GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC HEARING

+ + + + +

WEDNESDAY

JULY 21, 1999

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The Public Hearing convened in Room 220, 441 Fourth Street, N.W., Washington, D.C. 20001, pursuant to notice at 9:30 a.m., Sheila Cross Reid, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

| | |
|---|---|
| SHEILA CROSS REID | Chairperson |
| BETTY KING | Vice Chair |
| JOHN PARSONS | Zoning Commission |

STAFF PRESENT:

| | |
|---|---|
| SHERI PRUITT | Director |
| PAUL HART | Staff |
| JOHN NYARKU | Staff |
| BEVERLY BAILEY | Staff |
| ALAN BERGSTEIN | OCC |

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(9:35 a.m.)

CHAIRPERSON REID: Good morning. The hearing will please come to order. This is the July 21 Public Hearing of the Board of Zoning Adjustment of the District of Columbia. My name is Sheila Cross Reid, Chairperson. Joining me today are Betty King and representing the Zoning Commission is Mr. Parsons. 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. 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 will proceed as follows: the statement and witnesses of the applicant; government reports including Office of Planning, Department of Public Works, ANC, et cetera; persons and parties in support; persons and parties in opposition; closing remarks by the application.

The order of procedure for appeal of applications will be as follows: statement and witnesses of the applicant; the zoning administrator

or other government official; the owner, lessee or operator of the property involved, if not, the appellant; the ANC within which the property is located; the intervener's case; rebuttal and closing remarks by the applicant.

Cross examination of witnesses is permitted for persons or parties with a direct interest in the case. The record will be closed at the conclusion of each case except for any material specifically requested by the Board, and the staff will specify at the end of the hearing exactly what is expected.

The decision of the Board in these contested cases must be based exclusively on the public record. To avoid any appearance of the contrary, the Board requests that persons please not engage the members of the Board in conversation. Please turn off any beepers and all phones at this time so as not to disrupt these proceedings.

At this time, the Board will sit any preliminary matters. Preliminary matters are those which relate to whether a case will or should be heard today, such as requests for postponement, continuance or withdrawal, or whether proper and adequate notice of the hearing has been given. If you are not prepared to go forward with the case

today or if you believe that the Board should not proceed, now is the time to raise such a matter. Are there any preliminary matters? Please come forward.

MS. PRINCE: Alison Prince, here today on behalf of Tudor Place, Application No. -- it is a modification of Application No. 15774. We filed a request for postponement on June 1. It is my understanding from the staff that we will be rescheduled until October, but I was asked to appear today. The reason for the postponement was to provide ample opportunity to work with the community. The community is strongly opposed to our proceeding forward today and we are not prepared to go forward today, but we are prepared to go forward in October.

CHAIRPERSON REID: Okay.

MS. KING: I have no problem. That is fine.

CHAIRPERSON REID: Yes. I think the ANC wanted to have time to meet and to vote on the application.

MS. PRINCE: That is right.

CHAIRPERSON REID: I have no problem with it. Mr. Parsons? Do you wish to schedule a date certain at this time?

MS. PRINCE: I had tentatively discussed a date in early October with Mr. Hart of your staff. I'd like that confirmed so that I can share that with the ANC.

CHAIRPERSON REID: Okay.

MS. PRUITT: We can reschedule it for October 6.

MS. PRINCE: Thank you.

CHAIRPERSON REID: Thank you very much.

MR. MONTGOMERY: My name is Jim Montgomery, and I am here on the case that was originally scheduled for this date, that is Minor Krause, 16443. I wrote a letter stating that I had called on Monday. Mr. Aguglia from Hunt and Williams was supposed to be here also. Should I wait until he gets here?

CHAIRPERSON REID: Who?

MS. PRUITT: Mr. Aguglia is actually -- Mr. Krause is the applicant and Mr. Aguglia is the person in opposition. The applicant is requesting the postponement and it is not necessary that Mr. Aguglia

-- he is aware of it.

MR. MONTGOMERY: Okay, he is not an applicant. I just wanted --

CHAIRPERSON REID: What is your case

number, sir?

MR. MONTGOMERY: 16443.

MS. PRUITT: It is a case that has been rescheduled and it was tentatively put at the end of the agenda. You have a package.

MS. KING: I don't have one.

MS. PRUITT: You had -- that package was already given to you. It should have been along with -- staff should have indicated that you should have brought it, but we did not, and we apologize.

MS. KING: I received nothing about it. I don't even know what you are talking about.

CHAIRPERSON REID: Okay. What does the case involve, do you know?

MR. MONTGOMERY: It involves the extension of parking -- a variance to extend the -- the parking has been extended and this goes back over six years, and we are seeking a variance to make the extension legal.

CHAIRPERSON REID: All right.

MS. PRUITT: And they are requesting a postponement because they are not ready to go forward.

CHAIRPERSON REID: Okay. But I don't see this on the agenda anywhere.

MS. PRUITT: This was a case that we

talked about earlier that you heard -- it started already and then they asked for a postponement and continuing another postponement.

MS. KING: Madam Chair, I would ask the staff if things are not published on the agenda and if they are going to come before us, that they would at least have the courtesy to let us know so that we can bring the appropriate files or understand why we have files that do not appear on the agenda. But also it seems to me that even though it may not be legally required, that if there is time to publish additions to our agenda, even if they are postponements, to publish them again for public notice that it would not be harmful. But at the very least, you and I and the other members should be informed of what is going to be coming before us on any day of any meeting.

CHAIRPERSON REID: Absolutely. I thought we indicated earlier, staff, that we would really like to see any items that we are going to be taking up at the hearings reflected on the agenda, not only for our purposes but also for anyone who happens to come to the hearing room who may want to sit for or to elicit any subsequent hearings that they would be so advised.

MS. KING: I agree entirely.

CHAIRPERSON REID: So I hope that we will have that accommodation, Ms. Pruitt-Williams. Thank you. Now, for the matter that you are referring to, for your case I don't have any problem with it. It has been postponed once already?

MR. MONTGOMERY: Yes.

CHAIRPERSON REID: And the reason why you are asking for an additional postponement is for what -- repeat it again?

MR. MONTGOMERY: Well, on Monday it was not scheduled. I called up and it was not scheduled for today. Another aspect of this, I have here -- and this has been filed with you -- this is a decision and order of the DCRA, the Office of Adjudication, which is pertinent to this case and we are appealing to the Board of Zoning Adjustments. I would like to have -- I wrote a letter requesting that this appeal be consolidated with this case as it covers the same factors, the same properties, and there is a lot of background in here on the issues.

CHAIRPERSON REID: Okay. So the basis is because of lack of notification or preparedness.

MS. PRUITT: Madam Chair, let me clear up. This case was -- this case was already heard twice, so it has been advertised. And the Board's policy has been, since I have been here and prior to

that, that when a case is postponed, the applicant -- we postpone it to a date certain in front of the applicant so we do not have to go back and renotice. Now, we will certainly make the attempt and we will make sure that we put it on your agendas. These agendas are actually published 40 days prior to them coming out. So it is very hard for us to go back and redo the pertinent notice because we don't have that opportunity.

CHAIRPERSON REID: They were -- excuse me, Ms. Pruitt-Williams, they were notified at the public hearing?

MS. PRUITT: Correct. Right.

MS. KING: And when was the public hearing?

MS. PRUITT: The first time they were scheduled was March -- I believe it was March.

MS. KING: There was plenty of time between their being rescheduled in March and your publishing the notice for today's hearing for it to be on there.

MS. PRUITT: April 21.

MS. KING: Even though it is not required to be published on the --

MS. PRUITT: Ms. King, they were heard on April 21. That was the hearing date.

MS. KING: Okay.

MS. PRUITT: And then it was rescheduled from there another time. This is the third postponement.

MS. KING: Well, at least let us know what we are supposed to be hearing, even if you don't let the public know.

MS. PRUITT: Staff understands and notice of that is taken and we will do so.

CHAIRPERSON REID: Also, this is an appeal?

MR. MONTGOMERY: Yes.

MS. PRUITT: No. Actually, that came in just this week.

MR. MONTGOMERY: We just got this on Monday. This case was heard on February 22 at DCRA.

MS. PRUITT: They are just filing the appeal with the office this week.

MR. MONTGOMERY: We just got the decision.

MS. PRUITT: This is a new -- this is in addition to the process. Then came for an application and then they filed an appeal subsequent to their application.

CHAIRPERSON REID: All right. So --

MR. BERGSTEIN: Madam Chair, if -- Mr.

Aguglia is not here. If the applicant wants to consolidate a new appeal with this application, and that is what is being talked about, it seems to me that he should request that in writing and allow Mr. Aguglia a chance to respond. And then the Board could rule upon it. But at this point Mr. Aguglia --

MR. MONTGOMERY: Certainly I would like to have him have an opportunity to respond. I did send him a notice about this, but I would --

CHAIRPERSON REID: I think that that would be the proper procedure to allow Mr. Aguglia, if that is his name, to respond to your submission. And to go ahead and give you another postponement. This being the third, it should also be the last. This has been continued twice?

MS. PRUITT: This is the second time they are requesting it.

CHAIRPERSON REID: The second time.

MS. PRUITT: Right. The third time we are here, though.

CHAIRPERSON REID: Okay. All right. Well, then we will go ahead and -- I have no problem with it if the other Board members have no problem with it.

MS. KING: I'll be gone by that time.

CHAIRPERSON REID: We are postponing it for a date certain.

MS. PRUITT: Why don't we put it on the October 1, so that will allow me to give everybody notice.

CHAIRPERSON REID: That gives enough time to be able to do the notices back and forth.

MS. PRUITT: And we will inform Mr. Aguglia, who is represented by -- who is representing the opposition.

CHAIRPERSON REID: Thank you.

MR. MONTGOMERY: May I ask on the procedure for this consolidation and also the appeal, if it is consolidated, can we avoid the $800.00 appeal fee?

MS. PRUITT: No.

CHAIRPERSON REID: They are two separate issues.

MR. MONTGOMERY: Can we get an extension? 15 days is the limit to file -- to come up with the $800.00 and file the appeal. Can we get an extension of that?

MS. PRUITT: This is an appeal of DCRA's decision?

MR. MONTGOMERY: Yes.

CHAIRPERSON REID: Mr. Aguglia, please

come forward. You just missed discussing this particular case.

MR. AGUGLIA: I apologize for being late. MR. MONTGOMERY: I asked if we should wait.

MR. AGUGLIA: Okay. You are asking for a continuance?

MR. MONTGOMERY: We are, yes.

MS. KING: But he is also appealing the DCRA decision and wants to consolidate the two cases.

MR. AGUGLIA: Well, our feeling is that this is -- I am trying to put it politely, just a stall tactic or delay tactic. He has asked for a medical variance, and Ms. Reid said there is no such thing as a medical variance. So he asked for more time to submit opposition -- an opposition to our various briefs that we filed in this case. Absolutely nothing has been filed. Nothing. We then got the decision on Monday from the Attorney Examiner who stated that there were infractions and there were violations and that there was a fine and a penalty, and I had that submitted to the Board on Monday. So our feeling is --

MS. KING: I remember this case.

CHAIRPERSON REID: Yes. Let him

continue.

MR. AGUGLIA: So this is an attempt -- the illegal pads have already been constructed. They have already been constructed. This is an attempt to try to get some sort of retroactive relief, which I don't believe is permissible either. I don't think he has the grounds for a variance and I don't think he has the grounds to get some sort of a retroactive application of this. And I think this is just a delay tactic to keep the illegal pad there so they can use it for additional parking for people who are living in the house, and it is just another attempt to continue this illegality. We would prefer to go forward and have the case heard.

MR. MONTGOMERY: I would like to say we only received this on Monday. We have been waiting for this opinion and we only got it on Monday, two days ago. It is 15 pages long. What is in here is relevant to the application for a variance. So that is why we are asking that it be consolidated -- the appeal be consolidated with the variance.

MS. KING: Mr. Aguglia, what do you want? We know what he wants us to do. What do you want us to do?

MR. MONTGOMERY: Are you speaking to me?

MS. KING: No, I am speaking to Mr.

Aguglia.

MR. AGUGLIA: Does the Board have jurisdiction to hear or entertain the appeal of the infraction? Does this Board?

MS. PRUITT: Yes, they do. We have not scheduled civil infractions for a while. We have a few to do.

MR. AGUGLIA: They do. I personally think it has -- one does not have anything to do with the other. I realize the Board is interested in economy. I realize that. But I don't think one has anything to do with the other. He was cited for not going to -- not getting a building permit and not going to the BZA for the variance and not going to HPRB in order to get approval to do the permit work because it is in an historic district.

MS. KING: It is in an historic district?

MR. AGUGLIA: Yes, it is in the Cleveland Park historic district. So none of those were followed in the extension of the legal pad. So that to me seems to be very different from the request to have a variance based upon the three criteria which he cited, and no support for any of it.

CHAIRPERSON REID: If I recall

correctly, it was -- the application was in effect for a medical variance, and we discussed that and said that was inappropriate and that you would have to compile a case predicated upon the typical or usual basis for a variance request or variance relief, and that is what your case is supposed to be built upon. Have you done that?

MR. MONTGOMERY: It has been -- well, let me say first with respect to this case, the pads -- there was an oral approval given in 1993. This has been going on for --

MS. KING: An oral approval by whom?

MR. MONTGOMERY: Someone in the building office.

MS. KING: There is no such thing in the District Government as an oral approval.

MR. MONTGOMERY: No. What I wanted to point out is that the pad was --

MS. KING: It doesn't exist, sir.

MR. MONTGOMERY: I wanted to point out that the pad was, in fact, extended with the understanding that it was approved.

MS. KING: Have you filed an affidavit with us from the person who gave you that oral approval saying that he approved it -- he or she approved it?

MR. MONTGOMERY: No. We have an affidavit from Mr. Krause that he did get the approval. But I wanted to point out that this has been going on since 1993, six years, and we would like --

MS. KING: Madam Chair, I would suggest that we consolidate this whole case and hear it on the 1st of October and dispose of it then. But there will be no further postponements. Any further requests for postponements, it seems to me, of either the appeal or the case itself should lead us to dismissal of the matter, if we can.

CHAIRPERSON REID: Well, I would agree that given the fact that there seems to be a lot of loose ends to this particular case, that we give one additional extension until October 1 --

MS. PRUITT: It is October 6, I am sorry.

CHAIRPERSON REID: October 6. And that is the end of any further extensions. So everything can be taken care of at that time.

MR. AGUGLIA: Will the cases be consolidated at that point?

CHAIRPERSON REID: The cases -- I have no problem with the cases being consolidated.

MS. PRUITT: That will give us enough

time for a notice too. Because, I mean, we just got the application.

CHAIRPERSON REID: Right. Right. For more efficient use of our time, it would be so done -- that we would consolidate.

MS. PRUITT: We can do so, yes.

MR. AGUGLIA: Has an appeal actually been filed?

MR. MONTGOMERY: I filed it.

MR. AGUGLIA: Was there -- I mean an appeal to consolidate it.

MR. MONTGOMERY: Not in the formal sense. We have to pay an $800.00 fee.

MR. AGUGLIA: I mean, at this point -- once it comes in what you are saying is that you don't object to consolidation. There is nothing to consolidate at this point because there is no appeal.

MR. MONTGOMERY: No. I filed a notice of appeal, but it has to be on your form and I didn't have your form. We will file it.

MS. PRUITT: Excuse me, Mr. Montgomery. Is that correct?

MR. MONTGOMERY: Yes.

MS. PRUITT: So let me just be sure. You filed -- did you file an appeal at the front

desk including your fee?

MR. MONTGOMERY: No. The fee has not been paid.

MS. PRUITT: So we really don't have a case to consolidate. Until we get that, we don't give it -- it is not a case in this office.

MR. MONTGOMERY: Well, can we get a ruling subject to filing within the 15 days?

MS. PRUITT: That is up to the Board. But you would need to then file an appeal for civil infraction.

MR. BERGSTEIN: Why don't you -- well, what I would suggest -- because you can't consolidate something that hasn't been filed yet. What I would suggest is that when he files the appeal that it be accompanied by a request for consolidation. Mr. Aguglia, you don't oppose that?

MR. AGUGLIA: Given the Board economy of time, I will not oppose.

MR. BERGSTEIN: All right. So it would be an unopposed request for consolidation. At that point, it could be consolidated and he understands the hearings would be held together on that date. Is that a --

CHAIRPERSON REID: All right. That is fine with me.

MS. KING: And, Madam Secretary, since I will not be hearing any new cases after the end of September, I will come back to finish this case. Therefore, I would like it to be the first case -- we have a meeting in the morning and then start the hearing in the afternoon?

MS. PRUITT: Correct.

MS. KING: Would you be kind enough to schedule it as the first case?

MS. PRUITT: Yes.

MS. KING: So that I don't have to hang around all afternoon.

MR. MONTGOMERY: I have another procedural question. That is on filing a brief. We have permission to file a brief?

CHAIRPERSON REID: You are asking if you have permission? You mean your pre-hearing submission?

MR. MONTGOMERY: Yes.

CHAIRPERSON REID: Sure. Sure. Just make sure that you are within the time frame as far as Mr. Hart. Meet with him -- confer with him after the hearing to determine when you have to have your submissions in.

MR. MONTGOMERY: With Mr. Hart?

CHAIRPERSON REID: Mr. Hart is the

gentleman sitting right beside Ms. Pruitt-Williams. He is the --

MR. MONTGOMERY: So I should check with him later?

CHAIRPERSON REID: Yes.

MS. KING: But we will be hearing both cases. And therefore, as you know, there is no such thing as a medical variance, sir. You've got to make your case, which you failed to do before. This is your opportunity to make your case.

MR. MONTGOMERY: Yes, on additional variance arguments. Thank you.

CHAIRPERSON REID: Thank you. Mr. Aguglia, thank you very much. Are there any other preliminary matters? Does the staff have any preliminary matters?

MS. PRUITT: Actually, they were handled. CHAIRPERSON REID: All right. Thank you. Please call the first case of the day.

MR. HART: The first case of the morning, 16471, which is an appeal of 1300 First Street, L.L.C., pursuant to 11 DCMR 3105 and 3106, from the administrative decision of the Zoning Administrator to issue a building permit No. B00183471, for a sports bar and restaurant for 190 seats, "not sexually oriented", the appellant will

be affected by the proposed use and the lack of parking and loading space in a C-3-C District at premises 33 New York Avenue, N.E. (Square 671, Lot 27). Will those persons planning to testify please come forward and take the oath?

(WITNESSES ARE SWORN.)

MS. KING: Madam Chair, I have two separate maps showing where this plot is. Did you notice that? That the one supplied by -- I believe by Mr. Sher -- is yours the one with the black arrow? And then we have another one with a yellow. Which plot is this?

MR. SHER: I supplied -- for the record, my name is Steven E. Sher, the Director of Zoning Services, with the Law Firm of Wilkes, Artis, Hedrick and Lane. I believe that the one in your left hand is the one that we had included in our statement of the Appellant.

MS. KING: With the arrow?

MR. SHER: With the arrow. That is correct.

MS. KING: Because this plot is the one that is in yellow on something that was also in my file.

MR. SHER: That is not ours.

MS. KING: Exactly which lot is it?

CHAIRPERSON REID: Oh, gee. That is not -- you see, right here. This has been highlighted in yellow and that one as well.

MS. KING: No, but you see Steve is saying that this is the plot. Would you come forward and tell us exactly where we are?

CHAIRPERSON REID: Is it number -- what is the number on the lot? On the Square?

MR. SHER: The building is 33 New York Avenue, and it is I believe correctly the one that we have identified with the arrow. It runs through from New York Avenue to N Street. There is a building on the lot and then there is an open area adjacent to the building on the west side of the building. But this is the lot here. I do not believe this one is correct.

MS. KING: So they own this whole thing?

MR. SHER: Yes.

MS. KING: Including this blank space?

MR. SHER: Not this.

MS. KING: But not that. Okay.

CHAIRPERSON REID: Okay. Show me, Mr. Sher, which one --

MS. KING: What he is saying is that this is what they own.

CHAIRPERSON REID: And that has that

circle around it?

MR. SHER: It is not this.

CHAIRPERSON REID: Okay. Then who highlighted that?

MS. PRUITT: That was done by Mr. Nyarku. I am going to get him now.

CHAIRPERSON REID: Speak up, please. Because we don't have the PA system. So you have to subject your voices. Put a circle around exactly what parcel we are discussing here this morning, sir.

MR. SHER: It is one lot.

MR. PARSONS: Okay, what is this area?

MR. SHER: That represents the lot itself. That is the tax plat and the other is the Sandborne Atlas plat that shows where the property is with the building on it.

CHAIRPERSON REID: Speak loudly and give your name.

MR. GELL: My name is Steven Gell. I am representing the lessee of the property. This is lot 27. There is a building and a vacant lot which is used for parking, and that is shown perhaps a little bit better on this diagram, which Mr. Sher received.

MS. KING: Do you have multiple copies

of that?

MR. GELL: Yes, I do.

CHAIRPERSON REID: Give it to staff, please.

CHAIRPERSON REID: It is actually two parcels that have been combined -- two lots --

MR. SHER: It is just one lot. It is one lot 27. There is a building and an open area on the same lot.

MR. GELL: One of the maps does not show the building. It just shows the whole lot.

CHAIRPERSON REID: All right, maybe get that and give that to staff.

MR. GELL: This one shows the building separate from the lot.

MR. SHER: That yellow highlighting is wrong.

MS. BAILEY: Madam Chair -- excuse me, Madam Chair. The information that is being discussed is not being heard by the audience and there are some members of the audience who are interested in the case.

MS. KING: I can't hear a word you are saying, Beverly.

CHAIRPERSON REID: What she said is that the discussion heard at the dias was not picked up

by persons in the audience who are interested in the case. And basically what we were doing was that there was a problem with the plat map and the Sandborne map, where the wrong lot on the square was identified. So we were getting a clarification as to exactly what plat we were talking about. And Mr. Gell submitted for us a more distinctive plat that implicitly shows to us exactly where the parcel is and where the property is located. And what it is is a building and a lot combined.

MR. GELL: That is correct.

MR. BERGSTEIN: Excuse me, is there any way for the record that we could just mark it somehow so that we know what that document is? Either put an A on it or something so that we all know what that document is?

MS. KING: It has --

CHAIRPERSON REID: Exhibit A.

MR. BERGSTEIN: Or describe it somehow so that --

MS. KING: It is a fax dated 6/28/99 from Rudnick-D.C. And it is two pages.

CHAIRPERSON REID: And we will mark it Exhibit A.

MR. GELL: You have two exhibits, I think. One from Mr. Sher and one from us.

MR. SHER: There is yet another exhibit that I think the staff prepared that showed that property highlighted in yellow which didn't have the right property on it.

CHAIRPERSON REID: Ms. King stated that it is a fax from Rudnick-D.C. indicated at the top that distinguishes this particular --

MR. GELL: That is correct.

CHAIRPERSON REID: The picture from the other, and this is the one that we are using. We are all on the same page with this?

MS. PRUITT: Madam Chair, this is going to be part of the record and it will be logged in and have its own exhibit number.

CHAIRPERSON REID: By exhibit number. Okay.

MS. PRUITT: So it will be identified. I don't know where it will be --

CHAIRPERSON REID: Separately. Okay.

MR. SHER: Madam Chair and members of the Board, again good morning. My name is Steven E. Sher. I am the Director of Zoning Services with the Law Firm of Wilkes, Artis, Hedrick and Lane with Norman N. Glasgow, Jr. We represent the Appellant in this matter, 1300 First Street, L.L.C.

What is before you is the appeal of the

issuance of a certificate of occupancy for the building at 33 New York Avenue, N.E., which is located on the south side of New York Avenue between North Capitol and First Streets, N.E. The certificate of occupancy was issued on March 8, 1999. The C of O number is B00183471, and it allowed the use of those premises, 33 New York Avenue, N.E., as a sport bar and restaurant, 190 seats, "not sexually oriented". We have submitted a statement of the Appellant to the Board. We filed that two weeks ago, and I hope you have that in your package. The application for the certificate of occupancy is marked as Exhibit B of that statement, and the certificate of occupancy itself is marked as Exhibit C to that statement.

We are here this morning challenging the issuance of that statement. We believe that the Department of Consumer and Regulatory Affairs acted in error in issuing that certificate of occupancy, and we have a number of bases that we would like to present to the Board this morning indicating why that C of O was issued in error.

Basically, one, we believe that the use does not comply with the off-street parking requirements for that particular location and that particular zone. Two, we believe the use does not

comply with the off-street loading requirements for that use in that zone. And three, we believe that there are errors on the face of the certificate of occupancy which render it invalid.

In order to hopefully try and simplify my discussion of the parking and loading requirements, I would like to hand to the Board two pages which summarize the parking and loading requirements, and this is taken exactly from the statement. It is no new information. It is just a summary of what we provided before.

Madam Chair, I don't see anybody here from the Zoning Administrator's Office, or I would hand them one too.

MS. PRUITT: We called them last week and sent several letters. Mr. Hart is trying right now. So it was our understanding that somebody was going to be here.

CHAIRPERSON REID: That being the case, Ms. Pruitt-Williams, do you recommend that we continue without a representation from the Zoning Administrator's Office?

MS. PRUITT: That is --

CHAIRPERSON REID: Mr. Bergstein --

MS. PRUITT: They can choose not to defend it.

MR. BERGSTEIN: They are not here. They proceed at their own risk by not being here.

MS. PRUITT: They have been more than adequately notified.

MR. SHER: Okay. Let me then go to the substance of our arguments. With respect to the off-street parking requirements, the first page of the sheet that I just handed you. The zoning regulations specify that for a building built before the effective date of the zoning regulations, May 12, 1958, when the use of the building is changed, parking is required to the extent that the new use requires more parking spaces than the previous use. That is in Section 2100.4 of the regulations, and I have provided that section in its entirety under Tab D of our statement. So the exact language is there for you to see.

This is a building that was built prior to May 12, 1958. From the certificate of occupancy application, again Exhibit B to the statement, the previous use of this premises was for offices. The proposed use is a sports bar and restaurant 190 seats. The square feet occupied, 18,000 square feet. And that is taken from, again, the C of O application, line 12, proposed occupancy load, 190 persons, square feet occupied, 18,000.

