we are going to have a balcony all the way around, and that will help us rehab an alignment here with the Mint. They have a strong cornice line here, and we will also, and then this floor will be set back to kind of reinforce some of the important architectural lines that are created on the block.

CHAIRPERSON REID: Mr. Colbert, going back to the parking, did you say, how many spaces did you say that you are going to be providing?

MR. COLBERT: Twenty, but some of them aren't —

don't qualify as zoning required parking because they are actually public spaces.

CHAIRPERSON REID: Oh, okay. All right.

MR. COLBERT: Because they are in the vault.

CHAIRPERSON REID: Okay.

MR. SOCKWELL: If I might interject, you said that you were providing 18 — you said something about 18 spaces.

MR. COLBERT: And, I'm saying that the zoning computations for this building would require a total of approximately 18 spaces, and we're providing 20, so we feel that from a practical perspective we are providing a ratio. And, if this weren't in the C-3-C Zone, if this were in the C-4 Zone for a lot under 5,000 square feet, zero parking would be required. So, we feel very confident about the actual number of parking that we are providing, in terms of its adequacy with the zoning requirements.

MR. SOCKWELL: All right, because under zoning, as you know, required spaces cannot be provided in a vault.

MR. COLBERT: That's correct.

CHAIRPERSON REID: Right.

MR. COLBERT: That's why we need the relief.

CHAIRPERSON REID: And, if I understand you correctly, to comply with the Zoning Regulations with regard to the parking, there's not enough space there to permit you to comply with —

MR. COLBERT: Yes.

CHAIRPERSON REID: — with — being able to

provide the parking in the building on the designated site, that's my understanding of basically your variance request.

MR. COLBERT: Yes. What happens is, this is a drawing of our garage level, and what we are doing here is, we are providing an elevator for the cars. Unfortunately, because of the ramping, it would be virtually impossible for us to provide a ramp in this building that would allow us to serve two levels of parking, because by the time we are able to provide the ramp itself there would literally be no space left over for parking.

CHAIRPERSON REID: Right.

MR. SOCKWELL: Unless it's motorcycles.

MR. COLBERT: Yeah, exactly. I mean, this is an obviously much more expensive solution than building a ramp, so the owner is not necessarily trying to take the cheap way out. They are really going the extra step to try to, you know, be a good neighbor for the community.

MR. GILREATH: You said that some of the parking would be in public space, I guess in vaults or what have you, do you have to have permission or does this belong to the D.C. government, you say public space, what do you mean public space?

MR. COLBERT: Yes, we have to — the parking will be underground, but it will be underneath what appears to be a side yard to the building, but it's actually public space, and we will have to rent that from the city, and to make a determination that it was feasible to do that we had a surveyor go there and check the location of the utilities to make sure that there were no utilities in that area so that we

could do that.

And, 8th Street is kind of unusual, because the street itself is not extremely wide, but there's a lot of width between the curb and the building property line, so that's what allows us to get this extra space underneath.

MR. SOCKWELL: And, Mr. Gilreath, that's because 8th Street is a vista street.

MR. GILREATH: What kind of street?

MR. SOCKWELL: It's a vista street.

MR. GILREATH: Oh, yes, okay.

MR. SOCKWELL: We had a lot of problems at Tech World.

CHAIRPERSON REID: In regard to the variance relief request under Section 2117.4, which requires that there be accessibility of parking spaces from improved streets or alleys, and instead you are going to provide a car elevator rather than a driveway.

MR. SOCKWELL: That actually — it's still, there's accessibility from the streets, but it's not a ramp, it's an elevator, so they'll drive into the elevator from the private street — from the public street, and then be dropped down to the level of parking, or the two levels of parking.

CHAIRPERSON REID: Thank you, Mr. Sockwell.

MR. SOCKWELL: But, it is accessible from the —

CHAIRPERSON REID: But, that's not my question.

MR. SOCKWELL: Oh, I'm sorry.

CHAIRPERSON REID: A car elevator, what's that?

MR. COLBERT: The way it will work is —

CHAIRPERSON REID: I'm not familiar with that.

MR. COLBERT: — the people that — I think there's one at Ford's Theatre, the people that have these spaces, and this is not — my understanding is this won't be open to the public like a typical garage where, you know, it's operated by one of the larger parking places, the folks that —

CHAIRPERSON REID: I'm just not familiar with a car elevator.

MR. COLBERT: Right. The folks that will be there will have like monthly contracts, and they'll have a clicker, like you have for like a garage door, like a remote thing, and so as they are approaching it they'll push the button and it will call the elevator and open the doors, and then they'll have another button that they can press that will, you know, whether they want to go on the lower level or the upper parking level, it will automatically take them to that level and then the doors will open and they can drive to their parking space.