Under the parking requirements of the zoning regulations for a C-3-C district, office use requires one parking space for each 1800 square feet in excess of 2,000 square feet. Again, I have provided the exact language of the regulations under our Tab E, the schedule of parking requirements. Retail requires parking spaces at the rate of one space for each 750 square feet in excess of 3,000 square feet. So for an 18,000 square foot building, the office requires 9 spaces, 18,000 minus 2,000 divided by 1800 equals 8.89 or rounded up to 9. The retail requirement, the requirement applicable to a restaurant is 20 spaces. 18,000 minus 3,000 divided by 750 equals 20 spaces. The difference, therefore, that the restaurant requires more than what the office required is 11 spaces. 20 required for the retail/restaurant, 9 required for the office, and the difference is 11. In other words, this use, while it was not required to provide any parking when it was an office building, now is required to provide 11 spaces when the use is changed to a restaurant.

By observation, there is parking on the New York Avenue and N Street sides of the building, and there are photographs of the building. They are attached as our exhibit under Tab I, and you can see

striped spaces to park on both the N Street and New York Avenue sides of the building, but that parking is in public space. The building comes all the way to the lot line and therefore that parking cannot be counted to meet the requirements of the zoning regulations. There is no off-street parking currently provided on that outside area of the lot. If you look at the second photograph or the second page of photographs under Tab I, there is a photograph of that open area. It is gated. It is not striped. It is not lined. It is not even suitable for parking if you look at the way the pad sits in that lot. This photograph was taken on March 15. I have a photograph that I took two days ago and the condition hasn't changed any. There is no parking provided on the outside area of that lot. There was no parking provided -- there was no indication when the certificate of occupancy application was filed and approved by the District that they inquired as to whether parking was required. There is no information attached to the C of O application or on record in the Department of Consumer and Regulatory Affairs indicating that they asked whether parking was to be provided or that parking was to be provided.

As a consequence, this building which is

to provide 11 off-street parking spaces doesn't appear to have any, and we believe that that is an error on the part of the District in approving the certificate of occupancy application for a restaurant use on this premises.

The second argument, and it is a similar argument, relates to the off-street loading requirements. That is the second page of the two that I just handed you. Again, a building built before the effective date when the use of that building is changed, loading is required to the extent that the new use requires more loading berths than the previous use. And again, I have attached that section, 2200.4, to our statement. It is under -- let me get the right tab here -- it is under Tab K to the statement -- I am sorry, it is under Tab J, which is the authority, and then Tab K is the actual schedule of loading berths.

If you look at the schedule of loading berths in 2201.1, office use requires 1 30-foot deep berth and one service delivery loading space for a building with between 30,000 and 100,000 square feet. This building is less than 30,000 square feet. So office use required no loading berth or service delivery space. Retail or service establishment with between 8,000 and 20,000 square

feet requires one 30-foot berth and a service delivery space. So for our 18,000 square foot building, again, the office requires no loading berth but retail requires one and one service delivery space. The difference is that one berth and one service delivery space. There is no loading indicated as being provided anywhere on the outside of the building. There is a roll-up door on the N Street side of the building. I have no idea what goes on inside the building. There is no information provided in the certificate of occupancy application indicating in any way that loading is provided which meets the requirements of the regulations -- a 30-foot wide berth and a service delivery loading space.

So in that respect, we believe that the District erred in issuing a certificate of occupancy without requiring loading as provided for in Chapter 22.

In addition to that, we believe that the certificate of occupancy is invalid on its face for two reasons. Number one, the certificate of occupancy application -- and again, that is under Tab B -- lists the property as being Lot 27 in Square 617. The certificate of occupancy issued is for Lot 27 in Square 617. Unfortunately, this isn't

square 617. It is Square 671. So on its face, the C of O is invalid. Beyond that, the certificate of occupancy application indicates that the property is located in a CM-1 zone. The certificate of occupancy issued says that the property is located in a CM-1 zone. That is curious in and of itself because the property has never been in a CM-1 zone. From 1958 until 1997, the property was in a CM-3 zone. If you look at the zoning map under Tab L, it shows the property. And again, we have drawn an arrow to the subject square showing that the property is in a CM-3 or was in a CM-3 zone. By Order No. 821 dated August 4, 1997, effective September 26, 1997 -- and that is under Tab M of our statement -- the Zoning Commission rezoned this property to C-3-C. So at the time the certificate of occupancy application was filed and at the time the certificate of occupancy was issued, the property was not zoned CM-1, nor was it zoned CM-3. It was zoned C-3-C, and had been so for about a year and a half. The District erred in issuing a certificate of occupancy based on the wrong zone and applied -- I don't know what parking and loading standards they applied, but they clearly didn't apply the correct ones. Because they didn't know what the correct zoning was for the property.

It is, therefore, our view that the Department of Consumer and Regulatory Affairs erred in issuing the certificate of occupancy, that the certificate of occupancy should be revoked, and that the Department should be directed not to issue a new certificate of occupancy until the applicant, therefore, can demonstrate that they meet all of the requirements of the zoning regulations, including both off-street parking and off-street loading.

CHAIRPERSON REID: Thank you.

MS. KING: I have no questions. Mr. Sher's argument seems very clear to me.

CHAIRPERSON REID: All right.

MR. BERGSTEIN: Could I ask Mr. Sher a question?

CHAIRPERSON REID: Yes.

MR. BERGSTEIN: Could I look at Section 2100?

CHAIRPERSON REID: What tab is that, Mr. Sher?

MR. SHER: It is Tab D, I believe.

MR. BERGSTEIN: And I am looking at -- this building was constructed before 1958?

MR. SHER: That is correct.

MR. BERGSTEIN: You are presuming that Section 2100.4 applies to buildings constructed

before 1958. And I just would like to hear why you believe that that is true. I am not saying that it is one way or the other. But when I was looking at this section, I was also looking at Section 2100.6 and 2100.7, which deal very specifically with changes in intensity of use of buildings constructed before 1958. And the section 2100.4 doesn't call out buildings constructed before 1958, and also speaks of required uses -- speaks to required uses. So I would be interested in knowing why you believe that that section does apply to buildings constructed before May 12, 1958.

MR. SHER: Well, I'll answer that in two ways. Number one, it doesn't say that it doesn't apply to a building built before or after 1958, so I believe it is intended to apply to all buildings, number one. Number two, it has been my experience in almost 30 years of practicing at this stuff that that section has been applied to all buildings, both those built before and after. So that you are not required to provide parking for a building built before 1958 if you don't change the use. When you do change -- and that, I believe, comes out of 2100.1, which says all buildings and structures erected after May 12, 1958 shall be provided with parking. 2100.4 says when you change the use of the

building and that use requires more parking spaces. So there are circumstances where you change the use and you don't have to provide parking. If I change the use from office to a use which required less parking, I am not required to provide any. If I changed it to a use which required the same number of parking spaces, I am not required to provide any. However, when I change it to a use which requires more parking, then I have to provide the difference between that which would have been required for the office building and that which is now required for my new use.

MS. KING: And in this argument, do you cite also 2100.6 and 2100.7?

MR. SHER: Well, 2100.6 and 2100.7 talk about changing the intensity of use rather than changing the use itself. So that if I had an apartment building that had 100 units and I reconfigured that apartment building so that I had 150 units -- I haven't changed the square footage of the building, but I have changed the number of units in the building and the number of units is the indicator for the number of required parking spaces.

MS. KING: So this change from an office use to a sports bar use is changing the seating capacity in 2100.6 and the intensity of use in

2100.7. MR. SHER: Well, the only reason I wouldn't say it changes the intensity of use is that for parking purposes, the indicator of the number of spaces is the square footage. The square footage of the building doesn't change going from office to retail. So in that respect --

MS. KING: But the seating capacity in 2100.6.

MR. SHER: Well in office, there was no indication of seating capacity. So I don't know how many people worked in the building.

MS. KING: Okay.

MR. SHER: The indicator for parking is square footage. That didn't change. So I wouldn't say that the intensity of the building changed, whereas I might if it had been the number of apartment units in the building. But in this case, the use itself changed. It changed from office to restaurant. And that, I believe, is covered not by 2100.6 and 2100.7, but by 2100.4. Frankly, if the Board were to rule somehow that no parking at all is ever required for a building built before 1958, 99 percent of the time I would stand up and applaud. Because that works to my benefit and my clients' benefits almost all the time. That is not the way the regulations have ever been read before. I don't

even think that Mr. Gell would argue that he is out of that issue. But if the Board wants to go there, please do so.

CHAIRPERSON REID: Okay. Any other questions?

MR. BERGSTEIN: No, that is the only question I had of Mr. Sher.

CHAIRPERSON REID: All right. No word from the ZA's office?

MS. PRUITT: Yes. Staff did call and spoke to Ms. Dennis, and she remembered the call and they are not sending anybody.

MS. KING: I can't hear you, Ms. Pruitt-Williams.

MS. PRUITT: Staff called and spoke with Mrs. Dennis. They are aware of the case and they were aware of the calls and that we had called them several times, but they are not sending a representative.

MS. KING: Okay.

CHAIRPERSON REID: Okay. The owner or operator of the property?

MR. GELL: I am sorry, did you call me?

CHAIRPERSON REID: Yes, the owner or operator?

MS. PRUITT: Mr. Gell is representing

the owner.

CHAIRPERSON REID: Okay.

MR. GELL: Madam Chair and members of the Board, my name is Steven Gell and I am representing the lessee of the property. With me -- behind me is Mr. Robert Bell, who is the lessee, and his partner, Mr. Richard Merritt. And seated next to me is Ms. Gladys Hicks, who is the former Deputy Zoning Administrator. I would at this time ask the Board to accept Ms. Hicks as an expert witness. If the Board would like, I would be glad to go through her background and her resume. It might actually enlighten the Board as to the quite extensive background that she has in this field.

CHAIRPERSON REID: Just one second, please, Mr. Gell. Mr. Sher, did you wish to comment on that last point?

MR. SHER: Madam Chair, I don't think I am in any way going to stand up here and challenge Ms. Hicks' knowledge of the zoning regulations as probably second to mine in the District of Columbia. However, Ms. Hicks was in the Zoning Administrator's Office for many years. She was the acting zoning administrator until I am not exactly sure when and was the Deputy Zoning Administrator. Before she left the District Government, she was in the

Department of Consumer and Regulatory Affairs at the time that this certificate of occupancy application was considered by the Government. I don't know what role or whatever Ms. Hicks may have had in that consideration, but I've got some real problems with her appearing as an expert witness on behalf of someone who is now challenging the decision made by that same department.

MS. KING: Is it true, Ms. Hicks, that you were employed at DCRA in the Zoning Administration when this certificate of occupancy was considered?

MS. HICKS: I have been employed -- well, I was employed with the Department of Consumer and Regulatory Affairs Building and Land Regulation Administration and Zoning Division from January 18, 1982 until July 18, 1999.

MS. KING: Oh, so just a few days ago.

MR. GELL: Yes. She retired, I think, from the second --

MS. HICKS: It was effective June 18 -- on June 18.

MS. KING: And what is the date of the certificate of occupancy?

MR. SHER: March 8, 1999.

MR. GELL: Ms. King, may I comment on

this, please?

CHAIRPERSON REID: Just wait one second. I need to get a reading as to whether or not -- does it matter whether or not whether she was actively involved directly in this particular proceeding or this particular certificate of occupancy, or by virtue of the fact that she was employed there, would that render her not able to participate in this particular case.

MR. BERGSTEIN: Let me ask Mr. Sher a question. Your objection does not really go to her qualifications as an expert but to the weight that the Board should accept her testimony given the fact that she was an employee of the agency at the time that the certificate was issued. There are experts who do testify who are employees of in fact the same party who is a party in the case. That doesn't disqualify them from being an expert. It goes to the weight that is given their testimony.

MR. SHER: I think I have an objection that goes beyond that. As a -- well, she was an employee of the Department of a ruling that she now seeks to challenge, and she was in the Department at the time that that ruling was made and arguably has some responsibility for the administration of the zoning regulations. I don't know to what extent she

may have contributed to the ruling or not. All applications for certificates of occupancy and building permits go through the Zoning Administrator's office and are ruled upon by employees of that office, including the Deputy Zoning Administrator and the still acting Zoning Administrator, Mr. Lorenko. I just don't --

CHAIRPERSON REID: Why don't we get clarification from Mrs. Hicks. Were you directly involved in this particular certificate of occupancy to your recollection?

MS. HICKS: I am positive that I was not involved. The street address is not familiar.

CHAIRPERSON REID: Directly.

MS. HICKS: Directly or indirectly.

MS. KING: You were not supervising the people who --

MS. KING: I was supervising, but the -- well, the individuals who review the building permits and the certificates of occupancy, they are not always sitting in the Zoning Administrator's office. They are in the permits division where permits are processed.

CHAIRPERSON REID: So to your recollection, you don't have any knowledge of this particular application for a certificate of

occupancy?

MS. HICKS: No, I do not.

CHAIRPERSON REID: Mr. Gell?

MR. GELL: Ms. Reid, in fact I was concerned about this when I first talked to Ms. Hicks, because I am fully aware of the federal law that says that a person who leaves Federal or District employment cannot testify ever on something in which they were personally and substantially involved. And for I think it is one -- perhaps that is two years now, I think -- on matters that were under their jurisdiction. So we went into the question into whether the people who made the decision -- and I think Mr. Toa Bello actually signed the application -- was reporting to her with respect to these matters. And apparently on this, that was not the case. Mr. Armondo Lorenko at that time was the acting Zoning Administrator. And Ms. Hicks, while she had the title of Deputy, she had some very special duties that did not involve this matter. So it was our judgment that in fact she had not violated any federal statute, nor should she be disqualified on the basis that she was in the office at the time. She had no personal knowledge or supervision authority.

MS. KING: If she has no knowledge of

this, what is she going to testify to?

MR. GELL: I have asked Ms. Hicks to testify as to the practice in the office on how these calculations are made. I think it is crucial to the Board to find out what the history is on how you make the calculation of how much parking is needed. Our view is very different from Mr. Sher's as to the proper way to make the calculation. She has also, as an expert, viewed the site and has some comments to make about the site itself and how it complies with the zoning code. So I would be happy to present her testimony.

MR. SHER: I don't really want to drag this out, Madam Chair, but I have a serious objection to the Board accepting the testimony of Mrs. Hicks. I just don't see how someone who was responsible for supervising that office and who for a significant period of time was the acting Zoning Administrator for the District of Columbia and who had the ultimate responsibility to interpret and apply the regulations, who supervised among others Mr. Bello, who was the person who actually ruled upon the C of O or who signed off on the C of O application can now turn around and appear and challenge a certificate of occupancy issued while she was still an employee of that office. That is

up to the Board to decide.

MS. KING: I agree with Mr. Sher.

MR. PARSONS: I agree with Mr. Sher completely.

MR. GELL: May I?

CHAIRPERSON REID: Okay.

MR. GELL: Ms. Hicks is not challenging the certificate of occupancy. She is, in fact, supporting the certificate of occupancy. Mr. Bello or nobody from the Office of Zoning is here to provide testimony. There is not -- Mr. Sher has not pointed to any violation of federal law or any case that says she cannot appear or anything other than his own feeling that she can't be an expert witness on this case. And I would respectfully submit to the Board that that has never been the test of whether somebody could come back as an expert witness and testify. There is a very precise law on the subject.

MR. PARSONS: I cannot construe this as anything more than her defending herself. She should be up here on the other side. She is going to be defending a decision that was made by her staff while she had jurisdiction over it.

MS. KING: I completely concur.

MR. PARSONS: And I just don't think we

should proceed.

MS. KING: I agree.

CHAIRPERSON REID: Okay. I think that basically it is the feeling of the Board that it would not be -- while it may be legally appropriate, from an ethical aspect it perhaps would not be --

MS. KING: I am not sure that that is true either.

CHAIRPERSON REID: What I was saying, Ms. King, is that I am not sure. And as such, rather than to -- if we are going to err, I am going to err on the side of caution in this regard. That does not preclude you from being able to use or the applicants to be able to give us the information that is needed in order to make your case. But I think that the idea of Mrs. Hicks testifying here today is not going to set well with this Board. So you will have to proceed without her as an expert witness. And understand that it is a call that we are making, which is basically our gut feeling as to which way to proceed with this.

MR. BERGSTEIN: I am just thinking out loud, I guess. But if he is calling her -- first of all, I am not even sure it is expert testimony. There are two things the proffer has been about. One is what the procedures were at the Office of

Zoning at that time. And second, I guess, an opinion with respect to interpretation of zoning procedures. The first part of that, which is purely factual, I don't know -- the Board may want to consider whether or not, since Ms. Hicks was an employee at that time, why she could not be called as a fact witness just to state her recollection of what that procedure was. The rest of the issues, the expert issues, the Board may consider in another aspect. But if someone is a past employee and a party simply wants to know what the practices were at that time and what her observations were, I would think that anybody could call Ms. Hicks in that capacity. The expert issue is I think something else. But, Mr. Sher, I don't know if you want to respond to that. It seems to me that a party has a right to call either a past employee or a future employee if they want to illuminate an observed process as opposed to giving opinions on that process.

MR. SHER: Well, I think it is pretty clear that Mr. Gell, on behalf of the operator of the business, is calling Ms. Hicks in an attempt to argue against the appeal and in support of the decision of the Zoning Administrator. I just don't think that you can take her as an independent expert

having, you know, vast experience in the area, which I don't quibble with. Obviously, she was in the office for a lot of years. If she doesn't have a lot of knowledge, she shouldn't have been there. And I am not going to argue that. But I just don't think under the law -- and I don't have -- I was not prepared for Ms. Hicks this morning and I don't have that section of the law with me. Mr. Gell alluded to it, and I almost think he said it himself. That while she may not -- if she was personally and substantially involved in a matter -- and believe me, I know that law very well because I have had to deal with it for as long as I have been outside this government. You cannot ever come back before the Government on behalf of a private party, no matter how long it takes. There is another provision of the law, and I think Mr. Gell alluded to it, that says for some period of time, and I thought it was one year at the time that I left the Government, but since that was thousands of years ago it may have changed some, that if there was something in the office that I was not personally and substantially involved with but was still pending under the official responsibilities of the office that I supervised, I could not participate in that matter on behalf of another private party either. That

period of time has long since past, but I have always -- I mean, you have never seen me down here on a matter that somehow had any bearing on something that was there while I was here. I just don't see how Ms. Hicks can appear before you this morning, expert or non-expert, to illuminate or not illuminate, if she is appearing as -- I will call it loosely an advocate or on behalf of a private party in a matter involving the District Government. I am not the lawyer around here but --

MS. KING: That was a case that was under her supervision when it was decided.

MR. BERGSTEIN: That is a separate issue.

MS. KING: I totally agree with Mr. Sher. As a former government employee myself I know I followed this question of what you can and can't do. I think it is clear.

MR. GELL: Well, Ms. King and Ms. Reid, if I may, the case was not under her official supervision. Therefore, she does not violate the law. I know Mr. Sher would be the first to admit that he is not an attorney and doesn't want to make legal judgments. In fact, he doesn't even have the language in front of him. I would be happy to make

that available. I am willing to put Ms. Hicks on as somebody who has knowledge about the way interpretations were made. If I had --

MS. KING: Excuse me, Mr. Gell. Are you arguing that she was not the eventual supervisor of the person who issued this certificate of occupancy?

MR. GELL: What I am saying is the language doesn't say that.

MS. KING: I want -- was she --

MR. GELL: But that is not what the language says.

MS. KING: Was she in the line of command? Was she superior to and had control over the section that gave the certificate of occupancy?

MR. GELL: In a normal situation, one would assume that the second person in the office would have supervision over the people under her. That is a reasonable assumption. That is not the way the office operated. And in fact there was direct communication and direct line of authority between Mr. Lorenko and Mr. Bello on this case and on many other cases as well. Simply because she was named Deputy did not mean that she would be responsible for everything that happened with regard to the people under her. And I would just add one more thing. Had I subpoenaed a member of the office

now to come and give testimony along these lines, I think you would probably accept their testimony. And if you can consider Ms. Hicks as somebody who has knowledge, who I subpoenaed instead of asked to be an expert, I would present her testimony in that light and not ask her to give her expert testimony. Failing that, if you would give me some additional time to bring somebody else before you instead of Ms. Hicks, I would be grateful for that as well. But I think her testimony can illuminate, and I think Mr. Bergstein is absolutely right. You can learn a great deal from her understanding about how these things were handled in the office.

CHAIRPERSON REID: I think, Mr. Gell, that basically what we are talking about here is a comfort level. It appears that this Board is not comfortable with Mrs. Hicks testifying today. However, are you saying that you would like to ask for a postponement or a continuance to have someone to step into her shoes in that position to give some expert testimony as to how the DCRA or the Zoning Administrator's office operates?

MR. GELL: If somebody were here from the office, they could answer a lot of these questions without Ms. Hicks. But they are not here.

CHAIRPERSON REID: Do you feel that that

information is so pertinent that you would not want to continue today with Mrs. Hicks?

MR. GELL: Oh, it is absolutely central to the case. I mean, Mr. Sher is absolutely wrong about how these calculations are made. You have a different -- you have a change in the zone and the calculations are always made based on the previous zone. If you make your calculations based on that, they have credits for 20 parking spaces -- 20 parking spaces that they can now use. And all that Mr. Sher is saying is that 20 parking spaces were needed --

CHAIRPERSON REID: You don't think that you could adequately proffer to us the necessary information to counter what Mr. Sher has presented to us this morning?

MR. GELL: I think I would have to present it in a different way if I were to do that. I would rather have some time to prepare that.

MS. KING: What about the defect of the zone being C-3-C and the Lot number not being correct on there?

MR. GELL: What Mr. Sher -- I am sorry, I didn't mean to interrupt.

MS. KING: Not being correct on the C of O.

MR. GELL: Mr. Sher is absolutely right. A mistake was made on the Square number. It should be 671, not 617. A mistake was made on the CM-3. It was copied -- actually, it wasn't put on the application. It was copied from a previous C of O that was apparently in the computer. We can show you one that was issued in 1997, in which apparently the CM-1 was put on.

CHAIRPERSON REID: Okay. Mr. Gell, notwithstanding the information that Mrs. Hicks would have testified to this morning, would not the insufficiency in the zoning and in the square within itself render the C of O invalid?

MR. GELL: I don't believe so. Because I think that it could be shown through testimony that, in fact, in either case the appropriate amount of parking was being supplied. There was one other mistake that I would mention.

CHAIRPERSON REID: Mr. Gell, how is that possible when you are talking about an entirely different lot.

MR. GELL: It is not a different lot. It is a different square.

CHAIRPERSON REID: The C of O was issued for an entirely different lot.

MR. GELL: The address was correct. The

square number was incorrect.

CHAIRPERSON REID: And the zoning was incorrect.

MR. GELL: Yes. There is another mistake, which is perhaps most important of all, and that is that the building on this lot was listed as having 18,000 square feet, when in fact it has much less than 14,000 square feet. We were prepared to offer testimony to show that based on an actually 13,500 square foot building, that even under Mr. Sher's calculations, there would be sufficient parking. I will present that now or later or at some time. But I would like the opportunity to present it --

MS. KING: The application which presumably was filled out by the applicant says 18,000 square feet.

MR. GELL: Yes, it does. And unfortunately the gentleman who filled that out and submitted it and obtained the C of O died a few weeks ago. I can't ask him why he -- where he got that number, but it was a mistake. I have some additional testimony that doesn't depend on Ms. Hicks to verify that.

CHAIRPERSON REID: Mr. Parsons, you had a comment?

MR. PARSONS: Mr. Gell has asked for time to prepare and I think we ought to postpone.

CHAIRPERSON REID: Mr. Gell, that would occur to me to probably be the best way to go at this point.

(Whereupon, at 10:45 a.m. off the record until 10:47 a.m.)

CHAIRPERSON REID: Mr. Sher and Mr. Gell, we just conferred in a private conversation, but I would want to make it clear on the record. Corporation Counsel has advised us that there should not be a problem with Mrs. Hicks testifying as a former government employee.

MR. BERGSTEIN: What I am concerned about -- let me just stay what I am concerned about. The Government does use past employees as fact witnesses. The Government would never be able to defend an action if we could not use past employees as fact witnesses. But I am not as familiar with the law that Mr. Sher is referring to as I would like to be. What I am concerned about is if Mr. Gell wants to -- as an intervener wants to present testimony as to the processes that took place at that time, he should be given the opportunity to present it. If it is purely factual and purely observation, that is one thing. Not crossing the

line into opinion testimony, which may be Mr. Sher's issue. And maybe Mr. Gell needs to make a proffer about what he is proposing to do. Either that or allow Mr. Gell an opportunity to bring someone in from DCRA who was an employee at that time that could testify what the processes were. I am concerned about crossing that line between fact and opinion. But I think the intervener should have an opportunity if he believes those facts are relevant to be able to present those facts to the Board.

MR. PARSONS: What facts could be relevant here? I don't think she should be testifying on any aspect of this case that was decided while she was there. If she wants to tell us how they calculate C-3-C parking in general -- if that is what you are concerned about, fine. But it doesn't really have any application to this case. In other words, in order to be pertinent, she would have to say in this case, here is the way it was done. I don't see the relationship between the Government calling witnesses to defend itself and this occurrence here. I don't get it. Certainly if we wanted to call Ms. Hicks or the Zoning Administrator did to come back to testify as to what she was doing while she was in the office on March 8, fine. But this is not the case.

MR. BERGSTEIN: I will defer to the Board's judgment on this.

CHAIRPERSON REID: Let's bring some closure to this. We are kind of beating this to death. Mr. Gell, go ahead.

MR. GELL: I was simply going to respond to Mr. Parsons. It would seem to me that in trying to determine what is the correct way to interpret these things, it might be useful to know how the office has operated in the past over many, many case, many, many years. That, I thought, was a factual piece of information that was of use to the Board and where Mrs. Hicks could be, perhaps without peer, the right person to be giving it. But I will yield to the Board's judgment on that.