CHAIRPERSON REID: Oh, okay, interesting.

MR. SOCKWELL: Madam Chair, there are parking elevators primarily in buildings that were designed as parking structures, rather than as residential buildings or as office buildings. And, you just drive on and it takes you up to the floor, it's just a big — it's like a huge hospital elevator, about the same shape.

Mr. Colbert, I need to ask you one question about the vault. Will you go back to the plan that shows the vaulting? Yes.

Now, that vault area is under what?

MR. COLBERT: This is our property line.

MR. SOCKWELL: So, you are vaulting under what would really be what we call parking in the public space?

MR. COLBERT: That's correct.

MR. SOCKWELL: Okay. All right, I wasn't quite sure, I just didn't catch it when you showed it.

MR. COLBERT: Yes. This is our site plan, this is the building itself, and you can see we've got all this area between our building and the sidewalk.

MR. SOCKWELL: Right.

MR. COLBERT: And, it won't extend out beyond that.

MR. SOCKWELL: I used to know the numbers by heart, not anymore, the two component numbers of your public space.

But, okay, so now I understand exactly where all that goes. Okay.

Thank you.

CHAIRPERSON REID: All right.

MR. GILREATH: Can you address the loading berth, there's a question, I think, you are proposing you have a sign in front of the building which would say no parking, loading or something, that's kind of the material and so forth for the building would be unloaded?

MR. COLBERT: Well, most — it's my understanding that most office buildings, when people move in and out, they go through the front door in any case, and so what we propose here is that along the street we would just have a no parking, loading zone

permanently, and so that in instances where that occurs that, you know, trucks would be there on a daily basis, you know, Federal Express, which comes to the front door of the building anyway, would go to that location.

MR. SOCKWELL: The one area about having a curbside loading condition is that it requires public sidewalk to be crossed with the heavier aspects of in and out movement to the building, and that's one of the reasons why loading would be normally pushed to the rear of the building, alley access, loading docks, et cetera. And, while you are quite right that very often offices are moved primarily at night, directly out the front doors, evidenced by K Street and just about everyplace else you can imagine, it does — on that — that is going to be a very strong pedestrian street in the future, with the new buildings that are going up all around you. And, it is something that you would want to be very careful, or the owner would want to be very careful to control in terms of the time of major loading for in and out movement of tenants and material.

MR. COLBERT: That's correct.

One thing I'd like to point out is that we have a designated trash area here, there is an alley behind our building, and we are going to have this driveway to the elevator, so a trash truck can back up here and they can gain easy access to the trash area without disturbing the public.

MR. SOCKWELL: Now, there won't be a rollaway dumpster back up in there, will there?

MR. COLBERT: No.

MR. SOCKWELL: Okay.

That's not a through alley as I recall, is it, or is it?

MR. COLBERT: It's a private alley.

MR. SOCKWELL: It's a private alley, okay.

And, it's designated, Mr. Glasgow, for the use of the adjoining property owners, both, rather than just one?

MR. GLASGOW: I believe it's just for you all?

MR. COLBERT: It's for all three properties.

MR. GLASGOW: For all three properties, the Mint that's located to the west —

MR. SOCKWELL: Usually private alleys are derived of the adjacent properties, not always all of them, but almost always through some agreement, usually dating back to the 1800s, would be designated for the use of certain property owners and not necessarily for certain other property owners. So, you do have access to it?

MR. GLASGOW: Yes.

MR. SOCKWELL: That's all that matters.

MR. COLBERT: There are required emergency egress doors here, so this would always have to remain open.

MR. SOCKWELL: Where?

MR. COLBERT: Back here from the other building.

MR. SOCKWELL: Okay, very similar to a condition on 18th Street that we are dealing with.

CHAIRPERSON REID: Okay.

Any other questions?

MR. GILREATH: No questions.

CHAIRPERSON REID: Did we receive a letter from the ANC on this particular application?

MS. PRUITT: I don't believe so. You have the original file, I have none in mine.

CHAIRPERSON REID: I didn't see one. Let's see, they were noticed in July, and it doesn't appear that we received anything.

MR. GILREATH: I don't recall seeing a letter from the ANC.

CHAIRPERSON REID: Okay. Well, when we don't hear from the ANC we assume that they are —

MR. SOCKWELL: Chinese Consolidated Benevolent Association has written a letter.

CHAIRPERSON REID: — that they are not opposed to the application, and I don't think we have any other government reports.