MR. PARSONS: So she is not going to talk about this case?

MR. GELL: I can certainly ask her the general question of how these kinds of calculations are made.

CHAIRPERSON REID: If it's only on factual matters pertaining to procedures, and not getting into the merits of this case or the essence of this case, then I have no problem with it as long as the other Board members do not.

MR. GELL: But I would still appreciate

a postponement because of many of the other issues that might come up ought to be given to the Board through an expert or through some other kinds of evidence.

CHAIRPERSON REID: So you still need a postponement?

MR. GELL: I would ask for a postponement, if I could.

CHAIRPERSON REID: Mr. Sher, do you have any objection to a postponement? Under the circumstances in that he did not anticipate that you were going to object to him having Mrs. Hicks here, that is just an accommodation.

MR. SHER: I have an objection in principle, but I think Mr. Gell has conceded that the very basis of the application on which the certificate of occupancy was issued were erroneous. I don't know how that changes by a postponement. So in my mind, if he is going to present evidence that says the building isn't 18,000 square feet, then I don't think that is relevant to a certificate of occupancy that was based upon that information provided by his client's agent. I am sorry the man can't be here to say why he put that down either. But if the District relied upon that application or relied upon that information and issued the C of O,

I don't see how that is going to change any between now and whatever other time we reconvene here. So in my mind, the certificate of occupancy should be revoked. It is clearly -- it was issued on the basis of incorrect information. Mr. Gell has conceded that. The C of O should be revoked and the use should not be allowed to go forward. If Mr. Gell's client wants to submit a new application based on different information, I may be back here in six months. If he has got information that shows that under the way I would think the zoning regulation should be interpreted that he has got enough parking, then maybe I won't be back here in six months. But I think it is clear on the basis of what it before the Board today that that C of O was issued in error by the Department of Consumer and Regulatory Affairs and it should be revoked.

CHAIRPERSON REID: Okay. Thank you very much, Mr. Sher. Nonetheless, we have yet to hear -- in all fairness, we have not heard from the other side. So that being the case, I have no problems with a postponement. Board members? Ms. King?

MS. KING: No problem.

CHAIRPERSON REID: All right. A date certain, please?

MS. PRUITT: We can postpone it to

October 6.

CHAIRPERSON REID: Okay. Then at that time, Mr. Gell, I would think that it would be prudent of you to at that time proffer another expert witness, in that it appears there is a problem with Mrs. Hicks testifying in this case.

MR. GELL: I gather that the Board would be willing to hear Mrs. Hicks on the factual matters but not on --

CHAIRPERSON REID: On the factual matters. But you need -- by your own admission, you are saying that you need to have an expert witness to assist you with getting to the merits of the case.

MR. GELL: I have to rethink that. I may or may not. I may be able to provide some additional evidentiary materials that wouldn't require an expert. MS. KING: But you also need to bear in mind that you have to deal with the question of the erroneous application. The C of O is based on an erroneous application. It is for the wrong lot and the wrong zone.

CHAIRPERSON REID: And now we find for the wrong square footage.

MS. KING: And for the wrong square footage.

MR. GELL: And that may be another avenue to reapply.

MS. KING: You may want to consider going back and reapplying for a C of O with all the proper information.

MR. SHER: Madam Chair, can I make two requests, please? The delay, if there is one -- since the prejudice in the delay works to my client, the Appellant, I would like to ask two things. Number one, I don't know whether this business is actually operating or not. The times that I have been out there, it has been locked and not operating. I would like to ask that the Board order that the status quo be preserved. In other words, if they are not operating that they not be permitted to operate. If they don't have a restaurant license that a restaurant license not be issued until the question of the appeal be resolved. They don't, I believe, have an ABC license. I don't think they should be allowed to get an ABC license. Of course, you can't get an ABC license unless you've got a restaurant license. You can't get a restaurant license unless you have a valid C of O.

CHAIRPERSON REID: Right.

MR. SHER: We are raising a fundamental challenge to that, and I would just ask that the

Board order the Department of Consumer and Regulatory Affairs to preserve the status quo. I think that is fair to them and us.

CHAIRPERSON REID: I don't know if that is within our purview to make such a directive. Is it, Mr. Bergstein?

MR. BERGSTEIN: In terms of the C of O -- and maybe Mr. Sher can illuminate that question because I think it is a valid concern -- you have before you a C of O that at least the intervener has agreed is defective in certain respects. This case is being continued because of the need to provide another expert as I understand it, although Mr. Gell didn't notice to anybody that he had an expert to proffer. And maybe Mr. Sher can speak -- this is the jurisdiction of the Board -- to basically stay the implementation of a C of O. I don't think this BZA can order the DCRA not to issue a restaurant license or to order the ABC board not to issue a liquor license. The only question is whether or not the C of O could be considered at this point to have been stayed in terms of the ability to --

MR. SHER: As Mr. Gell pointed out and as the Board well knows, I am not an attorney. I am not prepared to argue the matter of law. But I just don't -- I think it works to the prejudice of my

client if in fact you continue this case and he is allowed to go about doing whatever it is that he is doing.

MR. BERGSTEIN: Mr. Gell, if you are granted a continuance, would you represent your client won't operate this establishment until this issue is resolved in October?

MR. GELL: No, I would not because in fact it is operating. Mr. Bell would stand to lose an enormous amount of money if he were forced to stop operating or forced to stop --

MS. KING: You have a restaurant license and an ABC license?

MR. GELL: I understand it is a restaurant license. No an ABC license. But he is operating a restaurant under a valid license.

CHAIRPERSON REID: Well, I thought I understood Mr. Sher to say the status quo as to if it is not operating, it will not open. But if it is operating, it will remain --

MR. SHER: I don't know. The times I have been out there, it hasn't been open. I will accept their proffer that it is operating, in which case I think they can. But if they don't have an ABC license, I would request that no license be issued.

MR. GELL: We can't ask for an ABC license until we have the zoning settled.

CHAIRPERSON REID: Okay. So in other words, that solves that problem.

MR. SHER: That is fine. If that is the understanding, then we will proceed on that.

MR. GELL: We can proceed before the ABC, but obviously they won't grant it until we have that. I would urge the Board not to bring this down on Mr. Bell. He came in good faith. He got a C of O. It was issued by an agency that was willing to defend it in all the discussions that I had with them. And I think that he ought to be allowed to continue to operate. I also think that Mrs. Hicks ought to be allowed to testify. I am sorry that we can't get a return date until October 6. Obviously that will do great harm to my client if the Board were to impose some imposition on him that he can't operate.

CHAIRPERSON REID: We are not going to do that, Mr. Gell.

MR. GELL: But I was prepared to argue that notwithstanding the problems with the C of O, and I admit that they are there, that in any case it would have been granted. That the mistakes were not that bad for the C of O. And I think the Board

would have accepted that, but I can't get to that point until I present it.

CHAIRPERSON REID: Thank you.

MS. KING: Mr. Gell --

MR. SHER: Madam Chair, just one other thing.

MS. KING: You go ahead, Steve.

MR. SHER: I was going to say given that we now know who all the parties are, can we ask that Mr. Gell serve us with whatever it is he intends to rely upon and argue? I had no idea Mrs. Hicks was going to be here this morning. I would have been prepared or better prepared to have dealt with that issue. But we filed and served our statement on you. Prior to the October 6 hearing, if we could get whatever it is so that we are all prepared and we can deal with this once and for all.

CHAIRPERSON REID: All right, Mr. Hart can give some time lines, Because that is appropriate.

MR. GELL: I would like to respond to that, if I may. Obviously, we would be happy to -- the materials we were going to submit today were not prepared until yesterday. There wasn't time to give it to them. Mrs. Hicks came into this case quite late in the game. But, yes, we will certainly let

you know.

MS. KING: Mr. Gell, I mean we are talking about postponing this by two months and a bit. During that time -- I mean, you still at the end are going to have to have -- you are going to have a C of O that has to be amended because it has got the wrong zoning and it has got the wrong -- you know, even if the parking and loading issue -- does it not behoove you to go back and apply again with the proper information?

MR. GELL: Ms. King, I think you make a very good point. We are certainly going to take that into consideration. It would make a lot of sense to correct it. Because we think that under the situation as it exists, that the C of O would be issued quite properly. That would make a lot of sense.

CHAIRPERSON REID: And given the fact that you presented to us the inconsistencies, then going back to the DCRA and pointing them out, it certainly would make a much better case for you to come with the corrected C of O. Thank you. Time line?

MS. PRUITT: If the hearing is on October 6, just to make it easier for everybody -- Mr. Sher and anyone else -- I would also suggest

that you serve it on the ANC -- be served by September 22. That gives them a two-week period.

MS. KING: And again, could we please schedule it at the beginning of the afternoon session so that I can hear it?

MR. GELL: Thank you.

CHAIRPERSON REID: Mr. Hart, call the second case of the day, please.

MR. HART: The next case is Application 16482 of the Catholic University of America, pursuant to 11 DCMR 3108.1, for a special exception under Section 210 for review and further processing of its campus plan to permit the interim use of the west of the Life Cycle Institute and east of Curley Hall for temporary manufactured housing unit to accommodate 96 students for a period not to exceed 3 years in an R-5-A District at premises 620 Michigan Avenue, N.E. (Square 3821, Lot 44).

Would those persons intending to testify, please raise your right hand?

(WITNESSES ARE SWORN.)

MS. KING: Madam Chair, given that this appears to be an uncontested case, perhaps Ms. Prince could just hit the high points. There is no one here, I believe, in opposition, and the ANC is supportive.

CHAIRPERSON REID: Ms. Prince, we have read the record and you can stand on the record for the most part. It appears to be very clear-cut, and it appears we also have received a letter -- actually, we have to waive it in -- from the ANC.

MS. PRINCE: Oh, you did receive it?

CHAIRPERSON REID: Yes, in support. So we will waive that at the appropriate time. I had just one question regarding the self-certification. It is unsigned. Do you have a signed copy?

MS. PRINCE: Not signed by the Zoning Office.

CHAIRPERSON REID: Signed by the Office of the Zoning Administrator.

MS. PRINCE: We have had a longstanding issue with the Office of Zoning Administrator on whether they need to sign these self-certification forms. They tell us that they don't need to sign them because their signing them to essentially say that they haven't read them. So they are saying it is an act in futility.

MS. PRUITT: Madam Chair, may I shed some light on this? Because I believe I spoke with Ms. Prince and Mr. Lawson. It has been the staff's policy not to sign them at DCRA. However, in talking with Mr. Lorenko, the Zoning Administrator,

it is their policy to. So the staff over there has not been doing what they should be.

MS. PRINCE: Okay.

MS. PRUITT: They have been directed. Now, I don't know if it has been filtering down. But this office in concert with Mrs. Kress has the assessments of Mr. Noble and Mr. Lorenko.

CHAIRPERSON REID: Mrs. Prince --

MS. PRINCE: We would be pleased to secure the signature.

CHAIRPERSON REID: Secure the signature and then submit it to staff and they will take care of it.

MS. PRUITT: But this is an ongoing problem. Particularly, this was probably filed much sooner than we had the meeting.

CHAIRPERSON REID: Because I would definitely like to see any document coming from over there signed by someone.

MS. PRUITT: Exactly.

CHAIRPERSON REID: To at least give us something --

MS. PRUITT: And we are also going to revise it so that at the bottom it has licensed attorney or --

CHAIRPERSON REID: Architect?

MS. PRUITT: Right. And really someone should indicate if they are a licensed attorney or an architect and for what jurisdiction.

CHAIRPERSON REID: Okay. All right.

MS. PRINCE: I am pleased to secure the signature. I'll be very brief. I am Alison Prince of Wilkes, Artis, Hedrick and Lane, here today on behalf of the Catholic University of America. We are here today to seek approval of 26 manufactured housing units that will remain on the campus for no more than three years. The reason for the housing units is a happy one. There has been a very positive jump in enrollment at the University after suffering a decline in the mid-1990's, and there are plans underway, as we speak, to construct a new dormitory. That case will be coming before you in the fall. But the dormitory can't get built in time to accommodate this jump in enrollment. The University remains well below its cap of 7,500 students with 5,486 students, well under the FAR limit of 1.8 with a .48 FAR. The University is a role model to other universities in its relationship with the community and the outreach that it has done to not only the subject ANC but all the surrounding ANC's on this project and really many other facets of the University's operation. And for that reason,

they have earned the ANC's support.

I have Sue Pervi, Vice President for Administration here today. She is the one that is down in the trenches with the community on a regular basis. We have very detailed testimony that Sue has prepared and I can submit that for the record. She can hit the highlights.

MS. KING: Submit it for the record.

MS. PRINCE: Okay. I am pleased to do that.

MS. KING: I would, however, like to ask a question which may be in that material. This is well insulated from any residential area as I see it on the map. I mean, you are fortunate in that you have, unlike some of your sister universities, have an enormous amount of acreage, and this is not anywhere near any other -- you know, any private housing.

MS. PERVI: That is correct. And I have an ongoing planning initiative for future housing in the housing cluster, and the neighborhood sat on the core master plan group from its inception.

MS. KING: Right.

MS. PERVI: So what we have done is we have tracked the future planning and put this -- it really borders on the future housing planning. So

the community, in fact, was very supportive of this particular location. We had brought it to the community first in terms of location and they were very happy with that. It is internal, in the heart of the campus.

CHAIRPERSON REID: Ms. Pervi, in that you have taken the time to come down and submit -- to give us briefing here, if you would like to say a few words and take this time to give us the highlights of your submission, it is up to you.

MS. PERVI: That is not really necessary. I think I did try to provide this detail that you could read at your leisure.

CHAIRPERSON REID: Yes.

MS. PERVI: I just wanted to say that we have been very pleased. We have a very good community relationship and our ANCs, our surrounding community, has actually participated. I invited them. They came to the site. They have seen representative samples. And they're participating -- just as a highlight, we have a partnership with the Brooklyn Garden Club and they are going to be participating with contributing to the landscaping on the site. So we have really and truly kind of made this a community project in the sense of our local community. We have architectural

professionals participating, and the students. So it is actually a very exciting project for all involved.

CHAIRPERSON REID: To your knowledge, have you had anyone opposed to your campus plan -- this extension of the campus plan?

MS. PERVI: No. We provide regular briefings to the community on a monthly basis. So what we try to do is discuss -- if we think in anticipation of any issues, we try to discuss that ahead of time and come up with solutions before they become problems.

CHAIRPERSON REID: It appears that you are in compliance with Subsection 210 in all aspects pertaining to noise, traffic, number of students and all the other various -- if you can stipulate that you are in compliance with all the various sections of Subsection 210. Any questions, Board members?

MS. KING: No. I move that we waive in the ANC report.

MR. PARSONS: Second.

CHAIRPERSON REID: Okay. And basically, Ms. King, did you see there -- I was trying to flip very quickly, but there was a quorum.

MS. KING: There was a quorum. There was a duly advertised meeting. There was a quorum

present. They voted to support. And specifically it is the view of 5-C that the measure is consistent with the important goal delineated in the Universities approved campus plan, that is, to provide interim and long-term housing accommodations for undergraduate and graduate students. Further, we see this move as presenting a win/win situation for both the University as well as the rest of the surrounding community. So that is a very strong endorsement by the ANC.

CHAIRPERSON REID: They seem to be elated. All right. There is no one here in opposition to. There is no other persons in supporting. Closing remarks?

MS. PERVI: In closing, I would simply like to note so that you are aware, the self-certification process is really working. I was contacted by Catholic University in early May. We filed this application on May 18. And with your favorable action today, this entire process will have been completed in three months, which I think is remarkable, having never completed a campus plan related case in less than six months. So we would appreciate your prompt action so that these can be finalized and occupied in October.

MS. KING: I might just mention that it

appears to me that Catholic and Galludet have such a good relationship and on ongoing dialogue with their neighbors, and that is one reason that they don't have the problems that some of the other universities have, and I applaud you for that.

CHAIRPERSON REID: Board members, I would move approval of this application.

MS. KING: Second.

CHAIRPERSON REID: It appears that they have certainly met the requirements for their campus plan under Section 210. There does not seem to be any adverse impacts with regard to this particular application, and it does not seem to impair the intent or integrity of the zoning map or plan.

MS. KING: Do your relations --

CHAIRPERSON REID: Second?

MS. KING: Yes, I seconded before. Do your dialogue with the neighbors -- is the three years important? Do you want -- do we need to put a stipulation that this is for three years only?

MR. PERVI: I don't think -- in the community, we are working on a long-range housing plan. In fact, we have enrollment management. We are not interested in uncontrolled growth.

MS. KING: No.

MS. PERVI: And what I have done with

the community is I think it is important that they understand the University in a broader sense, not just when we have --

MS. KING: No. But what I am saying is that we sometimes put conditions on our orders, and should we condition this approval for a three-year period? Is that comfortable for you? A four-year period?

MS. PERVI: If you don't need to condition it, obviously that would be the most optimum.

MS. KING: I mean, that would mean that you could have it in perpetuity, and I am not sure that that is --

MS. PERVI: No, that is not our intention. MS. KING: Your intention or the communities intention.

MS. PERVI: No, that is not our intention.

MS. KING: So let us put a number of years on it that is --

MS. PERVI: Comfortable.

MS. KING: That is within the most reasonable. Five years?

MS. PERVI: Well, I think four. They have talked about four or five years as being

acceptable.

MS. KING: Okay, five?

MS. PERVI: Five would be fine. Ms. Prince, do you have any comments?

CHAIRPERSON REID: All in favor? Aye?

ALL BOARD MEMBERS: Aye.

CHAIRPERSON REID: Opposed?

MS. PRUITT: Staff will record the vote as 3 to 0 to approve for five years. The motion made by Ms. Reid and seconded by Ms. King.

CHAIRPERSON REID: You should have your order in about two weeks, Ms. Prince.

MS. PERVI: Thank you very much.

CHAIRPERSON REID: The next case, please?

MR. HART: Our next case is --

CHAIRPERSON REID: The last case of the morning.

MR. HART: Application No. 16474 of Steve Choi on behalf of the Capital University of Integrated Medicine. Pursuant to 3107.2 for a variance under Section 330.5, to use the premises as administrative offices on the first and second floors in an R-4 District at premises 1131 8th Street, N.E., Square 908, Lot 40. This is application 16474.

UNKNOWN SPEAKER: I beg your pardon. I think the application number was read wrong. It is 16474 and you said 72.

MR. HART: Those persons who are planning to testify, please raise your right hand.

(WITNESSES ARE SWORN.)

MR. MERKLINGER: Madam Chair and members of the Board, my name is Jim Merklinger. I am an attorney and I represent Capital University of integrated medicine. We have filed an application.

CHAIRPERSON REID: I am sorry, your name?

MR. MERKLINGER: Jim Merklinger.

CHAIRPERSON REID: Mr. Merklinger, please project your voice. We don't have a sound system, so you have to speak loudly.

MR. MERKLINGER: I am actually told I am too loud a lot.

CHAIRPERSON REID: I can barely hear you myself.

MR. MERKLINGER: We are filing an application to use an office building, which is in an R-4 residential. It is a house and we would like to use it for administrative offices. It is located directly across the street from Galludet University. It sits on the corner of 8th Street and Florida

Avenue. The building is actually -- it has been approved as far as it has been kept in an professional manner. We have cleaned it up. It is used for only administrative purposes. What the University is -- Capital University is a program for doctors in an advanced program. They don't actually reside on the premises. They fly in once a month for classes. So there are no students coming into the office, and the classes themselves are held at Galludet in the Kellogg Center. They have a really nice conference center located on the campus.

MS. KING: I am sorry, this is continuing education for doctors is what it is?

MR. MERKLINGER: It is more of an advanced degree for doctors. It is integrative medicine. They teach them what they describe as different modalities in different areas of medicine so that it is built on the premise of a team approach to things. There is not any one area of medicine. Someone may need nutritional needs as well as a bone set. Doctors learn different areas. It is expanding the medical knowledge.

MS. KING: And the students are all M.D.'s, is that correct?

MR. MERKLINGER: M.D. or different areas of medicine, yes, they are.

MS. KING: Madam Chair -- and perhaps this is a question for staff -- the last organization which we have been dealing with which calls itself a University, we asked for its master plan.

MS. PRUITT: No, the last one -- the National Braddock University was reviewed under Section 206 not 210.

MR. MERKLINGER: We are not -- there is no campus. This is only an administrative office. No students reside here. The actual facilities are across the street. That is what makes the building itself ideal. There are five to six administrative staff in the building at any given time. They work normal business hours, 8:00 to 5:00 p.m.

MS. KING: And none of the students ever come in to register or anything?

MR. MERKLINGER: No, they are not. They register via mail. There is not a walk-in area. I mean, someone could walk into the building, of course, but it is not set up that way. Students come from all around the country. It is not something where you would just drop-in. They know about the program. As I say, they are professionals. One of the reasons that it is held once a month is because they have practices. They

are working students. So they come into the area. But this is for more -- as I say, administrative and keeping records. Sending out information as requested and answering any needs of the university itself. It is a non-profit. It has been there for just over two years. What they are asking for -- and they have met with the ANC and found that there is not really an impact upon the neighborhood. Members don't take up parking spaces. Most of the people who actually work there take public transportation to get there. As I said, they are only there during working hours.

MS. KING: Now you mentioned in your submission that the staff will park in the Galludet parking lot. Do you have a formal arrangement with Galludet for your people to park there?

MR. MERKLINGER: We have a pay parking lot across the --

MS. KING: Oh, they have a paying parking lot?

MR. MERKLINGER: Yes, they do. A double -- it is like a three-story structure. And as I said, most of the staff doesn't drive anyway.

MS. KING: But those that do pay for parking?

MR. MERKLINGER: Yes, off-street. There

is public parking on the street now. My understanding is actually they are going to change that. But right now, there is public parking. They are going to change it so it requires a sticker and limited two-hour parking. But as of today, it is open to anyone to park there.

MS. KING: There is no residential parking permits required?

MR. MERKLINGER: That is my understanding, yes.

CHAIRPERSON REID: Well, can you clarify a couple of things for me? Currently, the building is operated as a school building?

MR. MERKLINGER: Administrative offices for -- no classes are taught in the building.

MS. KING: I think what the situation is is that they purchased or leased --

MR. MERKLINGER: They have leased the building.

MS. KING: Leased the building, moved in, and then discovered that they needed zoning approval to have an office in the building.

MR. MERKLINGER: That is correct. It is our understanding --

MS. KING: And that is why they are before us.

CHAIRPERSON REID: Okay. Something that I read said you have classes once a month for three days -- three-day segments of classes.

MR. MERKLINGER: Yes, they do. Not in the administrative building. The reason we have that building right where we picked that location is that the classes are at the Kellogg Center, which is a conference Center run by Galludet University. It is directly across the street at the campus.

CHAIRPERSON REID: The classes are across the street?

MR. MERKLINGER: Yes, they are.

CHAIRPERSON REID: What currently goes on in this building?

MR. MERKLINGER: It is a paper office. It is for student records.

CHAIRPERSON REID: No. What I am asking you is you are currently, as Ms. King was saying -- that is what I was trying to get at. It is just that you are currently using it as such -- as the office building?

MR. MERKLINGER: As an administrative office.

CHAIRPERSON REID: Illegally?

MR. MERKLINGER: Yes.

CHAIRPERSON REID: And now you want to

legitimize the operation, as it were.

MR. MERKLINGER: What happened is that they leased the premises about a year ago and they did not realize that they could not use it for an office.

CHAIRPERSON REID: Okay.

MR. MERKLINGER: They are currently going through the D.C. licensing.

CHAIRPERSON REID: Okay. I see. How did you -- how is it that you -- no one told you when you leased it that it was improper? An improper use? I mean, how did you then determine that you did have to get one?

MR. MERKLINGER: Well, they are going through a licensure with the education review, and part of -- just one of the normal things is a certificate of occupancy. And it turned out that that was zoned for residential. So they really --

CHAIRPERSON REID: What was there before?

MR. MERKLINGER: What was -- it is housing -- I mean, family.

CHAIRPERSON REID: Okay. It is zoned R-4?

MR. MERKLINGER: Yes, it is.

CHAIRPERSON REID: Okay.

MS. BAILEY: Madam Chair, I just wanted

to remind the Board that this is a use variance. Once the use has been changed for this building, it will always be used for that purpose unless it is changed back before the Board.

MS. PRUITT: The use runs with the property is what she is saying.

CHAIRPERSON REID: Yes. We understand that. Well, you are asking for a variance, you know. And as such, you have to make a case for a use variance. You have indicated in your submission that there is an undue hardship because the building is less than 100 feet from Galludet University. That is your undue hardship?

MR. MERKLINGER: There is no undue hardship as far as changing the structure. Nothing needs to be changed to the building or the physical location. Part of what happens when we filed is we requested this special use, just a change for that purpose. The office next door said that this was the correct procedure to use. What we want is, as I said, just use it for the administrative office.

CHAIRPERSON REID: Then you said that the hardship would come about as a result of having to relocate.

MR. MERKLINGER: Yes. I realize that under the regulations of hardship -- if the lot

itself, anything needed to be changed or altered in the physical location. There is no hardship as far as to the structure. We actually don't need to change anything on the building.

MS. KING: No. You misunderstand the meaning of that. The hardship is why would it be a hardship for the owner to continue the permitted use of the property, which is residential.

CHAIRPERSON REID: To not continue.

MS. KING: To not continue. I mean, why would it be a practical difficulty or a hardship.

CHAIRPERSON REID: In this instance, it is undue hardship or perhaps a difficulty as opposed to area variance.

MR. MERKLINGER: But as I said, there is no hardship as far as the building.

MS. KING: Don't say that. As I was trying to point out to you, the thing is that you don't have a basis for your --

MR. MERKLINGER: But I am not trying to misrepresent anything to you. What I am saying is to fulfill this or to make this happen --

MS. KING: How long was the building empty before you leased it? Was it empty when you leased it?

MR. MERKLINGER: That I would have to

ask Mr. Choi, the owner of the property.

MS. KING: And he is behind you, is he not?

MR. MERKLINGER: Yes, he is.

MS. KING: And he is sworn in. Maybe he could come and testify.

CHAIRPERSON REID: Okay. Are you all testifying with the applicant?

MS. KING: They all got sworn in.

CHAIRPERSON REID: Come forward. Come forward.

MR. MERKLINGER: As I said, what we are saying is that they are in the office and they have been there for a year. They would like to continue using it. It is a great location. It sits right across the street.

MS. KING: None of that is germane to the argument that -- making your case -- that you have to demonstrate in order to gain a variance.

MR. MERKLINGER: I understand. We were told that there are three prongs to the variance.

CHAIRPERSON REID: Exactly.

MR. MERKLINGER: Exactly. As far as the hardship, actually what we have is that what I am saying is the hardship is more a financial hardship -- when the regulations talk about hardship to the

land use. I am saying to grant this, you don't have to change anything to the structure. It is not going to affect the integrity of the block -- the physical structure. The use of the land, we don't have to do anything to change that. That, in itself, is not a hardship. But I am saying that under anything that we consider a hardship is you would have to make these people move out of a building that works very well and does not have any adverse effect upon the community. If anything, it helps improve the area.

MS. KING: What was the building used for before you leased it, Mr. Choi?

MR. CHOI: I am the owner of that building or house.

MS. KING: Identify yourself by name and your home address.

MR. CHOI: My name is Steve Choi.

MS. KING: Sit down.

MR. CHOI: I own the property. I bought it back in late 1980 as an investment property. It was infested with I guess drug dealers inside and I got a loan and renovated the whole place, gutted it out. I could not find a tenant, but luckily I had an employee who was living there and taking care of it.

MS. KING: How long was it without a tenant?

MR. CHOI: In early 1990's, about two years. I had a break-in several times -- on several occasions. I noticed one thing, if you have somebody occupy, they will not break it in.

MS. KING: They had what?

CHAIRPERSON REID: If someone is occupying it.

MS. KING: Oh, I see.

MR. CHOI: Yes, if someone would occupy it, they would never break it in. Integrated Medicine, I think they leased it almost a year and a half ago from me. Ever since then, the building has been improved exposure-wise. The painting has been maintained and it is more lively, I guess, in a sense. The hardship I think that Jim was saying is that definitely it would be a hardship because it would be empty. And it would be a hardship for them because it is right across the street from Galludet University. If they have to move somewhere else, I definitely think it would be a hardship for their employees who are associated with the place. The parking matter-wise, they have paid parking, like three stories across the street. So that is no problem.

CHAIRPERSON REID: But the gist of this is that this is an R-4 as it is zoned. This is residential.

MR. CHOI: That is right.

CHAIRPERSON REID: It is across the street from Galludet?

MR. CHOI: Right across from the gate.

CHAIRPERSON REID: Okay. Now, as such, if someone just wants to move into residential housing and make it an office, it would have no -- that would run afoul of our zoning regulations. That is why we have zoning regulations. Now, if in fact someone wants to use a property that is zoned in one district in another way, then that is why we have variances and special exceptions. But in order to apply that, you have to meet the three-prong test. So far, I have not seen any validity in your making a case for us to give you a variance. Because what you are saying is not undue hardship.

MS. KING: Mr. Choi has said that he fixed it up as a residency and rented it for two years and was unable to do --

CHAIRPERSON REID: It can't be economic. It has to be inherent in the land.

MS. PRUITT: For a use variance, it can be economic.

CHAIRPERSON REID: Okay. My understanding was that it could not be economic.

MS. PRUITT: It can be both. Now for a use variance, it can be economic hardship. The fact that if Mr. Choi -- is that correct?

MR. CHOI: Yes, ma'am.

MS. PRUITT: Was unable to lease his property as residential as the zone is, that could be a facet in granting a use variance.

CHAIRPERSON REID: Okay.

MR. CHOI: Also, Madam Chairman --

MS. PRUITT: But he would need to demonstrate that he was not able to or that it was very difficult in doing so.

CHAIRPERSON REID: All right.

MR. CHOI: Also, Madam Chairman, I talked with the Zoning Board downtown, I guess, and they told me owner-occupied can have any office you want. Because I am not occupying that, I cannot get the special use permit. If I were to occupy the --

MS. PRUITT: Right. You can get a certificate of occupancy --

CHAIRPERSON REID: Oh, owner/occupant.

MR. CHOI: Owner/occupant, that is right.

CHAIRPERSON REID: Let's look at

uniqueness. I did garner from looking at the plat map or at the Sandborne map that it appears that you are right here on this corner.

MR. MERKLINGER: Yes, that is correct.

CHAIRPERSON REID: And it appears that you are triangularly shaped. You do have an irregular shape or a unique shape compared to the regular -- the other shapes of the properties on that particular square, which appear to be rectangular. I am helping you to make a case here.

MR. MERKLINGER: Yes. There is only one building adjacent to the property, the neighbor.

CHAIRPERSON REID: Well, the idea is that there has to be something unique or unusual about your particular property -- it is irregular or it is narrow or shallow or something that would give us the basis for -- you could fill in that first category. And it does appear that it is irregularly shaped. That makes it unique to the rest of the properties on the block or on the square.

Now let's go to undue hardship. So we are saying, Ms. Pruitt-Williams, is that in this instance, if in fact the owner has not been able to lease the property and has not been able to for some time and it caused a financial hardship as a result, then that could be the basis.

MS. PRUITT: That could be the hardship.

CHAIRPERSON REID: Okay. All right.

MS. KING: No questions. I would like to hear from the ANC.

CHAIRPERSON REID: No, let's look -- before that, let's go to adverse impacts. Have you had any feedback from the neighbors or the abutting property owners in regard to your application when you posted it?

MR. MERKLINGER: I believe Mr. Pernell from the ANC -- we have not had any negative impact. But also, they ANC will approve --

CHAIRPERSON REID: In regards to parking, traffic, noise or the like? You have not had any --

MR. MERKLINGER: No. It is actually a pretty quiet street.

CHAIRPERSON REID: Okay. And do you feel that your application -- granting your application will not impair the -- given the relief that you are asking for would not impair the intent or integrity of the zoning map or the zoning regulations?

MR. MERKLINGER: Yes, we do.

MR. PARSONS: Madam Chair, I wanted to ask Mr. Choi a question or two. Mr. Choi, this

structure seems to be larger than the others in the neighborhood.

MR. CHOI: It is.

MR. PARSONS: How many units did you have in this building after you renovated?

MR. CHOI: What we did is we went in and gutted it out. We did central air conditioning where before you had a boiler system that had a oil tank in the basement. So we -- in a sense, we left the structure as is, but the operating HVAC heating and also the electrical system had to be rewired because the building is of such an old age.

MR. PARSONS: So you were trying to lease this or rent this as a single family home?

MR. CHOI: Right.

MR. PARSONS: How many bedrooms does it have?

MR. CHOI: Well, it has got a living room and also a kitchen -- well, actually three and a half bathrooms and four rooms and a living room and a dining room.

MR. PARSONS: Would you say this is a lot larger than the other homes in the neighborhood?

MR. CHOI: I think because this is a corner lot -- if you look at it in the front, it is not. But this thing goes around the corner. You

know what I am saying? So you could say that it is larger than the other units.

MR. PARSONS: I am trying to determine is the difficulty you had renting this have anything to do with its oversize for the neighborhood, that is --

MR. CHOI: No. The difficulty is because of what I put in investment-wise, and I want to meet the mortgage payment. And most things in that area do not meet that figure. As a matter of fact, after the renovation, I had a hard time kicking the tenant out. Once they moved in, they would not pay me the rent. As a matter of fact, they vandalized the building when they left.

MR. MERKLINGER: Madam Chair, pointing out that it does sit on the corner lot and there is the traffic of the avenue right there and also in the front, as opposed to anyone -- I don't think you would move in if you had children or anything. You have a lot of traffic there and it is exposed to the public as far as around the corner street.

CHAIRPERSON REID: I know that area very well. What made you purchase -- for the record, why did you purchase the property?

MR. CHOI: I have business in the market. At that time back in the mid-1980's, real

estate was really booming. I had some money that I made from business and I was thinking from time to time when it is snowing or in the wintertime, I could not go to Virginia and I would like to live there. But I found out once we renovated it, that we had break-ins and I was kind of afraid to live there.

CHAIRPERSON REID: You said that the area was drug-infested?

MR. CHOI: Yes, exactly.

CHAIRPERSON REID: I think that even though that is not a basis for granting a variance, but when a property can be brought into service and to offset any kind of illicit activities around it, that is in my opinion good for the city. All right. Any other comments?

MS. KING: Just from Pernell.

CHAIRPERSON REID: ANC, please? Mr. Pernell? I am sorry, sir? Mr. Parson just pointed out, were you -- did you wish to say something? I wasn't aware.

MR. CHADWICK: Me?

CHAIRPERSON REID: Yes.

MR. CHADWICK: No. I am Alan Chadwick. I am the CEO for the University. If there were hardship questions, I could explain those.

MR. PERNELL: Good morning, Board members and members of the audience. My name is Daniel Pernell, III, and my last name is spelled P E R N E L L. I am chairman of the 6A Commission on Capitol Hill, and I am here on behalf of Wanda Steven Harris in the single member district of 1131 and her ANC single member district is 6A09. Ms. Harris and the 6A Commission was not aware of this facility in the area. We assumed that it was a residential home, and when we did find out, we started inquiring about this facility. I have witnessed for many years living in that area that this house, as the gentleman has said, was in bad shape and was a drug-ridden facility, and he came in and spruced it up and has gotten some occupancy in it. But the real concern is that the property has made an improvement to the Northeast community where we have been working so many years in improving that Northeast corner of New York Avenue and Florida Avenue, and the facility at 1131 being revamped has done just that for the community. And we are very proud that someone did come along and do something.

What we were concerned about with that facility there is that it was used as an office facility and that we felt that the 6A and the single member district of Ms. Wanda Harris felt that indeed

the owner of this facility was and is in violation of the zoning code of the R-4 residential area. Nevertheless, the ANC conducted its ANC zoning and license subcommittee on July 7, 1999, whereas the following results after hearing from both parties is that the 6A Commission voted to support Commissioner Wanda Harris in favor of permitting the premise at 1131 8th Street, N.E., to be used as an administrative paper office only, and not to be used as a medical facility or as a living quarters. At that time, the present facility would come up for a one-year review under the purview of the 6A Commission and the single member district of Wanda Harris for review for an extension after that period.

Ms. Harris wanted to emphasize that the facility is to be used for paper use or administrative use only. It is not to be used for sleeping quarters. And that the staff who use that facility are indeed and will be parking on the facility at Galludet only and not in the R-4 community, whereas it would impact that community.

Also, she feels that the delivery trucks that are delivering materials to that facility should be parked in the required 15-minute timing and loading and unloading there at that facility.

Madam Chair, we also heard from a constituent, Mr. Ricky B. McLain of 1122 8th Street, N.E., Washington, D.C. 20002. We had a conversation with him out in the hallway. And I want to provide for the record what he has had -- the disadvantage impact on the community there as far as Maryland license plates parking at this facility at 1131. I told him that we would put on the record here that, and they did say before us on July 7 that the staff there will be parking on Galludet property and that they will not be parking in the community area. We were very satisfied with that and we hope that this Board holds them to that. And that is for the record. It is just some vehicles illegally parked extended overnight. Some have Maryland license plates in the area and that is one of the great concerns that the ANC and single member district -- that is also my single member district also. I am on the borderline of Ms. Wanda Harris. She is on one side of 7th Street and I am on the other. So we share the same views in this.

Again, to end my statement, we don't object to this facility as long as it stays as a paper administrative office and they obey the wishes of the residents in the area by not parking in front of their houses and using the parking facilities

provided to that facility at 1131 at Galludet University. We also want the Board to make note that this facility opened up without the concern and following the regulations of the D.C. zoning and license to be permitted to be there and disrespectful to the single member district ANC, Ms. Wanda Harris, and the 6A Commission. With that, I end my statement.

MS. PRUITT: Excuse me, Mr. Pernell, do you have a statement from the ANC with the vote of the quorum?

MR. PERNELL: Yes, you should have it before me.

MS. KING: It is in our file.

MR. PERNELL: Right.

MS. KING: We've got it.

MR. PERNELL: We had a quorum of I believe -- it was unanimous.

MS. PRUITT: I just wanted to put it in for our records.

MR. PERNELL: We definitely have it for the record. You know, 6A. We definitely try to be on -- the problem that 6A is having is we have a number of BZA applications and we had to explain to our constituents in the community and to the applicants that we have a responsibility as a

volunteer body of the D.C. Government to respond to BZA actions, and therefore we made sure that our meetings were public with announcements in and around the 200 feet required and even beyond that to make sure that everyone was covered and that when we made a decision on this property that it would be fairly done, and I think we did so.

MS. KING: You have how many members on your Commission, Mr. Pernell?

MR. PERNELL: There are 14 Commissioners presently on board. When we had a quorum that day, we had 8 members present. The law requires that half of 14 is 7 and one over would be 8.

MS. KING: What you attached here said that Doris Wallace was not present and there were only 7 people there.

MR. PERNELL: You don't lose a quorum when someone leaves, madam. The quorum is still there. Ms. Wallace was there, but she was discussing a problem with constituents at the meeting. What I am saying is that she wasn't present when we voted. But she was there. She was a part of the quorum. And you don't lose a quorum once the quorum is established?

CHAIRPERSON REID: Is that -- really? I need clarification on that.

MS. KING: No, don't go there. Don't go there.

MS. PRUITT: Well, even if you interpret either way, they still would have maintained it.

MS. KING: Don't go there.

MR. PERNELL: And let me make it clear for the record, too, Ms. Pruitt and members of the Board, that this was a zoning and license subcommittee combined with a regular -- I called a special meeting on that day because we had a problem with the 6A Commission at the same time. And to keep from having a backlog on the BZA responding, we also at that regular meeting -- we had a combined regular meeting and we had a special meeting with the zoning and license. So, therefore, some members could stay and some couldn't stay. Ms. Doris Wallace did stay, but she was in another area. So I wanted to be fair on the record by saying that she was not present at voting on these issues. But if you notice, we had several applications that day and she did vote on those applications.

CHAIRPERSON REID: Mr. Pernell, I just had a question regarding the aspects of your report where you said that you would not like to see this building used for a medical facility or living quarters. It is okay as long as it is used as the

office building. But you said that for the special use permit, it will be up for review in one year. And that time, the applicant will come before the 6A Commission and single member district commissioner and request an extension of time for special use in an R-4 community, which is required by D.C. law. Could you elaborate on that? Because I am not real familiar with that.

MR. PERNELL: We felt that anyone in R-4 is at the highest resolution you get for a community. And anyone that is coming in with an administrative business like this before us now is asking the ANC and the single member district for special use to exist in that area. And we felt that since they came in illegally -- they were operating without the permission of the BZA and without the knowledge of the single member ANC and the purview of the 6A Commission, and we felt that they should be bound by these restrictions.

MS. PRUITT: Madam Chair?

CHAIRPERSON REID: Yes.

MS. PRUITT: If I am understanding Mr. Pernell correctly, that would be an agreement between the ANC and the applicant and the Board has nothing to do with it. If the Board grants a use permit or a use variance, it runs with the land,

regardless of what the ANC and the applicant has worked out.

CHAIRPERSON REID: Right. Mr. Pernell, you are familiar with the fact that the use variance runs with the land.

MR. PERNELL: Oh, yes.

CHAIRPERSON REID: But the aspect of the review -- even if they come for review and you stated that you are not pleased with some type of adverse impact that has come about as a result of the variance being given, what recourse do you have?

MR. PERNELL: Well, you know by law now as of 1999, ANC and community members have great weight. In the sense that we wanted to use our great weight if this facility and the use of this facility becomes a great impact on the community as far as impact on parking, the staff is not merging --

MS. PRUITT: Excuse me. I just want to try to understand you. Great weight in reference to the Board's decision or great weight in reference to what?

MR. PERNELL: Great weight in what the community members want in their community if there is an adverse impact.

MS. PRUITT: Okay, but Mr. Pernell, once

this is -- if this is approved, the application -- it is done. The applicant will have the right forever to use this as an office building.

CHAIRPERSON REID: Let me see if I could give you some comfort level at the ANC. What we customarily do is if in fact there is some concern, then we can -- I think we can put conditions.

MS. PRUITT: Conditions are generally under special exceptions.

CHAIRPERSON REID: Oh, but not with the use?

MS. PRUITT: Right. It is either black or white.

CHAIRPERSON REID: You can't condition it. What I was going to suggest was that we would condition it for like 3 or 5 years to come back.

MR. PERNELL: Well, hypothetically speaking in reference to the Board, what you are saying is true. But what I said in great weight is what the community wants -- taxpaying people. These people who use 1131 are transit people. They are --

MS. PRUITT: I understand that, Mr. Pernell. I --

MR. PERNELL: Can I finish my statement?

CHAIRPERSON REID: Please, let him finish. Give him the floor.

MR. PERNELL: What I am saying is that we have a right in our community to scrutinize any business that comes here. These people come and go and they do not put any money into our budget except for the use that they use it from 8:30 to 5:30 p.m. All I am saying is that we have a nice agreement with these people. We weren't hostile with them. We came to an agreement. They have agreed to come before us within the year and I will stick to that and I know they will. I am foreseeing that -- I appreciate the facility there. What I don't like is the owner taking the responsibility of not coming to the ANC and single member district and discussing this with us so we can have a medium. We have two civic groups -- Near Northeast Citizens Against Crime and Drugs and the Public Interest Civic Association -- sitting right on that borderline. We have a community council right at Galludet that we deal with. And I am on that board and this is what we want. We want a relationship with these people. Now, we didn't have any opposition when we threw out what we wanted in our subcommittee on July 7. And I think we came -- we could have been very hostile to the owner of this facility, but we weren't. And clearly, as they have said here today, they were operating without having permission by the zoning

regulations of the District of Columbia.

MS. PRUITT: Madam Chair --

CHAIRPERSON REID: Excuse me, Ms. King?

MS. KING: I would like to hear what Ms. Pruitt-Williams has to say, because I think once we give a use variance, that is in perpetuity.

MS. PRUITT: My concern is that while Mr. Pernell's issues are valid concerns, this is not the correct place for them to be aired because you have no jurisdiction over that. When you issue a use variance -- I mean, if you were to issue a use variance, it runs with the land. The applicant then has the right in perpetuity to use that property that way. Any other agreements that are done between the applicant and the ANC or any civic associations are between them and cannot -- the BZA cannot enforce them.

CHAIRPERSON REID: I think I understand. I think what the concern is --

MR. PERNELL: It --

CHAIRPERSON REID: Let me.

MR. PERNELL: Go ahead.

CHAIRPERSON REID: They have now established a rapport with the school --

MR. PERNELL: Galludet University.

MS. PRUITT: With the University and

Galludet.

CHAIRPERSON REID: With the University and Galludet. So what they are asking -- and this would be -- this is an agreement between you and them to come back after a year, and this agreement would also stipulate, I suppose -- again, it wouldn't be a part of us -- but contained therein you would stipulate that in the event there are any adverse impacts that they would be ameliorated as quickly as possible, and they would agree to do so. Is that what you are saying?

MR. PERNELL: Right.

CHAIRPERSON REID: But that would not be -- that is between -- and I see here in your letter now that you didn't say that the BZA would do it. You are just saying that you want that as a part of your agreement with them.

MR. PERNELL: Absolutely. And the 6A Commission has been very fair to the businesses coming to the District of Columbia.

CHAIRPERSON REID: Sure.

MR. PERNELL: We want them to respect our community like we would their business. You know, if President Jordan would have heard of their existence being here illegally, he would have been very upset. Because he had an on and on

relationship with us. Up until yesterday, we had a ribbon-cutting ceremony. So this would be very upsetting to him for them to come before us like that. But nevertheless, the community wants to move forward -- the Near Northeast Community wants to move forward and we want these people only to respect our community and by that coming before us. And there should be some restrictions on the owner that does this. It is not the people who are occupying this facility. It is the owner who comes before us. And there is great weight in the community.

MS. PRUITT: I understand that, Mr. Pernell.

MR. PERNELL: I am not disputing you. I am just making a -- what I just wanted to say is that to make it clear while they are here because these people don't meet before us. They met with us only because the application came before us. They won't attend our civic meetings and our ANC meetings. So I want to make it very clear for the record that if this facility in the far future becomes an adverse negative impact on the community, we have a mechanism set up to have them closed down under DCRA and with the police department. What we are saying is we want to avoid that by having this

relationship with them. And, therefore, that is why we are not contesting their application. We are just asking for the terms that you see in our letter. And I will end it at that before we get into a whole lot of other stuff.

CHAIRPERSON REID: Actually, Mr. Pernell, I think that --

MR. PERNELL: And letting them know that we are not hostile. We are trying to work with them but they've got to respect our community.

CHAIRPERSON REID: I think that that is very important in the city. The ANCs work very hard to try to ensure that the various communities are kept and maintained in the correct manner and that there is no adverse impacts on the citizens who live there when people come into the area. And I think that that is a very important function of the ANC and I really applaud your tenacity in assuring that that happens. This is part of the function of what I think ANCs should really be about. I appreciate that.

MR. PERNELL: And that building has for a long time -- you know, we have been down here for years. We are moving into the 21st Century. We just got a proposal for the Subway to be at New York -- I mean, actually in my backyard at First and M

Street. We have, I think, included -- it is unauthorized, but I have included Galludet University. I eventually talked to Reverend Jordan and he had a reception there for me, and we told him that we are moving forward. Because we have a lot of Galludet students there and we want whatever facilities for them, and we want to provide it in the Near Northeast, and that is the relationship we have there.

CHAIRPERSON REID: Great. Come up. This is the ANC portion, but Mr. Pernell, if you don't mind.

MR. PERNELL: No, I don't.

MR. CHOI: First of all, I would like to say that I apologize for --

CHAIRPERSON REID: Give your name.

MR. CHOI: My name is Steve Choi. I am the owner of the property. First of all, I would like to apologize to Mr. Pernell for not informing him about having an office there. First of all, all the time I owned the property, I not one single time got a letter for a community hearing or a community meeting. I was not informed. If there was a meeting or something was involved, I would have showed up and attended, because it affects the value of my property.

CHAIRPERSON REID: So you were not informed?

MR. CHOI: Yes, ma'am.

CHAIRPERSON REID: Okay. Well, then Mr. Pernell is going to make sure that you get the communication.

MR. PERNELL: The 6A Commission is very clear on that because I typed up those letters and I sent them to the applicant. The applicant is responsible for informing the owner. We can only go by what the BZA sent us, and that is what I responded to. But nevertheless, we are working with the Asian community in Edward Yum's and all them, so everyone is included. We just want them to attend our meetings. Our meetings, by law, are published. Okay. I accept it.

CHAIRPERSON REID: Okay. So you get that little communication problem solved.

MR. PERNELL: Yes.

CHAIRPERSON REID: Thank you very much, Mr. Pernell.

MR. PERNELL: Thank you, Board members.

CHAIRPERSON REID: All right. There has not appeared anyone in opposition and no one else has come in support. Closing remarks by the applicant?

MR. PERNELL: May I? I am just going to say I do not -- I do not have -- what I would like to say as an attachment is that they would adhere to the parking requirements in that area and that they will use the facility at Galludet to park and not in the community.

CHAIRPERSON REID: They have proffered here today on the record that they are using paid parking at Galludet.

MR. PERNELL: Okay.

CHAIRPERSON REID: They have secured those parking spaces.

MR. PERNELL: All right.

CHAIRPERSON REID: So that is adequate for us.

MR. PERNELL: I thank you.

MR. CHOI: Could I add to the parking park?

CHAIRPERSON REID: Give your name.

MR. CHOI: My name is Steve Choi. On the parking matter, because it is on the street, we have no control who parks in the front of it. He mentioned about parking with Maryland tags. I was not aware of somebody who has Maryland tags. Anybody can park there.

CHAIRPERSON REID: Well, what he said

was -- what the applicant stated was that they were going to make sure that the six persons who work there park on the Galludet parking or paid parking, and that is the only thing that we are concerned about. Now I don't know in regard to visitors -- I don't know if it is a -- can you come forward? I don't know if there is a building -- come forward and give your name for the record.

MR. CHADWICK: Yes, I am Alan Chadwick. I am the CEO and chief financial officer for Capital University. I want to address Mr. Pernell's question. One is we do want to become part of the neighborhood. I have only been there six months and I have met Mr. Pernell and we want to be open. In the past, I can't explain what happened prior to me getting there and taking over. But we do want to be part of the community. We want to make sure the community is safe, not only for the people who live there but the surrounding area. So we are going to work with you and we will be there at your meetings. We may not agree all the time, but at least we want to take part in it. And we will abide by the regulations of the ANC, because it is your neighborhood. It is our neighborhood also, whether we are transient or not. We belong to Washington, D.C. We work here and we want to be part of the

neighborhood. We may not pay all the taxes that you pay, but certainly our taxes go to support the school system. The parking situation, we really can't control. I came to work this morning at 6:00 and there was somebody from Texas, a truck I never saw before. So either Galludet students who live there or live across the street.

CHAIRPERSON REID: Excuse me. The concern is that --

MR. CHADWICK: We are going to use Galludet.

CHAIRPERSON REID: The persons who are employed at that facility or at that address will park on the Galludet Parking lot.

MR. CHADWICK: I pay the bills and they will be parking at Galludet.

CHAIRPERSON REID: And the other parking -- my question was do you have people who come -- like visitors who come there on business?