There's no one here to testify in support of the application, nor is anyone here to testify in opposition.

What letter were you referring to, Mr. Sockwell?

MR. SOCKWELL: There's a letter in the file from the Chinese Benevolent — Chinese Consolidated Benevolent Association at 803 H Street, N.W., stating that this is to — oh, this is just authorizing Wilkes, Artis to represent them.

CHAIRPERSON REID: Oh, okay.

MR. SOCKWELL: Okay.

CHAIRPERSON REID: That's your client.

All right.

Closing remarks by the Applicant.

MR. GLASGOW: I believe we've submitted testimony and evidence to meet our burden of proof, and we would like to have a bench decision if we could, with a summary order.

CHAIRPERSON REID: Okay.

MR. SOCKWELL: I'd like to say, this must be a very important building for Chinatown, because it's a very constrained site, and it's a very limited floor plate. It's requiring numerous unusual and not necessarily inexpensive adjustments to meet your goal, and while at its height it's a very compact building, so obviously the client has a very strong feeling about making a statement in Chinatown for a modern and useful building.

CHAIRPERSON REID: Mr. Sockwell, are you making a motion?

MR. SOCKWELL: I move that we approve the application as submitted.

CHAIRPERSON REID: Okay, and would you speak to how he's met his burden of proof?

MR. SOCKWELL: He appears to have met the requirements, I guess I should go down —

CHAIRPERSON REID: For the special exceptions.

MR. SOCKWELL: — for the special exceptions, I should go down through the specifics. Waiving the rear yard requirements seems to be a reasonable allowance, based on the particular constraints of the site.

CHAIRPERSON REID: And, that's one of the two special exceptions that they are asking relief on.

MR. SOCKWELL: Yes.

The elevator machine room not meeting normal setback requirements, again, would be consistent with the narrowness of the site, and the intention to push it as far and as unobtrusive a location as possible seems to be, without question, a reasonable request.

The variance to have fewer than the minimum number of required parking spaces, based on the difficulty of achieving a typical access route from the street, with the narrowness and small size of the site, which creates particular constraints seems to have been proven as a particular hardship request, and one that has no practicable solution other than an elevator.

The variance regarding access to the required spaces, again, would not be inconsistent with the variance for the number of cars, based on the constraints of the site.

CHAIRPERSON REID: Isn't that being accomplished by that car elevator?

MR. SOCKWELL: Yes, and that the car elevator is an acceptable means of reaching those spaces in this situation, I can believe that they have met the burden of proof, that an elevator is the only practical method of achieving access.

The variance to have less than the one required loading berth, while a more difficult one to deal with for me is proven by the fact that the number of square feet in the floor plate, especially

at the first floor, and the fact that a loading berth might even exceed, I don't know what your — what's your floor to floor from the first to second?

MR. COLBERT: Eleven feet.

MR. SOCKWELL: Eleven feet, pushes the capability of actually getting a truck of any size underneath the structure at that level to a rather interesting feat, perhaps, and I think that all of this is based upon what you have to work with and trying to maximize the amount of space that you can put in the building, keeping the floor plate, floor to floor heights as high as possible, but reasonable enough to get a square footage that gives you an economically feasible building.

So, I agree with all of these.

CHAIRPERSON REID: I would second the motion. I think that also there does not appear to be any adverse impact, which is evidenced by the fact that we don't have any letters of opposition or anyone who appeared here opposed to the application today. So, adverse impact in regard to parking, traffic, noise, lights, or any other nuisance does not appear to be apparent, and I feel that granting the application will not impair the intent and integrity of the Zoning Regulations or the maps.

MR. GILREATH: I would like to commend the Applicant, I think that they've come up with a very imaginative solution to this. I think the compatibility with the adjacent building and so forth, in terms of the architectural style, is very impressive and very compatible, and I would just like to commend them, and I feel that the

variances and special exceptions required are reasonable, and that they are fully justified given the unique narrowness of the lot area and so forth, that they've really done a superb job and I fully support the application.

CHAIRPERSON REID: All in favor?

(Ayes.)

CHAIRPERSON REID: Opposed?

MS. PRUITT: Staff would record the vote as 3/0 to approve, motion made by Mr. Sockwell and seconded by Ms. Reid.

CHAIRPERSON REID: All right, thank you.

MS. PRUITT: And, summary order.

CHAIRPERSON REID: Summary order, and you should have your order in about two weeks.

Okay, and that concludes the day's hearing of the Board of Zoning Adjustment.

Thank you.

(Whereupon, the hearing was concluded at 4:10 p.m.)