MR. CHADWICK: Very, very rarely. Basically, we have an open house -- to address Ms. King's question about what kind of university it is -- and I will regress a little bit. This is an integrated medicine where you take the alternatives and compile it with practical medicine. We have acupuncturists, aroma therapy, dentistry, and toxic

chemicals. We keep them coming and they are all doctors or dentists or naturopaths, so on and so on. We meet at Galludet for one weekend, Friday, Saturday and Sunday. All the people who fly in from all over the country go to Galludet. They are at the Kellogg Center. They park at the Kellogg Center. Yes, we do have delivery trucks and Fed-Ex's, but there are not really that many. You know Fed-Ex's and UPS, they are 10 minutes or less and they are gone. So we make sure of that. We meet on that one weekend a month. There is an open house at the Kellogg Center. Everybody is focused there. All the money that is derived there comes -- and that is a lot of money. We paid almost $100,000.00 last year to Galludet to hold the classes. So that is substantial support for the neighborhood. Dr. Williams is one of the founders and Judge Jackson is one of the founders of the university, and they are D.C. residents. They contribute regularly to the school. So, we want to be part of the community. We will address the questions about parking. I pay the bills. They will all park there. I park there. So I don't think that is going to be a problem. If there are other people there, please come see me or have Mrs. --

MR. PERNELL: Could I pose one small

question? If you are having deliveries -- and we know Federal Express and all them because they have a limit of 12 to 15 minutes, I believe. But these deliveries that are going to take a little longer, could you post a notice in the area where they are going to be doing that to the community so they will know?

MR. CHADWICK: Well, the problem we have got is that where they deliver is right in front of the fire hydrant unfortunately.

MR. PERNELL: And that is already a violation.

MR. CHADWICK: Right. So --

CHAIRPERSON REID: You have to move in and out fast.

MR. CHADWICK: So they move in and out real fast.

MR. PERNELL: Okay.

MR. CHADWICK: So I don't know what kind of sign that we can do, but we will certainly work with that.

CHAIRPERSON REID: Look, those details you all can work out between the two of you. And if you need it, fine. Maybe you don't need it. If it is going to be addressed with the fire hydrant, then perhaps you don't need it.

MR. PERNELL: Madam Chair, I read that the 6A Commission and the single member district that Wanda has is very pleased with this business being there.

CHAIRPERSON REID: Okay. Thank you very much.

MR. CHADWICK: Thank you.

CHAIRPERSON REID: All right. Closing remarks by the applicant.

MR. MERKLINGER: I am Jim Merklinger. We are very happy actually with the process of meeting with the ANC and getting to know the neighbors and actually with the review process. The University itself is before the licensing board for a review of its permission to operate in the District. This process has actually gone fairly quickly. And we ask that if we are approved that we just know the time frame if a permit were to be issued so that we would be able to notify the licensing board that the University would be in compliance with their guidelines also.

MS. KING: I would move that we grant this application. It seems to me that they have eventually and substantially met the burden of proof and that we could issue a summary order granting this application.

CHAIRPERSON REID: Mr. Parsons?

MR. PARSONS: Second.

CHAIRPERSON REID: Did you have any comments?

MR. PARSONS: Well, the point I was trying to make earlier I think has bearing here, and that is that this property is difficult property to use for residential purposes because of its size in the context of the other -- I mean, the exhibits in this case show the photographs of other structures to be used for residential are half the size, if that. For that reason, I think there is a hardship in this case. I don't know if you all concur with that, but that is where I was going with that line of questioning.

MS. KING: I agree.

CHAIRPERSON REID: I concur with my colleagues and feel that they have met the burden of proof for a use variance, and that there does not appear to be any adverse impacts. There is no one here in opposition. The ANC is in favor of it with periodic review. So, therefore, I would be in favor of granting this application. All in favor? Aye?

ALL BOARD MEMBERS: Aye.

CHAIRPERSON REID: Opposed?

MS. PRUITT: Staff will record the vote

as 3 to 0 to approve, motion made by Ms. King and seconded by Mr. Parsons.

CHAIRPERSON REID: Okay. You should have your summary order in approximately two weeks.

MR. MERKLINGER: Two weeks? Thank you very much.

CHAIRPERSON REID: This concludes the July 21 public hearing for the morning session. We will resume at 1:00.

(Whereupon, at 12;00 noon, the hearing was adjourned for lunch to reconvene at 1:00 p.m. this same day.)

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

1:00 p.m.

CHAIRPERSON REID: The hearing will please come to order. Good afternoon, ladies and gentlemen. This is the July 21st public hearing of the Board of Zoning Adjustment, District of Columbia. My name is Sheila Cross Reid, Chairperson. Joining me today are Betty King and John Parsons representing the Zoning 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 sitting to my right.

The order of procedures for special exception and variance cases will proceed as follows: 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 or parties in opposition; five, closing remarks by the applicant. Cross examination of witnesses is permitted by persons and parties with a

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

The decision of the Board in these contested cases must be based exclusively on the public record. To avoid any appearance to the contrary, the Board requests that persons present not engage the members of the Board in conversation. The Board will make every effort to conclude the public hearing as near as possible to 6:00 p.m. If the afternoon cases are not completed at 6:00 p.m., the Board will assess whether it can complete the pending case or cases remaining on the agenda.

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

MR. BROWN: Madam Chairman, a quick

question. My name is Patrick Brown from Greenstein, DeLorme and Luchs. On the action agenda, I don't see reference to 16455, Amoco. We are going to proceed with that case today?

MS. PRUITT: Correct. That is one of the cases that had been postponed from a previous hearing. This is the agenda that went to the public hearing notice, but it is on the end.

MR. BROWN: Thank you.

MS. PRUITT: And that also goes for 16459. CHAIRPERSON REID: And, Mr. Brown, we apologize for that omission. It should have been on the agenda, but it was not. But it is going to be heard this afternoon.

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

CHAIRPERSON REID: Thank you. And hereafter, we will make sure that those --

MS. PRUITT: It will be on the agenda that is ready for this meeting. It won't be published, but it will be --

CHAIRPERSON REID: For the meeting date it will be available.

UNKNOWN SPEAKER: Case 16459 will be heard this afternoon?

MS. PRUITT: Yes. Madam Chair, staff

has one preliminary matter.

MS. KING: I think Gottlieb Simon has something too.

CHAIRPERSON REID: Come up, please.

MR. SIMON: Good afternoon, Madam Chairperson. My name is Gottlieb Simon. I am representing Advisory Neighborhood Commission 6B. I am the executive director, and I have two preliminary matters with regard to case 16459, the Marquette University Les Aspin Center case.

CHAIRPERSON REID: Okay.

MR. SIMON: I want to raise the issue of notice on one issue and another question about it on a second matter. The first issue of notice, I understand that this case came up and was rescheduled for today. I would suggest to you that under those conditions, we really should have received another notice. We didn't receive any notice for today. It was not included in the proposed agenda, as you have already established, that was prepared for today.

And finally, I will tell you that callers to the office last week attempting to determine whether or not the case was scheduled were given a variety of answers, some of whom were told that the case was not on and some were told that the

case had been requested for a continuance on the part of one of the ANC's. It wasn't on the part of this one. And I understand it wasn't 6A either. So for all those reasons, we would ask that the case, in fact, be rescheduled for another date.

CHAIRPERSON REID: Was the ANC present at the previous hearing date?

MR. SIMON: No, we were not.

CHAIRPERSON REID: You were not present?

MR. SIMON: We were not present.

CHAIRPERSON REID: But you were notified?

MR. SIMON: I am not sure that we were notified to be present at that time. But I will tell you that the Marquette University staff person told me that he had submitted a request for a continuance from May 21st, which was when it was on. And as a result of that representation, we were not present. We were waiting subsequently to in fact receive an official word for when it was rescheduled for.

MS. PRUITT: Madam Chair?

CHAIRPERSON REID: Yes.

MS. PRUITT: This case was -- well, it was postponed from its original hearing date, and it has been this office's policy -- we don't have the

resources to renotice everyone. That is why we announce it to a date certain, so that we don't have to renotice. And it has been the standing policy of the office. We can change it if you wish. It is that anyone who would be here for the hearing would then be informed of its postponement and then could make the choice to come back.

CHAIRPERSON REID: Okay. But the only flaw in that policy is if the ANC is not present at the hearing and the ANC does not have adequate notice then --

MS. PRUITT: ANC was noticed on this.

MS. KING: Originally.

CHAIRPERSON REID: But on the subsequent hearing.

MS. PRUITT: It is the responsibility of the ANC to either provide someone at the hearing to then -- so that if it is postponed, they know. We have not -- we don't have the resources to renotice everybody again.

MS. KING: But I think the ANCs, because of the great weight we must give to them, fall into a different category, and I would suggest, Madam Chair, that we should institute a policy of if the ANC is not here or is not represented at the meeting, that we certainly have got to let them

know. Even if both adversaries in an adversarial hearing are here and the ANC is not, we have to let the ANC know.

MS. PRUITT: Ms. King, that is a rulemaking issue that the Zoning Commission would have to take up.

MS. KING: All right. Well, I would suggest, Madam Chair, that we refer to the Zoning Commission as a matter of absolute urgency.

CHAIRPERSON REID: Since Mr. Parsons does represent the Zoning Commission, what is your feeling about that?

MR. PARSONS: I am trying to recall on how many occasions this occurs. Is this unique? How many times do we notice something and we have a hearing and the ANC is not there and it is postponed? We could take it up as part of rulemaking, but it is probably very seldom. Is it only the ANC that you are interested and not everybody who was noticed within 200 feet?

CHAIRPERSON REID: No. Just the ANC because of the great weight.

MS. PRUITT: However, they receive the same great weight as a party. And since parties are not determined prior the hearing --

CHAIRPERSON REID: No, we don't -- the

great weight is only afforded to the ANC.

MS. PRUITT: But parties have similar concerns. So you are not addressing parties at that point, too. That is my concern.

MS. KING: But if they are parties, they have to be here at the first hearing.

MS. PRUITT: Parties are determined then, though. That is the whole issue.

MS. KING: Pardon?

MS. PRUITT: You have not determined parties -- sometimes you have not determined parties at that point.

MS. KING: But still, if they wanted to be a party, they would be here.

CHAIRPERSON REID: They have to be here to be a party.

MS. PRUITT: That is the same argument for the ANC.

MS. KING: No, that is not.

CHAIRPERSON REID: The ANC --

MR. PARSONS: Let's not have the hearing here. I'll take it back to the Zoning Commission.

CHAIRPERSON REID: Yes. But in the interim --

MR. BERGSTEIN: The ANC is automatically a party in a proceeding.

CHAIRPERSON REID: And they are also afforded great weight.

MR. BERGSTEIN: If the question is whether or not you can hold -- if there has been an initial hearing and the ANC is automatically a party and they don't attend the first hearing and they claim not to have notice of the second hearing, I don't think that is a great weight issue. I mean, the regulations indicate that the hearing may be adjourned and a new hearing date set at that hearing and no further advertisement is required. You would have to amend the rules to say unless the ANC party doesn't show up. And then in that case, you would readvertise, but then that would open up a discussion about, well, if they are automatically a party but they don't show up at the hearing and then there needs to be a readvertisement, are they going to show up at the second hearing, and why are you having that type of difference. But the rules allow for a hearing to be resumed without advertisement as long as the date is announced at the first hearing. That is the rule.

CHAIRPERSON REID: Often ANCs don't come to the hearing. Sometimes they send a letter. But if in fact that -- be that as it may, as a courtesy we then -- Ms. Pruitt-Williams, could we -- if there

is a continuation of a case and the ANC is not present, just as a courtesy could we just call them?

MR. BERGSTEIN: You could do that as a policy.

MS. PRUITT: We could try. But unfortunately --

CHAIRPERSON REID: Or drop them a --

MS. PRUITT: Most of the times, the phone numbers -- we can certainly try to call. My concern is their offices aren't manned all the time, so it is very difficult sometimes to reach them. We can leave voice mails and we can send -- it is a resourcing --

CHAIRPERSON REID: A fax notice or something? We could do like a template or a form type of thing that addresses the issue of the fact that the ANC was not in attendance. However, on blank date at blank time, this case number blank has been continued and fax it.

MR. COTTINGHAM: Madam Chairperson, if I could --

CHAIRPERSON REID: Come forward if you would like to speak and give your name.

MR. COTTINGHAM: Steve Cottingham representing Marquette University, the applicant in the manner you are discussing.

MS. PRUITT: I am sorry, sir, our PA system isn't working, so could you please speak up?

MR. COTTINGHAM: I am sorry. Steve Cottingham representing Marquette University, the applicant in the case that you are discussing. I would just like to say before you rule that we would strongly like to proceed today. I have flown out from Milwaukee this morning to be here. We have arranged to have everyone here. I am a little puzzled, I guess, since the ANC's letter says that they had no meeting back on June 15, why they would need additional meetings at this time. But we are here and we are ready to go. We would strongly prefer to proceed today.

MR. SIMON: Madam Chairperson, I would like to make two other points. You may also want to hear from the chair of 6A, who is in the audience as well. With regard just to the issue of today's hearing, I will tell you that I called last week to clarify when this case was, because I had had a conversation with Father O'Brien from Marquette. And I was told by the staff member that it wasn't on for today. I made several calls over several days and got some conflicting answers, but I am here today because my last call said it was. That is on the issue of this particular time.

CHAIRPERSON REID: You called this office and you were given conflicting information?

MR. SIMON: That is correct. And I understand that other parties -- I don't know if any of them are in the audience who may have come in since I walked over to the table, were told that it was not on here today. So there was some question as to whether or not we were having this. But aside from that kind of an issue, it may be useful for me to bring up my second point now, because that may have some additional bearing on how we proceed.

This is a special exception with regard to Section 206 of the zoning regulations. Section 206 has to do with private schools. There is another exception -- another section, Section 210, that has to do with colleges and universities. We would submit that this application has come to you under the wrong section. It should not be coming as a private school. The regulations at several points indicate that they make a distinction or understand that private schools are not the same thing as colleges and universities. Marquette University is clearly a college, a university of higher learning. It is not a private school of higher learning, it is a college and a university. And consequently, this case should be coming before you as a special

exception with regard to Section 210 and not Section 206, and accordingly should be readvertised under that section.

MR. COTTINGHAM: Madam Chairperson, if I could be heard on that. We discussed that issue with the staff at length before deciding to apply under 206, and we were specifically informed that we could proceed under either 206 or 210.

CHAIRPERSON REID: What staff, sir, did you discuss this with?

MS. PRUITT: DCRA staff or this staff or both? Probably DCRA staff, because that is what refers you here.

MR. COTTINGHAM: Right, the office with which we filed the application.

CHAIRPERSON REID: I am sorry?

MR. COTTINGHAM: The Department of Consumer and Regulatory Affairs.

CHAIRPERSON REID: Okay. And there they said you could go either -- did you self-certify? I don't have your file in front of me.

MR. SIMON: Yes, ma'am, they self-certified.

CHAIRPERSON REID: Okay. And you were told that you could go up under 210 or 206?

MR. COTTINGHAM: Correct.

MS. PRUITT: Madam Chair, we, of course, just heard this morning the National Graduate University under 206. We also heard the earlier case that is associated with National --

CHAIRPERSON REID: Catholic University was 210.

MS. PRUITT: I am sorry --

MR. SIMON: 210. It originally came in as 206 and then was reconverted to 210.

MS. PRUITT: Which one? I am sorry?

MR. SIMON: National Graduate University originally came before you as a 206. That issue was presented and they were then readvertised as 210. I am not sure what issues may have been resolved with regard to that institution.

CHAIRPERSON REID: Catholic University came --

MS. PRUITT: Not Catholic, Capital. The last case.

CHAIRPERSON REID: This morning we had Catholic University with --

MS. PRUITT: And then we had Capital University.

MS. KING: But also the Graduate School --

CHAIRPERSON REID: Was that not under

210? MS. PRUITT: They have an established campus plan.

CHAIRPERSON REID: They had a campus plan.

MS. PRUITT: Correct. So they were further processing their existing case.

CHAIRPERSON REID: Right. And then Capital University was under --

MS. PRUITT: 206, I believe.

CHAIRPERSON REID: As was the Graduate University?

MS. KING: No. That was under the other.

CHAIRPERSON REID: They came in under 210? But they did not have to have a campus plan.

MR. SIMON: Madam Chair?

CHAIRPERSON REID: Yes.

MR. SIMON: National Graduate University initially applied as 206, and that is partly how we became more educated about the issue. They applied at 206 and there was a discussion and they reapplied as 210. And consequently we have been looking at the regulations. I haven't had any conversations in the Department of Consumer and Regulatory Affairs about how they might interpret it. But you will see that if you look on page 31-9 in the chart that

explains which particular special exceptions apply to which, you will see that there is a distinction made between a school, between -- in the first instance, it talks about a school -- private school, trade school, colleges and universities. It then goes on to have a category called private school, excluding colleges and universities. So there is a distinction and there is an exception. And consequently, the present application ought properly to come under 210.

CHAIRPERSON REID: Let me ask staff if to your knowledge -- oh, Mr. Bergstein is here. Is it either/or? When it is time for a college or private school, do you have the option of either/or, or is it one or the other?

MR. BERGSTEIN: I don't know if I am prepared to answer that off the top of my head. There are --

CHAIRPERSON REID: I don't understand an either/or answer. Either it is or it isn't or whatever.

MR. COTTINGHAM: If I might add?

CHAIRPERSON REID: Yes.

MR. COTTINGHAM: Part of what may have driven that is Marquette is not here. We are a private university located in Milwaukee, Wisconsin.

Our program here is not in a sense what people think of probably as a college or university. It is essentially an internship program for some of our students and students from elsewhere. If we get to the matter, Father O'Brien will talk about the very limited presence that they actually have as a private tools capital, essentially once a week. So it is not as if they are taking classes. They are really out here working in congressional offices, FDA, and other government offices. So in looking at 31-9, I think it excludes trade schools. In other words, it excludes private colleges and universities.

MR. SIMON: 31-9 indicates private schools. And in that particular section that you are referring to, a private schools is distinguished both from a trade school and a college and a university. I don't think that you are suggesting that Marquette is other than a college or a university. I would also like to bring to the Board's attention a letter from council member Ambrose, who also raises the point. I believe you just perhaps received copies of the letter indicating that this is an issue that the Board needs to give some consideration to.

And with regard to Mr. Cottingham's

last point, I believe that the 20 or so odd -- or up to 20 or so odd students who are at this campus instead of at the Marquette University campus, they are treated as full students -- full-time students, is that not correct?

MR. COTTINGHAM: They are earning college credits for this program.

MR. SIMON: And in fact, don't they actually pay more tuition to be in Washington than they do in Marquette?

MR. COTTINGHAM: I don't know if that is true. I would just ask why that would be relevant.

MR. SIMON: Well, it has to do with whether or not it is just a sort of casual relationship that they have with the university. They seem to have about a $10,800.00 relationship with the university during the semester that they are here.

MR. COTTINGHAM: But the real issue is whether a private university is not also a private school.

MR. SIMON: And our regulations contemplate that a private school is not a college or a university.

MR. BERGSTEIN: Can I ask the ANC representative where in 206.1 he is reading the

exclusion as not to include universities?

MR. SIMON: I am drawing your attention to page 31-9.

MR. BERGSTEIN: 31-9?

MR. SIMON: Right. That is way in the back.

MR. BERGSTEIN: Yes.

MR. SIMON: And there is a listing -- a table that shows type of special exception, district, and section in which the conditions are specified. Those are the three columns of the table. And as you go down the table, you will see that there is a row -- there are three rows. One row is entitled schools -- college, university, or other academic institution of higher learning -- that is 210. The next row is school-private school, trade school, college or university. So that each one of those entities are separated. And then you see finally the third category, school-private other than trade school. The phrase college or university does not appear in that row.

MR. COTTINGHAM: Which was the point I was raising of how you had initially claimed it specifically excluded universities. Instead, you were really just arguing by omission.

MR. BERGSTEIN: It does say private

school in both places. In one instance it says private school with college or university and the other says private school without college or university. And then the listing above it says college, university, or other academic institutions of higher learning. The main difference between a college or university is that section, in the private school section. The actual standard is the same in the sense that 206.2 says, "A private school shall be located so that it is not likely to become objectional..." And 210 has that same standard. The principle difference is that if there is a campus per se, then there needs to be a campus plan. In other words, if there is more than one building, you need a campus plan, and a special exception can be consolidated in the campus plan. In other words, you can have a campus plan and consolidate that with a special exception for the use itself. The other difference is that in an R-1 zone, colleges get additional bulk flexibility, which if you are applying as a private school, you don't get. In other words, if you are electing to be considered a private school, then you won't get the flexibility requirements of 210.3. But there is a different demarcation between these two uses -- between private schools and colleges and universities. As I

said, the basic standard is the same except that when a university establishes itself, it has to have a "campus plan". But in this case, there is really no
-- if I am correct -- campus. It is a single --

MR. COTTINGHAM: It is one -- it is the basement in this building. That is the only space we are talking about.

MS. KING: Do you own the entire building?

MR. COTTINGHAM: We do. The rest of it is used for residential space.

MS. KING: I am sorry, I can't hear you.

MR. COTTINGHAM: The rest of it is residential.

MS. KING: Oh. Associated with the university or rented out to --

MR. COTTINGHAM: Owned by the university.

MS. KING: But --

MR. COTTINGHAM: The entire building is owned by the university.

MS. KING: Yes, I understand. But the people who rent --

MR. COTTINGHAM: The program director, Father O'Brien, lives there.

MS. KING: I see. Okay. This entire building is for the use of Marquette, but that is the only building you own in the District of Columbia?

MR. COTTINGHAM: Correct.

MR. SIMON: And just to flesh out the issue of whether or not they are the same or different, also in Section 9-12, page 9-8, schools and colleges, you will see once again that there is a distinction or a separation between private school, trade school, college or university. Each are being considered a distinct, separate entity.

MR. BERGSTEIN: With respect to -- but we are in an R zone here.

MR. SIMON: Yes. But my point is simply again that that phraseology appears once again, indicating that those are not synonymous, but are actually separate entities.

MR. BERGSTEIN: How would the advertisement of this as a college or university versus the advertisement that this is a private school prejudice you if the standard appears to be the same in terms of the location, the objectionability, and is subject to the same special exception standard and there is no campus?

MR. SIMON: Well, there would be some

additional information. There would still be the necessity of a campus plan, whether or not you consider one building to be a campus or not a campus, and the issues of impact upon the neighborhood would be more fully mapped out. You would have the traffic study.

MS. PRUITT: Madam Chair?

CHAIRPERSON REID: Yes?

MS. PRUITT: May I just make a suggestion? The thing with the self-certification is the applicant takes the burden of saying that this is the type of zoning relief that is required. I may suggest that maybe you go forward and if once it gets back to the zoning administrator they determine it comes under 206, that is the burden of a self-certification that then it would have to come back forward. If, for some reason, 206 is upheld and it goes through, then Mr. Gottlieb has the ability to appeal the Zoning Administrations decision. I mean, that is one course. that is why self-certification is done. It allows people to move expeditiously through the process, but they also take that burden and responsibility that they may have to go back through the process if they did not choose the correct zoning and that is just the understanding.

CHAIRPERSON REID: Are you a preliminary matter?

MS. NEAL: Yes.

CHAIRPERSON REID: Then come forward and state your name, please.

MS. KING: And address.

MS. NEAL: My name is Jean Marie Neal. I am a neighbor at 621 A Street, N.E. I know this is not the time you are taking neighbors' statements, but I wondered if I could address a misleading statement made by the Marquette lawyer that I think is relevant to this and I think that was a question you were attempting to ask that was not answered about the use of the facility. Is that proper that I can address that?

CHAIRPERSON REID: Well, I don't think that is a preliminary matter.

MS. KING: No, it is not a preliminary matter.

MS. NEAL: I am sorry, it just related to your question about a rental facility.

CHAIRPERSON REID: At the appropriate time, you will be able to testify.

MS. NEAL: Okay. Thank you.

CHAIRPERSON REID: Now, the question as it relates to whether or not it should be continued

--

MS. KING: Well, there are two questions. One is should it be continued and the other is is it advertised under the -- and I think -- I mean, let's dispose of that.

CHAIRPERSON REID: No, Ms. Pruitt-Williams I think settled that by simply saying we go under this and then it goes back to ZA. If they kick it out, then Mr. Gottlieb would have to appeal it. Given the fact that we are here.

MS. KING: So the Board is going to agree that they have self-certified and if they screwed it up, then they get involved in a long legal appeal and that is the responsibility of their lawyers and architects. So that disposes of that. Now we are on the question of do we postpone or continue.

MR. PARSONS: Mr. Simon?

MR. SIMON: Yes.

MR. PARSONS: Has your ANC taken a position on this matter?

MR. SIMON: ANC 6B?

MR. PARSONS: Yes.

MR. SIMON: ANC 6B, yes. We took a position to oppose the case. And I will tell you now that Father O'Brien, who is here today, has

protested very vigorously that we took the case in his absence. MR. PARSONS: Do you have a letter in the record?

MR. SIMON: A letter was faxed. I have a copy of the original itself. And --

MS. PRUITT: When was it faxed, sir?

MR. SIMON: Excuse me?

MS. PRUITT: When was it faxed?

MR. SIMON: It was faxed on Monday.

MR. COTTINGHAM: If I may at this point --

MS. KING: Could you speak up?

MR. COTTINGHAM: Sure. If I may at this point, since we have come to that issue, the letter is not timely under the rules.

MS. PRUITT: It would need to be waived. We understand that. Thank you.

CHAIRPERSON REID: Is it in the package?

MS. PRUITT: Yes.

MS. KING: Is this it? The letter of July -- oh, no, it is July 14.

MR. SIMON: Yes, that is the correct one. that is the one.

MS. KING: "Dear Board Members, Marquette University is requesting a special exception..."

CHAIRPERSON REID: Did that come today?

MS. PRUITT: No. It is in your package.

MS. KING: No, it was given to me today.

MS. PRUITT: It should be in your supplementary package.

MS. KING: But it may have been in another package as well.

MS. PRUITT: Because your packages go out on Friday. So anything after Friday has to be put in a supplementary package to give to you today.

MS. KING: But it was faxed over on Monday -- this copy was faxed over on Monday, July 19?

MR. SIMON: Yes. It came with a request that the rule be waived in as much as the chairperson misunderstood that --

MS. KING: Yes, that is here too.

MR. SIMON: Right.

CHAIRPERSON REID: The chairperson misunderstood what?

MS. KING: The request for a waiver.

CHAIRPERSON REID: The chairperson misunderstood what?

MR. SIMON: That he should have faxed it as opposed to bringing it back to the ANC office.

CHAIRPERSON REID: Oh, I thought you

were referring to me.

MS. KING: No, the chairperson --

CHAIRPERSON REID: I understand. Okay. Well --

MR. PARSONS: I want to continue on. Mr. Simon, you are obviously here to represent this point of view today.

MR. SIMON: Correct.

MR. PARSONS: What would a postponement do to change this position?

MR. SIMON: Well, it is my understanding that there are some neighbors who would like to weigh in on the issue whose knowledge that we were meeting today was, shall I say, compromised by the representation I made earlier that they called and found out that this matter wasn't coming up and also were generally unaware that this case was in process. MS. KING: We could perhaps cure that by leaving the record open.

CHAIRPERSON REID: I am sorry, we could cure what?

MS. KING: The fact that -- what Gottlieb is saying is that there may be some neighbors who didn't get proper information about this hearing and who would like to weigh in with their opinion. The Capitol Hill Restoration Society

is represented, Ms. Neal, who wrote in advance and asked or party status is represented. You are here representing the ANC. And it seems to me that we could leave the record -- we could cure that problem with the neighbors by leaving the record open. Our next decision making meeting isn't going to be until the first week in September. That gives them plenty of time to weigh in with their opinion.

CHAIRPERSON REID: And also the letter -- the July 14 letter is in support of the application with conditions.

MR. SIMON: Excuse me?

CHAIRPERSON REID: I said your letter -- the ANC letter --

MR. SIMON: Yes?

CHAIRPERSON REID: Is in support of the application.

MR. PARSONS: That is from 6A or 6B?

CHAIRPERSON REID: I don't remember. It must be 6B. Do you have 6B right there?

MR. PARSONS: Here.

MR. COTTINGHAM: Madam Chairperson?

CHAIRPERSON REID: Okay. So 6B opposes and 6A supports it. All right.

MR. COTTINGHAM: If I could note for the record, we are actually in ANC 6A, who is in support

of the application, and Mr. Pernell is also here today. We are adjacent to 6B, but we are actually in ANC 6A. And I don't know -- would you like to raise a preliminary question, the question of 6B having given proper notice of their meeting? Or would you prefer that Father O'Brien talk about that?

CHAIRPERSON REID: Whether 6A was given proper notice?

MR. COTTINGHAM: Whether 6B gave proper notice of their meeting at which they took the vote in opposition of our application.

CHAIRPERSON REID: I mean, we can ask. Were you -- did you notify properly?

MR. SIMON: The issue in this case is that we had a meeting scheduled for June 8, and that meeting was canceled because as some of you may be aware, one of our Commissioners, Dennis Dollinger, was unfortunately murdered and that occurred on the Friday before our Tuesday meeting. The meeting was thereupon canceled. The notice was put on our door and other efforts were made to notify people of the change in our meeting. I believe that we did manage to put up required notification. But in any event, I believe that the law does say in circumstances of that sort, less than 7 days notice is allowed.

MS. KING: Gottlieb, do I understand that the Marquette University property is not in ANC 6B?

MR. SIMON: The Marquette University property is exactly on the north side of the boundary separating 6A and 6B.

MS. KING: You mean, it is on the other side of the street?

MR. SIMON: It is on the other side of the street, that is correct. We then count as an affected ANC rather than the ANC in which it was located.

MS. PRUITT: So, therefore, the Board does not -- it is not granted great weight.

CHAIRPERSON REID: Okay. Let us try to move on from this point, the preliminary matter. The issue on the floor is whether or not we should proceed today. I think it would be my take on this that we would go ahead and proceed with it. As Ms. King suggested, you'd have ample time to meet and then to weigh in by submitting a written -- putting a written report on your position that we would pass at a time that we would actually have the meeting to decide this case.

MS. KING: Well, we have their written report. What he is considered about is the

neighbors. CHAIRPERSON REID: Well, he -- that is the whole point I am making.

MS. KING: And additional public comment.

CHAIRPERSON REID: He is saying that they want to have the time to get additional comments and submissions to submit to us.

MR. SIMON: Well, I am saying their opportunity to participate today or to be here today has been compromised.

CHAIRPERSON REID: Well, not if they can submit it in writing, Mr. Simon.

MR. SIMON: No. You will be able to hear from them, but their ability to be present at this hearing will have been, as I say, compromised.

CHAIRPERSON REID: Well, that -- I don't know if that -- whether or not it is compromised or not. The most important thing is that they have the opportunity to be able to have their view or their opinion aired to us, which they will be given that. They would be afforded that opportunity.

MR. SIMON: I understand.

CHAIRPERSON REID: And I think under the circumstances and given the fact that Marquette is here and ready to go and has flown in, we would try to be fair about this and give them an opportunity

to submit and to go ahead with the case today. That would be my take on it. I don't know what the other Board members -- how you feel about this?

MS. KING: I agree.

MR. PARSONS: Agreed.

MR. COTTINGHAM: One point of clarification. I anticipate we could also have neighbors submit letters if the record is open so that it could --

CHAIRPERSON REID: If the record is open, they will give -- and we will give time lines for the submission of their responses or whatever.

MR. COTTINGHAM: Okay.

CHAIRPERSON REID: We have until September -- our first meeting in September in order to do all that. So there is ample time.

MR. COTTINGHAM: Thank you.

MR. SIMON: Thank you.

CHAIRPERSON REID: All right. Are there any other preliminary matters? Does staff have any preliminary matters?

MS. PRUITT: No. We would just like to let you know that the third case in the afternoon, application 16472, I believe all the participants are here.

CHAIRPERSON REID: Okay. Are you all

ready now? Can you come forward at this time to be taken first?

MR. LYLES: Yes. Yes, we are ready.

CHAIRPERSON REID: All right, then come forward. Mr. Hart will call the case.

MR. HART: Case No. 16472 of the Holy Christian Missionary Baptist Church for all People, pursuant to 11 DCMR 3107.2, for a variance from the rear yard setback requirements of Section 774.7; and a variance from the number of parking space requirement of Section 2101.1, for proposed new construction of a church for a 812 seating in a C-3-A premises at 4000 Benning Road, N.E., Square 5081, Lot 52. Would those persons planning to testify, please stand and raise your right hand.

(WITNESSES ARE SWORN.)

MS. PRUITT: Madam Chair?

CHAIRPERSON REID: Yes.

MS. PRUITT: Staff has just one preliminary matter on this and that is that the property was posted two days late. For the record, we would just like to let you know that.

CHAIRPERSON REID: Okay. Should we waive the --

MS. PRUITT: Yes, you need to deal with that. However, it was posted -- it was posted for

13 instead of 15 days. It was posted, but it was just two days late.

CHAIRPERSON REID: Unless there are any objections from anyone here, then we can waive that requirement that it be posted 15 days in advance of the hearing date.

MS. PRUITT: Okay. And I believe there is another issue. The Park Service has requested party status in this case. Could you please come forward? This is the time to do so. Actually, could they just sit there and request that they need to just talk -- they are requesting party status.

MR. ROSENSTOCK: We make our presentation first?

MS. PRUITT: No. This is still a preliminary matter. We haven't gotten into the merits of the case at all.

MR. ROSENSTOCK: Sure.

CHAIRPERSON REID: Okay.

MR. ROSENSTOCK: Good afternoon. My name is James Rosenstock representing National Capital Parks East.

CHAIRPERSON REID: I am sorry, sir, you have to speak up. We are having --

MR. ROSENSTOCK: I am sorry. Good afternoon. My name is James Rosenstock representing

National Capital Parks East in this matter.

MS. KING: Your address? Your home address?

MR. ROSENSTOCK: 13508 Harrison Avenue, Fort Washington, Maryland 20744.

MR. MURPHY: Good afternoon, my name is David Murphy. I am representing the National Capital Region of the National Park Service this afternoon. My home residence is 7910 Woodrow Place, Cabin John, Maryland.

CHAIRPERSON REID: Okay. Go ahead, Ms. King.

MS. KING: Do you request party status?

MR. MURPHY: Yes.

MR. ROSENSTOCK: Yes, ma'am.

CHAIRPERSON REID: Basically, I guess you are not familiar with the process. You give us the basis by which you feel that you should be granted party status. That is what you are here for right now.

MR. ROSENSTOCK: Oh, okay. Basically as the adjoining landowner of the historic Fort Mahon, we request party status. I am prepared to make a presentation, but I had thought that that would follow the applicant's presentation.

CHAIRPERSON REID: Not right now. And

also, isn't there a federal interest, the Department of Interior?

MR. ROSENSTOCK: Well, yes.

CHAIRPERSON REID: That is what I am saying.

MR. ROSENSTOCK: National Park Service property, historic Fort Mahon of the Fourth Circle Parks, Department of the Interior.

CHAIRPERSON REID: And that is why you want party status?

MR. ROSENSTOCK: It is adjoining property, yes, ma'am.

MS. KING: I recommend that they be given party status.

CHAIRPERSON REID: No problem with me. Okay. Now.

MR. LYLES: Thank you, Madam Chairman and Board. My name is Dean Michael Lyles, attorney for Holy Christian Missionary Baptist Church, and we are here today to request a variance for two restrictions -- a rear yard setback restriction and a required number of parking spaces.

The Board of Zoning may grant a variance on this lot 52, Square 5081 generally from strict application of the zoning regulations to relieve peculiar and exceptional difficulties or exceptional

and undue hardship caused by exceptional narrowness, shallowness or shape of a specific piece of property at the time of the original adoption of the regulation, or by reason of exceptional topographical conditions or other extraordinary or exceptional situation or condition on a specific piece of property. A variance may be granted, however, only if such relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose and integrity of the zoning plan.

We are here today to request a variance for the proposed plan for Holy Christian Missionary Baptist Church to build a new church home facility in a C-3-A zone, which is currently undeveloped and has always been so. The height and design of the building conforms in every way to the zone plan except for the rear yard setback and the parking spaces. The planned use, a church, will be an integrated design of high quality and multiple uses associated with providing Sunday service and service to the community. The applicant hopes to add value to a small area of the District that has been neglected by major businesses and the government. The pastor and the parishioners hope to bring additional spirit and commitment to service to a

neighborhood already being served by the wonderful people at Marshall Heights, Metropolitan Police Boys and Girls Club, and the National Park Service. The organizations currently assisting the community cannot do it all, however, and the applicant promises a gleaming new church facility on the hill welcoming all.

With respect to the rear yard setback, the applicant will evidence through our architect, Mr. Otis Johnson here, one of our primary witnesses, the practical difficulties because of the unique characteristics of the subject property. He will discuss the topography, the park land adjacent to the property, the location of Metro, and the amount of dirt that needs to be moved and the support that the design can give to emergency vehicles and not detract from life, safety and health for the users in the surrounding community.

In addition, compliance with the applicable area restrictions would be unnecessarily burdensome. The application that you should have shows the requirements for 12.8 feet based on the height of the building. Our requirement or our design shows only 12 feet, and we will let Mr. Johnson discuss the construction difficulties and the economic unfeasibility of a major redesign of

that small space. So without any further ado, I would like for Mr. Johnson to discuss the basis for the project, after introducing himself and where he works. The basis for the project and the rear yard setback variance that we seek. Just introduce yourself.

MR. JOHNSON: Yes. My name is Otis Johnson, and I am a principle with Design Construction Management, architects and engineers, Clinton, Maryland.

MS. KING: I am sorry, I can't hear you, sir.

MR. JOHNSON: Yes, Otis Johnson. I am a principle with Design Construction Management Team. We are architects and engineers based in Clinton, Maryland.

MS. KING: And your home address?

MR. JOHNSON: 8910 Bluffwood Lane in Fort Washington, Maryland.

MR. LYLES: And, Mr. Johnson, describe the basic design of the church and how the rear yard setback comes into play.

MR. JOHNSON: I have before you here a site plan. I know some of you are a little ways away here, so I have outlined in yellow to indicate the property line. The building is located -- as

you see this line here, it is into a hill. This building is built into a hill that rises from roughly 78 feet above sea level at the sidewalk and bed and road, up to 102 feet. So as you can see, there is quite a slope there. And our proposal is basically building this building into that hillside. This building is composed of about 13,000 square feet on each floor. The total building is 29,000 square feet. The lot coverage here is roughly 250 x 100 or about 25,000 square foot lot. There is adjacent to this property park land to the right -- National Park Service property -- and to the rear National Park Service property, all of which is undeveloped, of course. There is one residence to the left. The neighborhood is generally commercial. There is a funeral home across the street, a boys and girls club, and also a shopping center right across the street.

This church is proposed to seat 670 worshipers. We were only able to provide, because of the space requirements of the church, we were only able to provide 16 parking spaces on site. However, as recently as last week, we had some conversations with city officials of the Highway Department, who suggested that we cut another entrance to make two entrances into Benning Road,

which we would have liked to have done at first. This change we believe will allow us to increase the parking spaces maybe to 20 and maybe even 26.

MR. LYLES: Mr. Johnson, deal specifically with the rear yard setback right now and the difference between the 12.8 feet and the 12 feet.

MR. JOHNSON: Okay. Well actually what we are talking -- because of the height limitation, we are 12 feet. We are short on that rear yard by 8 inches. We are short in the setback 8 inches. It is a fact -- I don't know how I can describe that any more. I don't have photographs.

MR. LYLES: Are there exits coming out from that --

MR. JOHNSON: Yes, we had to provide some space in the rear here to provide exits for the basement.

MR. LYLES: Can people come out of the building safely if they had to exit?

MR. JOHNSON: We are providing adequate exits.

MS. KING: Which is the high end and which is the low end.

MR. JOHNSON: Well, this is Benning Road along here.

MS. KING: Okay. And that is where --

MR. JOHNSON: It goes up hill, up to 102 up on the high end here. It continues to rise.

MS. KING: And where does the park come out again?

MR. JOHNSON: Beg your pardon?

MS. KING: The park land?

MR. JOHNSON: The park land is to the right side over here and to the rear.

MS. KING: Now your building is going to go to the property line on Benning Road?

MR. JOHNSON: To the property line on Benning Road. We have got a 12 foot setback.

MS. KING: We should be 12'8"?

MR. JOHNSON: 12'8".

MS. KING: Other than that, there is no problem about the size of the building?

MR. JOHNSON: No.

MS. KING: Now where are the parking spaces going to be?

MR. JOHNSON: The parking spaces are located to the right side of the lot. There is an alley, a public alley, that borders adjacent to the property, both on this side and to the rear.

MS. KING: Right.

MR. JOHNSON: That alley currently is

undeveloped. The church proposes to improve that alley -- to actually build the alley. The alley is just actually designated --

MS. KING: Do you have permission from the Department of Public Works?

MR. JOHNSON: We are working with them. We are working with Public Works now and there doesn't appear to be any problems. It is just a matter of some small details in terms of how we manage the storm water.

MS. KING: Now in the various papers that we have received, there are various numbers as to the amount of parking that you would have to have or that you should have for this project.

MR. JOHNSON: Right.

MS. KING: I have seen the number 31, 66 and 82. What is the number that should be required? How many -- what kind of a variance are you asking for?

MR. LYLES: We can deal with that, ma'am.

MS. KING: Well, he mentioned parking and I would like to hear about parking.

MR. LYLES: Okay, sure.

MS. KING: I mean, he was showing me where it was. You've got 16 spaces.

MR. JOHNSON: We have got 16 spaces here, which we believe because of some recent changes we will be able to increase that to 25.

MS. KING: But that is way off the number that you should have.

MR. JOHNSON: Yes. By zoning, based on 812 spaces, we will need roughly 82 parking spaces.

MS. KING: Okay. Now what is the capacity of this building? I see scratched out 812, because you said it was going to be a building for 670.

MR. JOHNSON: Well, 670 is the first phase of this building. We are planning for a future balcony at some point which will house another 142.

MS. KING: So in fact I can now cross out 670. You are building a facility for 812 people?

MR. JOHNSON: 812 people.

MS. KING: And for 812 people, how many parking spaces should you have?

MR. JOHNSON: We should have 82 based on the ratio of one per 10.

MR. LYLES: One of the things that Mr. Johnson will be able to talk about is the number that was submitted in the application is based on

what we hope will be the Board's using its authority to reduce the number of spaces.

MS. KING: From 82 to 16?

MR. LYLES: Well, under 112108.2, the Board has the authority --

MS. KING: Sure, we have the authority to do it, but it is a big jump.

MR. JOHNSON: Well, it is a big jump --

MS. KING: Therefore, at some point in your presentation, you are going to tell us where those other 70 cars go, right?

MR. LYLES: Yes. Mr. Johnson was a little precipitous in mentioning the parking.

MS. KING: No, I raised it. Go ahead.

MR. LYLES: Okay. So we are going to talk about it, but we wanted to break it down into two components. The rear yard setback, to give you a full picture of that, and then as he finishes that, we will talk about the parking.

MS. KING: Okay.

MR. JOHNSON: Okay. What I might -- and I think Mr. Lyles will probably go into this in a little bit more detail -- but we are assuming -- this is a C-3-A zone and there is possible on-street parking available. There is a Metro station. The Benning Road station is roughly -- it is about 900

feet away, and I think the zoning regs allow for 800 feet. So we are just slightly over that 800 foot limitation to the Metro station. There are shopping centers and other parking directly across the street that I will let Mr. Lyles address in terms of the status of the parking arrangement agreements with the people in the neighborhood.

MR. LYLES: While we are on parking, what were the special considerations with respect to the topography of the lot and the parking that you can provide?

MR. JOHNSON: Well, we were limited in the sense that because this is on a hillside, we had to build the parking in the terraces. So we weren't able to flatten the site out. Right now, we are requiring some retaining walls as you might imagine around that parking lot to accommodate the use of the terraces. We don't plan to cut all of the fill out of that hill. We want to nicely terrace it so that it will blend into the surrounding conditions. And since it is a hill, we don't want to turn out and make a large retaining wall. So we are terracing the parking to help it blend into the area.

Now in terms of -- I think the other issue would be how we are dealing with the parking,

as you addressed it.

MR. LYLES: Talk about your discussions with the traffic division and what effect you think a discussion with them can have on the traffic coming in and out of the parking lot.

MS. KING: Do you have a traffic consultant's report?

MR. LYLES: No, we don't. We just talked to traffic and Mr. Otis Johnson will tell you about that.

MR. JOHNSON: Well, we had some conversations with traffic. We thought because of the traffic --

MS. KING: You mean with the Department of Public --

MR. JOHNSON: The Department of Public Works.

MS. KING: I am sorry, I thought you had a traffic consultant. Go ahead.

MR. JOHNSON: Okay. Normally if this were a high traffic area, they would not allow for two entrances into a major thoroughfare. So, therefore, our initial design included only one entrance. But after reviewing it with the Highway Department and Public Works, they recommended that we bring in two entrances, which is in my opinion

that they don't expect heavy traffic in that area, especially on Sundays. They are going to allow us to put another entrance in there and that is the thing that is going to allow us to redesign the parking lot to accommodate 25 cars.

MR. LYLES: And, Mr. Johnson, talk about the bus stop at the entrance and the handicap drop-off, please.

MR. JOHNSON: Okay. Because of the first floor elevation -- we are making the first floor elevation of the building identical to the sidewalk elevation. There will be direct handicapped access from the sidewalk directly into the building. There is also a handicap drop-off up here on the parking lot, which will be able to accommodate people with wheelchairs or other handicapped people who can't be dropped off at this level. We are providing an elevator in the building to access between the two floors.

MR. LYLES: Do we have appropriate handicap spaces?

MR. JOHNSON: We are accommodating. There are sufficient handicap spaces.

MR. LYLES: Okay. Now I would just like to have Pastor Young discuss a little bit about the church and why this requirement for 82 will be

obviated somewhat by the church's initiatives in providing some services not only to the community but also to the individuals that will be parishioners at the church. Talk a little bit about the history of the church and how you got to this point, Pastor Young.

MR. YOUNG: I want to thank the Zoning Board for allowing us to come. I am Pastor Steven Young, Pastor of the Holy Christian Missionary Baptist Church. We are presently at 601 50th Street, N.E., which is the national progressive headquarters, which is the chapel of the headquarters and where we hold our services. Our initial starting date was we started in October of 1992, at the Zelch's Banquet Facility, which Ms. Zella Worsley is here in support of what we are doing. We stayed there for about three years and then we moved to the progressive headquarters, where we are presently holding our services.

One of our trustees saw this sign up where it said the property was vacant. We did some investigating and found out the property was available to do some building on. Trustee Allen is here. So we were able to secure the property. I hear the gentlemen talking about our parking. We have a very young church. God gave me a vision to

start this church and try to get some of the kids off the streets and out of neighborhoods and out of the crime system so that we could be an effective entity in our church. Right now in our church, we have NA, which is on Tuesday.

MR. LYLES: What is NA?

MR. YOUNG: NA is rehabilitation for drug and drug users. We also have AA, which is alcohol abuse, and that is very Tuesday. We also every second and fourth Saturday, we preach on the Street up on Nannie Helen Burroughs Avenue, which no other church is doing that.

MR. LYLES: Now about the composition of the church, how many of your parishioners actually drive to the church and how many actually walk or live in the neighborhood?

MR. YOUNG: Well, the advantage of our church is that there is a bus stop in front of our church where we are now. Not only is there an advantage here, but at the new location there is also a bus stop in front of the church. About 50 percent of our people drive. The other 50 either ride motorcycles or bicycles or they ride the bus. So because the bus stop is right in front of our church, that gives them the opportunity to come. The oldest person at our church is something like

60. Our youngest are ages from 18 to 21 to 33. It is a real young church and all of them do not have vehicles. They either get a ride, get dropped off and then picked back up, but the bus is the help.

MR. LYLES: Talk about your plans for a shuttle service, if any.

MR. YOUNG: Well, once we get the new church built down on Benning Road, the Metro Subway, which is on Minnesota Avenue, which they call the Minnesota Avenue line, we have two vans which can pick up and bring those person who are getting off the subway to the church and then take them back to the Metro stop.

MR. LYLES: Talk about the investigation into buying property around the church for additional parking off-site.

MR. YOUNG: Well, we discovered that there were some vacant properties on Benning Road, some vacant houses that have been there for years, which I felt the neighborhood looked kind of bad. So our investigation now is to get that property bought so that we can use it for additional parking. It is across the street from our property that we have now, which those houses have been vacant, from what the neighbors tell me, 10 to 20 years. And so while we are doing our work trying to find out who

the property belongs to, we want to get that property and tear it down and make it for additional parking, which will probably help our church as we continue to build what we are doing on Benning Road.

MR. LYLES: What discussions did you have with anybody in the community with respect to the parking agreements for short-term that we could use parking in their facilities? Who did you talk to?

MR. YOUNG: Well, we talked to Stuart Funeral Home. We talked to the Safeway. We even talked to the Girl and Boy's Club about using their facilities for parking on Sunday, which we would only need parking from 8:00 to 2:00.

MR. LYLES: What did you find out once you talked to the Boys and Girls Club? Who owned that lot next to the Boys and Girls Club?

MR. YOUNG: Oh, I can't remember the exact name.

MR. LYLES: The Park Service.

MR. JOHNSON: Was it the Park Service?

MR. LYLES: You told the Board what you remember.

MR. YOUNG: It was the Park Service, yes.

MR. LYLES: And so did you have

conversations with the ANC with regard to the church coming into the community?

MR. YOUNG: Yes. And from all indications, even when I talked with neighbors, nobody had a problem with that, the property going up. Because I do attend community meetings. In fact, we had a meeting just last month at Ms. Zella Worsley's place, which is at Nannie Helen Burroughs Avenue, with the Marshall Heights president. And they were talking about how excited they were about building a church on Benning Road and they didn't see any problems with it. So the ANC and the neighborhood -- a couple of people were concerned about churches being built and that kind of thing. They wanted to know why we needed another church on Benning Road. Well, there are only four churches on Benning Road total, and our church will be the fourth one. I looked at it. Trinidad is on Benning Road and 17th, and then they have three other churches. Across East Capitol Street, there is another church across from Fort Chaplin, and then we would be the fourth church. So there is a need because of what we are doing and our outreach.

MR. LYLES: What is the bulk of the use of the facility going to be used for?

MR. YOUNG: Well, our intent is to have

before and after care, senior citizens care, daycare. We still want to do our outreach feeding. We will adopt a family. Those persons who have been locked up and incarcerated, we adopt a family. We give toys to the kids. We started off by feeding at Thanksgiving and Christmas and the Lord spoke to me and said that is not enough. So now we feed quarterly. Every three months, we get out and advertise and we get people to come. We witness to them and feed them and then we clothe them. We have a clothing ministry. The sisters take the women if they need baths or whatever, and wash them up. The men take the brothers and wash them up and give them clothes and what have you. The thing is that a church is not supposed to be just sitting there for advertisement. It is supposed to be ministering. Not to just be done on Sunday morning. It is an outreach, where we go out to compel others.

MR. LYLES: Now how does this affect the parking in your current neighborhood, all of these outreach programs?

MR. YOUNG: Well, right now we have parking at the progressive headquarters where we park on the street. The police department -- in fact, we have police officers in our church to make sure that we are parking legally. And then we park

up on the hill at the school because it is closed on Sunday and during the week. So we have additional parking because our services, when they start at 7:30 or 8:00, the school -- Nanna Ambrose is closed and everything else is gone, so we can park up there.

MR. LYLES: Okay. Mr. Johnson, could you enlighten the Board about the economic feasibility of adding the number of spaces that are required over what we are asking for? What would that require in the redesign of the facility and/or the parking lot?

MR. JOHNSON: Well, the only way we could consider accommodating sufficient cars on that site and still accommodate the church program would be a parking garage. Certainly that would be at about $10,000.00 per car for parking.

MS. KING: How much?

MR. JOHNSON: $10,000.00 per car would be prohibitive for the church to consider as an option. The other option to accommodate the parking would be to reduce the size of the church, which then we would not be able to accommodate the church's programs.

MR. LYLES: What are the costs, if any, associated with a change in redesign that you just

talked about?

MR. JOHNSON: Well, we are probably talking in the neighborhood of $10,000.00 -- $9,000.00 or $10,000.00 to redesign the entire structure to accommodate the required parking.

MR. LYLES: What about the rear yard setback? Is there a cost associated with redesign if the Board does not grant the variance?

MR. JOHNSON: There would be a slight structural cost due to redesign, but that could be accommodated without a major problem.

MS. KING: With respect, sir, I don't think that you can justify a peculiar difficulty by the fact that you purposely designed something that needed a variance. I mean, that is a self-imposed hardship. So that the cost and so forth is not an argument in favor of a hardship that is imposed upon you by the land. That is a self-imposed hardship.

MR. LYLES: What about the -- go over again the topographical features with respect to increasing that side. Are there any things the Board needs to know with regard to how the topographical features allow for the type of building which you have designed?

MR. JOHNSON: No, I don't -- I think I have covered that pretty much. I don't think -- I

can't see anyway I can add to that.

MR. LYLES: Okay. We have several witnesses, I think, who are signed up to offer comments also.

CHAIRPERSON REID: Okay. Let me ask a couple of questions. You said that -- this is to Pastor -- I am sorry, your name?

MR. YOUNG: Young -- Pastor Young -- Steve Young.

CHAIRPERSON REID: That you had inquired about trying to obtain a lot across the street?

MR. YOUNG: Yes, ma'am.

CHAIRPERSON REID: The property?

MR. YOUNG: There are two houses there.

CHAIRPERSON REID: Okay. And then you wanted to raise those houses to make a parking lot?

MR. YOUNG: Yes, ma'am. Both of them are vacant. They are empty houses.

CHAIRPERSON REID: And how far have you gotten with that process?

MR. YOUNG: Well, we have found out that they were I guess in tax default. So we are just trying to figure -- that is still a year process, even after we secure them. There is the process of getting them. There is a house that is not occupied and then there is a lot next to them. We are trying

to get three lots and we are trying to do it together so that we can -- when we go over, we want to do one project. So that the parking is feasible for what we might need.

MS. KING: What is the zoning of those three lots? Are you going to have to come back to this Board to get permission to build a parking lot?

MR. YOUNG: We probably will.

MR. LYLES: Is there a lot already there that the church looked into?

MR. YOUNG: Oh, yes. There is a lot there that is vacant next to the two houses.

MR. LYLES: And is that -- what is the position of that lot? Is that near the street? Are there other parking lots that the church looked into or spaces that currently have no houses around them?

MR. YOUNG: Well, we looked at Stuart Funeral Home for parking, but it just didn't -- they just didn't want to comply with what we needed to have done at this time.

MR. LYLES: What about the parking space next to the Boys and Girls Club, the Park Service? Is there a lot available there?

MR. YOUNG: There is a lot there as well. A lot there as well.

MS. KING: Is it an existing parking lot

or where you would have to come back to get permission to build a parking lot?

MR. YOUNG: Are you talking about where the houses are?

MS. KING: No, I am talking about the Park Service and the Boys and Girls Club?

MR. YOUNG: Oh, no, ma'am. No, no, no.

MS. KING: There is parking there now?

MR. YOUNG: Yes, ma'am.

MS. KING: But they have not made an agreement with you to allow you to park there?

MR. YOUNG: No. I mean, we want to be neighbors. I mean --

MS. KING: I understand. But what I am saying is that you don't have -- what you have is 16 or possibly 20 parking spaces.

MR. YOUNG: Yes.

MS. KING: And you are required to have 82.

MR. YOUNG: Yes.

MS. KING: And there is no place except on the street to dump the other 62 cars.

MR. YOUNG: On the street, there is free parking on Saturday and Sunday.

MS. KING: And nobody else ever parks there on Saturday and Sunday?

MR. LYLES: Because there is nothing there.

MS. KING: But what about the Boys and Girls Club?

MR. YOUNG: They park on their lot.

MR. LYLES: They park on the Park Service lot. That is I guess the position we are in. The parking lot the Park Service owns is being utilized as a parking lot. The Park Service uses it for parking for visitors to their park and the Boys and Girls Club utilizes it only because they have no parking at their space, as we found out once we investigated. Additionally, there is nothing on that side of Benning Road that anyone would need to park on that side of the street. Additionally, on the other side are residents.

MS. KING: Are there 20 spaces on your side of the street?

MR. LYLES: Oh, there are more than 20.

MR. YOUNG: More than 20.

MR. LYLES: More than 20. Because the facility takes up almost half of a block -- from the alley all the way down to another alley where the house exists. Could you talk about that?

MR. JOHNSON: Well, I don't have an overall site plan. But roughly -- the footage on

Benning Road is roughly 240 feet or 250 feet.

MS. KING: And across the street from that frontage is --

MR. JOHNSON: That is all open too. So you've got about 500 feet across the street.

MS. KING: On Benning Road -- on the other side of Benning Road, there is nothing?

MR. JOHNSON: There is a funeral home.

MS. KING: This is Stuart's Funeral Home?

MR. JOHNSON: Stuart's Funeral Home. And then right in front of the lot are residences of which --

MR. YOUNG: They park out back.

MR. JOHNSON: They park in their own lots in the back. And there are several houses that are vacant. And there is a vacant lot that is currently undeveloped. That is about a block. And then the next block is the parking lot where the Park Service has their parking and then the Boys and Girls Club is at the end of that block. So we are talking about two blocks in front of the Holy Christian Missionary Baptist Church. No one parks on Benning Road on either side at any point in the day because of all the other available parking that exists.

MR. YOUNG: Ms. King and Ms. Reid, may I address something else that just came to my mind? Stuart Funeral Home is here and Marshall Heights is here. There is a side street, 40th Street --

MS. KING: Marshall Heights what?

MR. YOUNG: Headquarters.

MR. JOHNSON: Community Development Organization.

MS. KING: CDC?

MR. YOUNG: Yes, ma'am. Well, down that street there is no parking. Nobody parks down there. That is -- I mean, there is parking that is available.

MR. LYLES: And the beauty of the --

CHAIRPERSON REID: Okay. So have you investigated --

MR. YOUNG: I am just saying there is extra space.

MR. LYLES: It is public. It is on-street parking. And the beauty of this particular location is that there are commercial properties on the other side and organizations and very few residences on either side within a two block radius. So we get to a situation where people park either in their driveways, behind their homes, behind the parking lot, behind the businesses or organizations.

CHAIRPERSON REID: My question is the lot that Pastor Young referred to, it is a vacant lot?

MR. YOUNG: Yes, ma'am.

CHAIRPERSON REID: And where is that in proximity to your particular property?

MR. YOUNG: Yes, ma'am. It is about four doors away from Stuart Funeral Home.

CHAIRPERSON REID: Okay. And you are saying that you all do park on this lot or --

MR. YOUNG: No, ma'am. We are not -- we have people working trying to secure the houses so that we can use them for additional parking.

CHAIRPERSON REID: There is a lot on your side of the street as well as across the street?

MR. YOUNG: No, ma'am, across the street. Not on my side, across.

CHAIRPERSON REID: Okay, I have gotten confused. I thought you were saying that that lot and the houses were across the street and then that there was another lot that was on the same side.

MR. YOUNG: No, ma'am.

MR. LYLES: I provided some pictures that will show a different view.

CHAIRPERSON REID: Okay.

MS. KING: The zoning of the houses that you intend to tear down, what is the zoning?

CHAIRPERSON REID: They didn't know.

MR. YOUNG: We didn't know. It is still under investigation to find out how --

CHAIRPERSON REID: Okay. Now the purpose of your coming to this Board is to make a case for being given the relief of a variance.

MR. YOUNG: Yes, a variance.

CHAIRPERSON REID: And that requires that you have to satisfy a three-prong test.

MR. LYLES: Yes.

CHAIRPERSON REID: All right. And basically that is the merits of your case and that is what you need to be moving into. Because that is going to be the crux of whether or not you are able to have this variance granted to you.

MR. LYLES: Well, we were attempting to show -- we were attempting to show that there are exceptional topographical conditions which don't allow for additional parking on site. We also were showing that the parking as it is with Pastor Young, we can show that there is no detriment to the public good. And through Mr. Johnson we showed that the setback, because it is surrounded by woods and also because of the access to parking and the numbers of

people that do not drive attending the church, there would be no impairment of the intent and purpose and integrity of the zoning plan.

CHAIRPERSON REID: Okay, wait. What is the practical difficulty?

MR. LYLES: Well, the practical difficulty is that in order to have 82 spaces, there would be additional cost and there is no need for additional spaces because of the numbers of people that take public transportation. And the --

CHAIRPERSON REID: No. What you have to demonstrate is if in fact you were to comply with existing zoning regulations, in other words what would keep you from complying with existing zoning regulations? What is the practical difficulty that you would incur as a result of --

MR. LYLES: Well, first of all, as Mr. Johnson will attest to again, there is no room for 82 spaces on the lot as it is currently configured.

CHAIRPERSON REID: But Ms. King -- sorry to interrupt you, but Ms. King indicated to you that basically what you are establishing is a self-imposed hardship. The lack of the parking spaces is a function of the fact that your building is so large and you can't accommodate building a lot.

MR. LYLES: What we are saying is not

that the building is so large, but if you reduce the size of the church any more, you get to the situation where the church already is. They are in an overcrowded situation. And reducing the size of the church in order to accommodate the numbers of parking that are required, it is one for every 10. That is a huge requirement for a church. Because once you reduce it past a certain size, you begin to get -- have problems getting people into the church and you get into a standing room only situation. The church is currently overcrowded. And I would say that 82 spaces or even reducing the size of church as currently configured reduces the capacity of the church to do its ministry, which it has to do really out of space it is kind of on loan for.

MS. KING: But what Chairperson Reid is saying is that you have chosen -- if you were going to have a facility for 812 people that requires 82 or approximately -- I mean, the difference between the required 82 and the 16 to 20 that you are going to provide is huge.

MR. LYLES: Well, let's look --

MS. KING: No, wait a minute. Let me just finish. What you have done is chosen a plot of land that is too small to build a facility that will accommodate 812 people and minimal parking. The

pastor has testified that half of the people drive. That would be 400 odd people. And even if they came on an average of two people per car, we are talking about 200 cars, right? He said that -- in his testimony that 50 percent of the people drive.

MR. LYLES: Well, I guess he means -- and he will say that we have families.

MS. KING: Ultimately, that would be 300 to 400 people are driving.

MR. LYLES: Well, that is not true for any church. Because basically what you have is people in families. It is a family church. So 4 or 5 --

MS. KING: Okay. Say half the congregation, 400 people, come. And that they average 3 per car. Is that reasonable? Because some of them are going to be couples without children and some of them are going to be couples with three children each or something like that or even to be generous say four.

MR. LYLES: Okay.

MS. KING: That is 100 cars that you bring in.

MR. LYLES: Okay.

MS. KING: And you are providing 16 to 20 parking spaces for 100 cars, and there may be

more.

MR. LYLES: I understand.

MS. KING: So, I mean, this is a big hurdle for you all to get over. And to say this is the only place in the District of Columbia where we can build this and it is too small and therefore it is a hardship that you must take into consideration doesn't fly. Because it is again, as the Chairperson has pointed out, a self-imposed hardship. You need a facility for 812 people and you need 82 parking spaces, and you have a piece of property that will not accommodate both of those things.

MR. LYLES: Well, we will let the pastor talk about investigating other pieces of property in the District and --

MS. KING: I am not sure that we can take that into consideration.

MR. LYLES: Well, I think you brought it up, Ms. King, that there is other available property, and I would beg to differ that there is no other available property. You are in a land-locked city that doesn't allow for the kinds of buildings that people want to build now that host the numbers of people that will go to church. And it is just -- the land is just not available. And so we are where

we are with respect to building. The church --

MR. YOUNG: Our ministry is in D.C.

MR. LYLES: It is trying to minister here in the District of Columbia.

MR. YOUNG: Our ministry is in D.C. You see, I think that --

CHAIRPERSON REID: Wait a minute, Pastor Young. In the alternative, then providing parking spaces across the street so that you can have an accessory parking lot to go with that church. But for you to attempt to obtain a variance of that size is rather a stretch. It is really a stretch. You are kind of pushing the envelope a lot there. I think that there is no way that I can see that that -- that you can adequately accommodate your congregation. And then you go to adverse impacts. You are going to have parking problems, traffic problems, noise problems in that community. I don't see any way of getting around it unless you are able to identify other parking adjacent to or across the street or somewhere to accommodate those cars. I just don't see how you could do otherwise. Go ahead, I am sorry.

MR. LYLES: Is there a -- we are in the process of procuring space within what the regulations require within 400 feet of the church.

That has not come to fruition. If we do that, does the Board see any capacity or number of parking spaces that it would pass muster at this junction?

CHAIRPERSON REID: That is a hypothetical correction. We have to --

UNIDENTIFIED SPEAKER: On Benning Road along there is parking --

CHAIRPERSON REID: First of all, ma'am -- ma'am, I am sorry, but you can't speak from the audience. But you will be given an opportunity to testify and you can do so at that time. We cannot allow you to just arbitrarily just shout out.

UNIDENTIFIED SPEAKER: Well, I raised my hand.

CHAIRPERSON REID: No, it is not that. You will be given an opportunity, but you can't do it at this time.

MR. YOUNG: I think that we fail to look at the overall picture. Now, we are not homeowners. We want our own church. We are leasing -- I mean, any day the people where we are now could say you've got to go. My kids don't have a place to stay. I want to be a homeowner. When that property came our way, it was a blessing that we got it. And we have been sitting on that property for three years, paying taxes and the whole nine yards that go with

it. And we have just gone through so much just to get it. I am telling you, we are not going to give that property up because we have to build it on that because that is the property that God gave us to build. Now, what I am saying to us is that we have to look at Metro. I mean, every day anybody who goes to church knows that you can't stop visitors from visiting your church. Anything new that goes up, people are going to come to see it. Not just members but visitors. If you've got something to offer, they are going to come. Now, Metro is around the corner. My kids walk. They ride their bikes. There is a bus stop in front of it. I am telling you, we are not sitting on a church where my kids ride in Benzes and big cars. If they do get a ride, it is about four or five or six of them packed up in one car just to get there. I am only saying to us as a people that we have to look at the overall picture. That in order for us to be effective -- I know that our church will be a help to Benning Road, because I see that we are being a help to Nannie Helen Burroughs Avenue. The crime is down. I mean, people are catching buses to church and from church at night, when they wouldn't do it at first. I am the only pastor who goes to the hood and convinces the youngsters that this is not the way. 6th

District and 7th District police station will tell you I am the man in that town. When it comes down to getting it done, nobody else does it. They don't have the heart to do it. I am only saying what I have to offer -- senior citizen care is needed, before and after care is needed, daycare is needed.

CHAIRPERSON REID: Pastor Young, be that as it may, and your point is well taken and I agree wholeheartedly with everything you are saying because it is very important and it is true. Nonetheless, we still have a zoning issue to get around.

MR. YOUNG: We can't park on the street? You are telling me we can't park on the street, a free street that nobody else is parking there?

CHAIRPERSON REID: That becomes an enforcement issue that we don't have jurisdiction over. Nonetheless, what you are here for today is to try to get the zoning relief that you need, and this is what we have to deal with. Your ministry and the competencies that you are accomplishing, it is extremely applaudable for you to do that. We need it and we appreciate it and we welcome that. But we have still got a zoning issue that we have to address here today.

MR. YOUNG: And the zoning problem is

this. We are not going to Maryland. We are going to build on Benning Road. And the thing that I am trying to get us to understand is that there is no way in the world that it can't be done.

CHAIRPERSON REID: Well, the only solution I can -- as I said before, is that you need more land. You need to acquire more land --

MS. KING: Or make some kind of deal with somebody somewhere within 400 feet for parking.

CHAIRPERSON REID: And that -- you see, this is -- and you've got to understand in all the good that you are doing, you don't want to be the cow that stuck its foot in the milk. Because in the interim --

MS. KING: I didn't know you were a country girl.

CHAIRPERSON REID: In the interim, if in fact we grant this and then you have a colossal adverse impact over there, then you've got problems. This is what we are trying to avoid is causing inadvertently more problems. While you are trying to solve these problems over here, you create more over there.

MR. YOUNG: What problems do you think that we will have?

MS. KING: Parking problems. Traffic

disruption. Noise of traffic. And then, of course, there are all the questions that are raised about the ecological impact. But traffic, parking and safety and impact on property values, environmental impact of the stability of the land are all questions that were raised by members of the ANC.

MR. PARSONS: Madam Chairman?

CHAIRPERSON REID: Yes.

MR. PARSONS: Reverend, how many parishioners or members of your parish do you have now?

MR. YOUNG: About 500.

MR. PARSONS: And --

MR. YOUNG: And that is in two services.

MR. PARSONS: Two services. So how is it that you need a church with 812 seats? That is the issue here. If you were to build a smaller church, you wouldn't be here today. And you are asking this Board to create a variance of a proportion that I don't think we have ever done.

MR. YOUNG: Well, you know --

MR. PARSONS: It is not as though you can run around the city and look at other churches and say, you did it here or you did it there or you have done it all over the city. I mean, this is extremely unusual.

MR. YOUNG: I want to try to accommodate for what I envision. I know people are going to come. And so my thing is that I want to be prepared. I mean, we are in a sanctuary now which holds 350, and even now we have to have chairs down the aisles. It gets so crowded that we have to open the doors and they sit out on the porch. My thing is that I am just envisioning that because of the type of ministry that we are going to offer. People are going to come and I want to accommodate. I mean, there is nobody --

MR. PARSONS: You have the wrong site then. You just do. You need a site that will accommodate the 800 people, and this is not it. It might have been three years ago when you started with a smaller following, if you will. But it has gotten

-- you probably need 1,400. I am persuaded that you are a man of great influence and have a great following, I am sure. You may have to move on from here in two more years. I am kidding. I just can't imagine what would bring us to giving you this variance. I understand your argument of Metro and on-street parking and so forth. But to set the precedent in this city for that kind of a variance is just too much. So if you were to go out and buy

the properties across the street and come forward with a parking proposal that made sense, it may be worth pursuing. But we can't speculate on that here.

MR. YOUNG: So if I go back and get permission from other supporters -- the funeral home, Boys and Girls Club, or maybe the Safeway or whatever the case may be, which they are across the street and I can get some type of permission from them to park?

MS. KING: In writing. You need some kind of a contract or something of that nature.

MR. YOUNG: So you would consider that?

CHAIRPERSON REID: Oh, absolutely.

MR. YOUNG: Okay.

MR. PARSONS: It has to be a contract of some kind. It can't be that the manager of the Safeway moves on and the next one throws you out.

CHAIRPERSON REID: That is all you have to do is to provide parking.

MR. YOUNG: Well, I have been to them three or four times and I just have to go. I don't know. We have build that there. That is the vision. We can't go anywhere else.

CHAIRPERSON REID: Well, that is the thing. You see, given the fact that you are

deficient in the parking, then that is where your job is. Impressing upon them the importance of contractually agreeing to allow your congregation. Once you get those additional parking spaces -- and I think you are lacking 66?

MS. KING: No. They should have 82 parking spaces and they are going to have 16 or 20 -- maybe 20. But that is less than a quarter of what they need even if it is 20. And there are other issues that the people in opposition to this case are going to be raising as well that you may --

CHAIRPERSON REID: So we have to listen to the whole case. And then after having heard the entire case, then you will see -- you will get a better picture as to what is required.

MR. YOUNG: Okay. All right.

MS. KING: But I mean, we have all more or less told you that the parking is an impossible impediment.

CHAIRPERSON REID: The rear yard setback, I think that that -- you know, we could probably work that. But the parking is so --

MR. YOUNG: Okay. We are one down.

MR. LYLES: We appreciate that. If the Board in its judgment sees fit to grant us the rear yard setback, we will work very hard at bringing

back a parking arrangement that you can go with.

MS. KING: Well, then we have to listen to the other issues that are going to be raised by the people in opposition.

CHAIRPERSON REID: I am just saying that that appears it is something that is workable. Again, we have to hear the whole case.

MR. PARSONS: Mr. Johnson, I wanted to better understand the drawing before us here and the slope and so forth. Do you have a cross section?

MR. JOHNSON: Yes. I have got a --

MS. KING: Here are the plans, John.

MR. PARSONS: No, I don't. Could I?

MS. KING: Oh, yes.

MR. PARSONS: I didn't realize.

MS. KING: They are in the file.

MR. JOHNSON: The Benning Road elevation. I'll give you --

MS. KING: This is the Benning Road elevation.

MR. JOHNSON: The Benning Road elevation.

MS. KING: Okay. So the slope is not up from Benning Road, it is up from 42nd Street?

MR. JOHNSON: No. Benning Road is down here.

MS. KING: And where is 42nd Street?

MR. JOHNSON: 42nd Street is --

MR. LYLES: To the left.

MR. JOHNSON: To the left, yes. To the left. The hill is going up here.

MR. LYLES: 42nd Street doesn't go all the way across into the property.

MS. KING: And Minnesota is to the right?

MR. JOHNSON: Minnesota -- no, Minnesota is --

MS. KING: Can you show me on this map?

MR. YOUNG: We are wrong. 42nd is to the right and Minnesota is to the left of this building.

MR. JOHNSON: Minnesota is down here.

MR. YOUNG: That is right.

MR. LYLES: This is Benning Road and Stuart Funeral Home is directly across the street.

MS. KING: And where is your plot?

MR. LYLES: The plot is this circle right in there.

MS. KING: Oh, I see. It is a bunch of different --

MR. LYLES: Yes, it is a lot of plots. So Minnesota is way down here. This is an alley and

there is a house here and there is a street.

MS. KING: Okay. Maybe we can work it --

CHAIRPERSON REID: So this was --

MS. KING: So this is the house that is there?

MR. LYLES: Yes.

MS. KING: This is the house that is there and you are some of this?

MR. LYLES: Yes, that is correct.

MS. KING: There is a house here. This is Benning Road. And Stuart's Funeral -- I mean, here is the Boys and Girls Club. Stuarts Funeral Home is here?

MR. LYLES: Right here. This is a lot. This is vacant. This is what the pastor is talking about. And there are some houses here too and there is a vacant lot here.

MS. KING: And where is the Safeway?

MR. LYLES: The Safeway is down here.

MS. KING: I see.

MR. LYLES: There is a whole shopping center here.

MS. KING: Down here?

MR. LYLES: Yes. We presented the pictures that showed --

MS. KING: Yes, but I was just trying to identify it on the map.

MR. LYLES: This street is this street here.

MS. KING: Okay. So this would be Stuart Funeral Home. And you are right here?

MR. LYLES: Correct.

MS. KING: Somewhere in here.

MR. LYLES: Right. That is it right there.

MS. KING: Now, does your land run to where this house is?

MR. YOUNG: Yes. It runs right up to the lot line right here.

MR. LYLES: There is an alley that separates the property and the house.

MS. KING: Okay. So this in effect is your property and this is the alley which doesn't exist.

CHAIRPERSON REID: And what is this right here?

MR. LYLES: That is part of the park.

CHAIRPERSON REID: So it is park land?

MS. KING: Here it is.

CHAIRPERSON REID: Oh, okay.

MR. LYLES: It is a huge area.

CHAIRPERSON REID: Yes.

MS. KING: You see, they are in here.

MR. YOUNG: Right. There you go.

MS. KING: Okay. So they are in C-3-A. And there is the park. Okay, got you.

MR. PARSONS: I don't think that is what I was interested in. How about the one labeled main entrance?

MR. JOHNSON: That is the main entrance off of the parking lot.

MR. PARSONS: Yes. So to the right of your hand there is the alley, is that correct?

MR. JOHNSON: Yes. There is an alley right here.

MR. PARSONS: And Benning Road then is to the left?

MR. JOHNSON: Yes, and down.

MR. PARSONS: So where is the property line on the right side of the drawing?

MR. JOHNSON: Right here?

MR. PARSONS: Yes.

MR. JOHNSON: The property line is about here.

MR. PARSONS: And the result of your design effort makes it an 8-inch encroachment, is that right?

MR. JOHNSON: Yes.

MR. PARSONS: You are 12 feet back?

MR. JOHNSON: Yes.

MR. PARSONS: 12 foot instead of 12'8".

MR. JOHNSON: Yes.

MR. PARSONS: And then I was trying to -- could you go back to the plan, please?

MR. JOHNSON: The plan?

MR. PARSONS: It was the one on --

MR. JOHNSON: You want to see a plan?

MR. PARSONS: What is happening there on the alley about a third of the way down the building itself?

MR. JOHNSON: Here?

MR. PARSONS: Yes, right there.

MR. JOHNSON: Nothing. This just identifies it as a public alley. Right now it is all trees. It is not developed.

MR. PARSONS: I am sorry, I didn't make my point. On your side of the alley then, what is happening midway down the building? Stairways and so forth?

MR. LYLES: There is a retaining wall.

MR. PARSONS: Oh. That is not shown on the section then. Oh, okay.

MR. LYLES: Yes. There is a retaining

wall back here.

MR. PARSONS: And what is it retaining? Your property or the public alley?

MR. JOHNSON: It is retaining the park land property to the rear of the alley beyond and above.

MR. PARSONS: Oh, so you are below.

MR. JOHNSON: Yes. We are building into -- actually, we are building into the hillside.

MR. PARSONS: All right. So between the alley and your building then will be a --

MR. JOHNSON: A retaining wall.

MR. PARSONS: A retaining wall. So that is the reason for the stairs then.

MR. JOHNSON: Yes.

MR. PARSONS: Oh, I understand.

MS. KING: And the alley is a full floor below the retaining wall, is that it?

MR. JOHNSON: The alley is roughly -- give me a second. The alley is about let's say 93 at this point, and we are at 87.3 at the entrance to the facility.

MS. KING: Oh, I see. So you have to climb up to it?

MR. JOHNSON: To go up to the alley, yes.

MR. PARSONS: So if you are driving along the alley, on top of the retaining wall, would there be some kind of a guardrail or something?

MR. JOHNSON: Oh, yes. Yes.

MR. LYLES: And know that there is not an alley like you envision an alley now. It is trees.

MS. KING: But you are asking DPW for permission to develop it?

MR. JOHNSON: Yes. Right.

MS. KING: Because it is necessary for safety purposes for building this housing of 812 people that you have exits in all directions and so that the emergency vehicles can get around. So you have no option but to develop that.

MR. JOHNSON: Right. Most definitely.

MR. PARSONS: Okay. Now I understand. Thank you very much.

CHAIRPERSON REID: Okay. Are there any other questions Board members? I was asking if there were any questions. If not, does that conclude your statement?

MR. LYLES: Yes, we are going to conclude here. And I think based on what we talked about today, our witnesses will just come back with us next time if the Board does not grant us the

variance.

CHAIRPERSON REID: Well, again, let's hear the whole case.

MR. LYLES: Okay. Well, we have some witnesses who would like to testify.

CHAIRPERSON REID: Oh, are they testifying with you?

MS. KING: On technical matters?

MR. LYLES: No, they are not technical matters. They are citizens and they are testifying on their own.

CHAIRPERSON REID: That is fine. In support?

MR. LYLES: Yes.

CHAIRPERSON REID: Okay. Then they will have an opportunity to do so.

MR. LYLES: Thank you.

MR. YOUNG: Thank you so much.

CHAIRPERSON REID: Is the ANC here?

MS. KING: Is anybody from the ANC here? Now the Park Service is a party.

CHAIRPERSON REID: Is there any cross examination from the Park Service?

MR. ROSENSTOCK: No questions.

CHAIRPERSON REID: No questions.

MS. WORSLEY: Excuse me, there is

supposed to be someone here from the ANC. I don't understand why they aren't. But I am here as a member of the community.

CHAIRPERSON REID: Okay. You will be given an opportunity to speak. And if the ANC comes before we conclude this case, I will give them an opportunity to speak as well. All right, government reports? ANC? Have we got a letter from the ANC?

MS. KING: We have a letter from the ANC. They did not, however -- and I have lost it.

MR. LYLES: Which we have not received.

CHAIRPERSON REID: Oh, yes. They --

MS. KING: It is dated the 15th of July.

CHAIRPERSON REID: ANC 7D -- go ahead.

MS. KING: The 15th of July, they needed four members for a quorum and only three members were present at the meeting. Therefore, they -- however, they did raise the following questions. They want us to require the applicant to conduct a full impact study and share the findings with the ANC 7D. The study should address the potential impact that the construction would have on a) small plants and tree displacement; b) soil erosion and other ecological and environmental changes in the area; c) vehicular traffic increases and parking considerations; d) safety and traffic pattern; and

e) property values of the houses in the immediate area of the proposed church. The general opinion of most residents present was that the community could not cope with the occasional increase of traffic and individuals to the neighborhood, and it is the collective opinion that the variances should not be allowed. Residents cited the tax-exempt status of the church as another imposition to economic growth in the community. The influx of transient activity and additional automobile traffic into the area by residents of surrounding jurisdictions could become a nuisance. Stability of the land may become threatened by major changes to the soil up on the hill and could eventually effect the surrounding neighborhood with respect to unstable surface and soil.

MR. LYLES: We would just --

MS. KING: You have my copy.

CHAIRPERSON REID: Yes, you will have an opportunity to respond.

MR. LYLES: Okay.

MS. KING: But you can have my copy.

MR. LYLES: Thank you. I appreciate that.

CHAIRPERSON REID: Let me just state for the record that that is an ANC report and it

reflects the fact that there was not a quorum present, so a vote was not taken. This is basically a conclusion that they came to, but it was not an official vote that was taken. And this is basically being proffered to us --

MS. KING: As an opinion of the community.

CHAIRPERSON REID: Yes, as an opinion of the ANC.

MS. KING: Are you an ANC commissioner, madam? Are you an ANC commissioner?

UNIDENTIFIED SPEAKER: I am an opponent because I live on --

MS. KING: But you are not an ANC commissioner?

UNIDENTIFIED SPEAKER: No.

MS. KING: Okay.

CHAIRPERSON REID: Now since the ANC is not here and we read the ANC report --

MR. PARSONS: This is another ANC report. This is 7C.

CHAIRPERSON REID: Okay, ANC 7C. Ms. King, would you like to summarize that for us?

MS. KING: Oh, let's see. Now do we have to waive this in?

CHAIRPERSON REID: It just came today?

Yes. We will so waive. We will waive the ANC report in as far as the timeliness is concerned. I don't know if you have seen this.

MR. LYLES: I haven't seen it.

CHAIRPERSON REID: It is dated July 20th.

MR. LYLES: It is not the ANC that is required to present their report.

CHAIRPERSON REID: Well, apparently this is an ANC that is in close proximity.

MS. KING: Again, we have no indication as to whether there was a quorum present. But ANC 7C is in opposition to the proposed location of the Holy Missionary Christian Baptist Church. There are three or more churches closely to this location. This would cause a drastic impact on the community with additional traffic problems. Furthermore, there are just too many churches on this side of Ward 7 and in Ward 7 as a whole. We are asking that you vote no in opposition to this case.

MR. LYLES: We will just object to both letters.

CHAIRPERSON REID: What is that attached thereto?

MS. KING: This is from Radiation Safety at GWU and then there is something from --

CHAIRPERSON REID: Does this have any relevance to this particular case?

MR. PARSONS: I think that that shouldn't be attached.

CHAIRPERSON REID: I didn't think so.

MS. KING: Oh, no, it is something --

CHAIRPERSON REID: All right, physically the ANC has a report and you can cross examine the ANC. But the ANC is not here. But did you want to say something?

MR. LYLES: Well, we just want to object to both letters.

CHAIRPERSON REID: First of all, you have to come forward and you have to give your name.

MS. KING: Excuse me. It seems to me that since there is nobody here to cross examine, that the gentlemen should deal with this issue in his closing remarks.

CHAIRPERSON REID: Okay. All right.

MS. KING: But we have made it clear that since neither indicates -- we are required to give great weight under law to the advice of the ANC provided they have a quorum and it was a duly constituted meeting. This is not that. They have raised some concerns --

CHAIRPERSON REID: Or an opinion that we

are taking into consideration.

MS. KING: And we will consider them as we do all community concerns, either pro or con.

MR. LYLES: Okay. But not given the great weight that is due an ANC.

CHAIRPERSON REID: No. We cannot give great weight.

MR. LYLES: Okay. Thank you. I appreciate that.

CHAIRPERSON REID: But we will take it under consideration.

MR. LYLES: Thank you very much.

CHAIRPERSON REID: Thank you. All right. Persons and parties in support of the application? Please come forward. How many people are here in support of the application?

MR. LYLES: Who was provided? Ms. Worsley is here and this gentleman here. We have three left.

CHAIRPERSON REID: Three in support.

MS. KING: Has everybody been sworn in?

MR. LYLES: Yes. They all stood up at the swearing in.

CHAIRPERSON REID: Please come forward quickly if you wish to testify. You don't have to testify.

MS. KING: This is their opportunity. These are people in support.

MR. CREASEY: Excuse me, I am ANC commissioner Mike Creasey from 7D-01.

CHAIRPERSON REID: You are just arriving? Okay, I am sorry.

MR. LYLES: Do these folks have to go back?

CHAIRPERSON REID: Yes. Just sit right back. Don't go too far. Let's allow the ANC commissioner to come in and make his -- testify. Sir, give your name?

MR. HART: I need to swear him in.

CHAIRPERSON REID: Oh, go ahead.

MR. HART: Sir, raise your right hand, please.

(WITNESS IS SWORN.)

CHAIRPERSON REID: Your name and address.

MR. CREASEY: Michael David Creasey, ANC Commissioner, 7D-01.

CHAIRPERSON REID: You are a single member district?

MR. CREASEY: Excuse me?

CHAIRPERSON REID: You are a single member district representative?

MR. CREASEY: That is correct.

MS. KING: And is the proposed church site in your SMD or not?

MR. CREASEY: It is right abutting my SMD. It is in 7D-02.

CHAIRPERSON REID: Okay. We have a letter from -- we do have a letter from ANC 7D. Are you familiar with that?

MR. CREASEY: Yes, I am from 7D. But my single member district is 02.

CHAIRPERSON REID: And you have another letter?

MR. CREASEY: It might possibly that you had from Mr. William Wright, Commissioner Wright?

CHAIRPERSON REID: Yes.

MS. KING: We just read that into the record.

CHAIRPERSON REID: We have just gone over that. Do you have additional statements to make?

MR. CREASEY: What I would like to say -- speaking for myself, I have no problems with the church. It seems like they could maybe work something out with maybe the Metro parking facility that is at the Minnesota Avenue subway station. They could possibly think about having a shuttle

from point A to point B. But in that stretch of Benning Road, it would be quite congested to add a parking lot beside the Benning National Park, the historic park, Fort Mahon, which is port of the lists of presidents -- Abe Lincoln's Civil War Forts, and it is commissioned as such. And it is also part of the Fort Circle Park, which runs throughout pretty much all of 7D, which is Fort Mahon and Fort Chaplin and Fort Dupont. So it is all connected. If anything, we should try to consider maybe strengthening the attributes of the park and give the citizens there something constructive they can do and take their children and sit out instead of having a parking lot there.

MS. KING: Thank you very much.

CHAIRPERSON REID: Thank you. Wait, did you have any questions?

MR. LYLES: We have no questions.

CHAIRPERSON REID: Okay. Park Service, do you have any questions on cross examination of the ANC?

MR. ROSENSTOCK: No questions.

CHAIRPERSON REID: All right. Thank you. Persons and parties in support, please come forward.

MS. KING: The three of you come forward

now. Now you are on.

CHAIRPERSON REID: Can you try to contain your remarks to three minutes? Three minutes each?

MS. KING: But don't feel you have to repeat what anybody else has said.

CHAIRPERSON REID: No. Please don't be redundant. If one person has said something, please don't reiterate the same thing. Give a different point. Use your time to have the most efficient use of the time, please.

MR. SMITH: My name is Allen Smith. I am one of the trustees at the Holy Christian Missionary Baptist Church and I live in the Ward basically.

MS. KING: What is your home address?

MR. ALLEN: My home address is 225 57th Place, N.E., Washington, D.C. I think that building that church on that lot at Benning Road, N.E., would be a very good thing to do from my vantage point because it would offer not only aspects to different community entities, but also aspects to the community-wide. I think that the main concern as far as the parking, looking at it from that vantage point, I know we can get it done. I know we can find a way to get around the parking concern

regarding what the committee has made relevant. I also believe that this church would be an instrumental part within the city. Yes, there are three or four churches within the area. I have no idea what those churches are doing as far as providing support to the community, but I know that Holy Christian Missionary Baptist Church would do just that. They would provide support to the community. They would be able to enhance the community in a better fashion, I think.

When we purchased the land in 1995, I was one of the impetus to locating that land. I basically was the one who said, we have property there that we can purchase. So we bought the land thinking that we could build a church there. It was our hope that we would go forth and do likely. I have been in the area since 1983, so I have been there about 16 years. And yes there is the Fort Mahon Park which is there. I feel that we can work together with the Fort Mahon Park people. We can also work together with the community to make sure that we do what needs to be done for community support. That is all I have to say.

CHAIRPERSON REID: Thank you.

MR. BELLOWS: Yes, my name is Arthur Bellows. I live in the 7th District at 1012 49th

Place, N.E. I am the chairman of the deacons at Holy Christian Missionary Baptist Church. And I just simply wanted to say that this church is a great impact to the young people. I know right behind the property you had that vacant school, Woodson Junior High, which also has a parking space. So maybe -- I don't know who is in charge of that parking space. Just like they said, we can use the Metro and run a shuttle. You can also park on that school parking lot. That school is not being used. With the Park Service, I never really even see no activity or anything going on in the Park Service. I have been there -- I have lived in D.C. all of my life. So on behalf of the church, like it has already been said, this church is a very helpful church to the community. It would help the community if given the opportunity. They have shown that and they have proven that. I am quite sure they will have no problems working out with neighbors or the rest of the commercial sites there. We can all work together if given a chance.

CHAIRPERSON REID: Thank you.

MS. WORSLEY: Good evening. My name is Zella Worsley and I am a member of Purity Baptist Church, the Reverend J. Terry Wyngate is my pastor. I met Reverend Steve Young --

MS. KING: Excuse me, would you give us your home address, please?

MS. WORSLEY: 5373 Chillum Place, N.E. 20011. First, we built the Yumosha Drug Clinic about six years ago and Providence Hospital runs that program. And at the time, I guess about six years ago, there seemed like there was so much killings and it seemed like I was always going to a funeral. I met Reverend Steve Young when he was preaching to the youth at a funeral home and he was trying to convey to them that it is time to stop this killing and what they were doing and they seemed to be listening. And I said, Lord, this maybe is the vehicle that I have been looking for to see if I can help stop some of this crime. So I approached him, but I had a hard time getting to him because of the youth that was around him. So I went all the way to the grave site and I asked him -- and plus, we had purchased a banquet hall out in Northeast there, and I asked him, don't you want to start your church and start seeing if you can speak to some of these kids and bring them into your church and talk to them and convince them to stop shooting and killing one another and stop fooling with these drugs? So he said he would think about it, because he was like an assistant pastor

somewhere else. But he really wasn't interested at that time.

So I went to another funeral and I met him again and I said we've got to help, we've got to do something. I said, this drug treatment clinic is just not enough. So I was convinced to talk to him. So finally when I met him again, he said I have been looking for you. He had lost my address and phone number, because I gave it to him. And so I convinced him to come and start at my banquet hall and start seeing what he could do to these kids. And sure enough, he started on a Sunday morning, and he has drawn these kids. You should just go and look. They are not old folks like me. They are young children with children, children, children. This is what we need. Somebody to get through to these children. You know, and this man has been a real help. Just go and see what he is doing to help stop some of this killing. And I do believe he has hope. Because in the time that I have brought him to this church, it seems like some of it has stopped. That is all I have to say.

CHAIRPERSON REID: Thank you. Thank you very much. Just one second, please. Any cross examination of these witnesses?

MR. ROSENSTOCK: No.

CHAIRPERSON REID: Thank you. Is there? Cross examination?

MR. CREASEY: Not so much a cross examination just a --

MS. KING: Come forward.

CHAIRPERSON REID: No. No. This is the time for cross examination and you have to ask them questions. You can't speak at this time.

MR. CREASEY: Okay.

CHAIRPERSON REID: Thank you.

MR. CREASEY: The children and so forth, when they were in --

CHAIRPERSON REID: Do you have a question? Do you have a question here?

MR. CREASEY: Yes.

MS. KING: Relating to what they have just said.

MR. CREASEY: Yes.

CHAIRPERSON REID: All right. Come on. Come forward so they can hear you. Give your name.

MS. KING: And you have to identify yourself for the reporter.

MR. CREASEY: ANC Commissioner Michael David Creasey, 7D-01. The area in question that they are referring they are from is over in 7C, and the people that are pretty much in that area where

they are talking about is 7C. That has nothing to do with 7D. It would be nice if you could put that --

MS. KING: A question.

MR. CREASEY: The question is why don't you put the church in 7C, because we have all worked on the Nannie Helen Burroughs task force that Councilman Shavers had proposed, and there is a lot of --

MS. WORSLEY: If you can find a space there, we will.

MR. CREASEY: There is a lot of space. There are a lot of buildings --

CHAIRPERSON REID: The question has been answered. That is it. Thank you. You made your point. Thank you. Thank you very much. Persons and parties in opposition please come forward.

MS. KING: Wait. Did the Park Service have any questions for these?

MR. ROSENSTOCK: No.

CHAIRPERSON REID: The Park Service, you are in opposition?

MR. ROSENSTOCK: Yes.

CHAIRPERSON REID: Okay. Come forward.

MS. KING: Maybe we will hear from the community first.

CHAIRPERSON REID: Are you in opposition? Well, come to this table. All right, again, we ask that you try to keep your remarks to around three minutes and please don't be redundant. Your name and address, please.

MS. JOHNSON: My name is Ruth Barbara Johnson.

CHAIRPERSON REID: You have to speak up, Ms. Johnson, because we don't have a sound system here.

MS. JOHNSON: My name is Ruth Barbara Johnson. I live at 15 42nd Street, N.E., about two blocks from the church. The traffic is what I am concerned about. We cannot control our churches for people coming to different functions. Benning Road is a four lane highway and you have buses and cars and there is houses on one side of the street. And I am concerned about the traffic. People will double park. I don't care how many single spaces they have, they will double park, which will cause problems as far as I am concerned. And that area is heavily traveled. I have been in that area for 35 years and I have seen the growth, and I think it should be given some heavy consideration with the traffic especially. And with 800 people in a church, you can rest assure that there is going to

be oodles of cars and oodles of people and you cannot control that when people are coming to church. And with all these programs that he says he is going to have, it is going to be not just on Sunday. And when the funeral parlor has their functions and then the Boys and Girls Club has their functions, Benning Road will be jammed with traffic. It is going to be dangerous. That is all I have to say.

MS. WILLIAMS: My name is Reverend Virginia Williams. I live at 4053 Benning Road, N.E. I am directly across the street from the park and right next door to me is two houses. The first house is owned by my neighbor, Elsie Catrell, who is in a nursing home. And adjacent to that one is a house that burned down over 20 years ago and then next to that is the vacant lot. I have been instrumental in trying to keep the neighborhood clean. My home is a very, very nice home. It has been there since 1929. I am very active in my community. Reverend Young came to my house and approached my family in reference to the property next door to me. I was not home at the times that he came. I am in total opposition to a church trying to purchase the property next door to me for the purpose of a parking lot. Since I am on Benning

Road, there is a lot of traffic. Stuart parks on Benning Road when there is an overflow, which is constant. There is a bus. There is a fire department and all of that. I have no objection to the church being on the hill. However, I do have objections in terms of the parking because I am affected. My nieces and my nephews and all of the young people that come to my house will be adversely affected. I, too, am interested in the property next door and some of my neighbors are interested in the property next door. We talked to the Marshall Heights Community Development Service, who was looking at that property in terms of putting houses there, and I don't -- and I think that if anything should be there, there should be a some houses, not a parking lot where if I come right out my back door or my side door, I would be looking right down on that parking lot. And all of the neighbors -- they are not here today, we will be in opposition to that parking lot right outside of my door. And as I said, there was a meeting at the Police Boys Club on July 9. A letter went out to Reverend Young and his congregation. No one from his congregation came to address us at that meeting, where the ANC commissioner was there and members of the community, where we could ask him questions. We asked did the

letter go out to him. A letter did go out to him, but no one came to address it.

I know that they presented proposals and all of that. But in terms of actually living there, I don't think that these parking spaces are going to be able to be accomplished. And I definitely oppose. Now he has a right to go down and try to buy the land next door to me, but I am also going to be down there trying to buy the land too, because I do not want this parking lot right next to my home. And my home is the best home on Benning Road.

CHAIRPERSON REID: I hate to cut you off, but you said that three times.

MS. WILLIAMS: Right. Well, I just want to make sure --

CHAIRPERSON REID: We got it.

MS. WILLIAMS: That I am heard. And Mrs. Stuart was also at that meeting and she said that she had been approached by Reverend Young in terms of using her parking lot, and she said that she did not wish to have her parking lot used for the church members.

MS. KING: Excuse me, what is your address?

MS. WILLIAMS: My address is 4053.

MS. KING: Okay.

MS. WILLIAMS: I am right across the street. The park is right in front of my house. I am adversely affected. And the lots that he is talking about securing are right next door.

MS. KING: The ones that are contiguous to your own property.

MS. WILLIAMS: Right.

MS. KING: I understand. Thank you.

MS. WILLIAMS: And we do have parking on Benning Road. At certain times of the day you cannot park on Benning Road, from 4:30 to 6:00. I park on Benning Road. I park my car on Benning Road overnight. And there are other people that come and park their cars on Benning Road also. I jotted down a few notes, but I just wanted to make sure that I did bring out the main points.

CHAIRPERSON REID: Thank you.

MS. KING: Thank you very much.

MR. ROSENSTOCK: If there are other members of the community that were waiting to testify, I can --

CHAIRPERSON REID: I think these are the only two that were here in opposition. Are there any other members in opposition -- of the community? Okay.

MS. KING: Madam Chair, could I suggest

that the Park Service, which is a government organization, should be given more than the three minutes that are allotted to a neighborhood?

CHAIRPERSON REID: How much time do you need?

MS. KING: He is a party to the case.

MR. ROSENSTOCK: I will try to be brief. We have some issues --

CHAIRPERSON REID: Can you wrap it in five minutes?

MR. ROSENSTOCK: I will do the very best I can.

CHAIRPERSON REID: Okay. Well, just -- because I just wanted to make sure that everyone understands why. The Park Service is a limb of the Department of the Interior. So we will afford him a little bit more time.

MR. LYLES: Excuse me, we didn't receive one of those -- whatever he is passing out to the Board.

CHAIRPERSON REID: Let's see, do you have additional copies? The attorney for the church should have a copy of whatever is being distributed.

MR. ROSENSTOCK: Not with me. Again, my name is James Rosenstock and I am testifying for the National Park Service. My colleague, Mr. Murphy,

expresses his regrets. His daughter is flying off overseas this afternoon and she very much wanted her daddy to be there to see her off. So he was unable to stay around.

CHAIRPERSON REID: You can adequately represent the both of you.

MR. ROSENSTOCK: Well, I am not quite as capable in terms of song and dance as Mr. Murphy, but I will do the best I can. First of all, I need to say that my discomfort level here right now is quite high. I am not comfortable opposing a church and its good works. However, that is indeed the case. The application for variances, which is what we are opposing, it is clear that what we have here is a building that is far too large for a site that is far too small and far too steep. There are also some issues of the adjoining properties. Both the residential, as you have heard, and the National Park Service, which borders it on two sides.

In the package I gave you, the first is a letter from my superintendent, John Hale, opposing the variances here. To synopsize that, we are really concerned about initially how the applicant has gone about the initial stages of this. We heard -- we were surprised in early April to find that massive clearing had taken place on this site and a

trespass had occurred on those District right-of-way and National Park Service land as well. Apparently, the applicant had not done a proper survey before undertaking a rather haphazard clearing of the site. A couple of days later, the architect and the pastor were to the park with a request for the National Park Service to provide them a written parking agreement in order to get past the variances that are now before you. Of course, we cannot in writing consign public land for private uses.

We did express our concerns at that time of the tree cutting of Park Service trees and the trespass on park land and expressed our desire that the applicant remain in close touch with us as this process went forward so that we could resolve both prior issues and plan for the church. We are frankly quite concerned at the scope of this project.

Since our letter went to the applicant saying that we could not grant the parking privileges, we have not heard from the applicant. Following the letter from John Hales, that initial letter, asking the applicant to work closely with us and explaining why we could not grant written parking agreements for that kind of commitment of park service land.

There is also a case incident record from the U.S. Park Police on the tree cutting incident, and a diagram that shows the properties. This is a xerox from the D.C. land records, I believe. What I have drawn in green was the formerly unbuilt D.C. alley right-of-way. In yellow is National Park Service land above that, which was also cleared during this time.

Running above that is the Fort Circle Park's hiker/biker trail. The built portion of the alley kind of loops up above actually onto Park Service land and joins this hiker/biker trail. And basically in this incident the applicant cleared all the way up to that point and took down a number of Park Service trees.

I have enclosed a reprint from a book entitled, "Mr. Lincoln's Forts", which documents the historic earthworks that were put in around this so-called Fort Circle area of Washington, D.C., the hastily constructed Civil War defenses of the Union. For Mahon was the northern-most one of these forts in Anacostia. It was on a promontory that guarded the entrance to D.C. by the Bennings Bridge, what is known as Benning Road now, and Eastern Branch Road, which is now known as Minnesota Avenue. It was a critically important fort in the defense of the

Nation's Capital in the Civil War. Some of that fort no longer exists because of playground area further up. There are, however, obvious earthwork remains right off of the Fort Circle Trail, and just above the applicant's property.

If you will go to the photographs I have here, this is what the property looks like from Benning Road at this point, and you can see the nature of the clearing job. The automobile you can see parked up in the alley is the end of the built portion of the alley. Clearing went on beyond that on the alley right-of-way and in the National Park Service right-of-way. You will notice also that this property is not posted. I know that is a technicality, but it is also indicative of the level of communication that we have had.

The hiker/biker trail, the so-called Fort Circle Trail, runs just past -- just beyond 42nd Street. The Fort Circle Trail approaches the earthworks at Fort Mahon. We have a sign noting that the earthworks are visible, and there is a spur trail that goes directly above the applicant's property and onto the historic earthworks. This is just before you get past the applicant's property what the trail looks like. You can see some earthworks here -- more obvious earthworks. Above

approximately 41st and Benning.

Here we have a picture taken from the spur trail of Fort Circle that shows the cleared property as it is now. Yours truly standing by a Park Service cherry tree of pretty serious diameter that was a critical screen for the Fort Circle Trail. Now the Park Service does not object to the church's construction of an appropriate facility on their private property, but we have serious concerns about this property. Frankly, the building is far too large. The slopes are steep. The land in this area is notorious for being highly erosive. There plans also, if you will direct your attention to the chart my friend Mr. Murphy drafted up for me just yesterday evening. The Fort Circle Trail comes from beyond here and then comes past -- this is the spur that takes you to the earthworks. These are approximate locations of some of the reigning earthworks, most likely rifle trenches, that were set up to protect the approach to Washington, D.C.

We are very concerned about the plans of this structure. The terracing -- the so-called retaining wall that will be of heights between 5 and 8 and 12 feet along here. Frankly, there is no room for mitigation or revegetation at this point. There will be -- we are very concerned that

archaeologically sensitive Park Service land may be subject to erosion just by the very construction of this. This is not a retaining wall constructed on their property. This is building into the D.C. alley right-of-way, directly abutting Park Service land.

Basically it is a very large intrusion on a very nice historical park. This is a National Register Historic Places site, by the way.

MS. KING: Have you had a meeting with the church people?

MR. ROSENSTOCK: Yes, we did. They came to us --

MS. KING: They came asking for parking?

MR. ROSENSTOCK: Requesting parking. And we discussed the issues of the clearing and expressed concern about the general nature of the building and we put -- we sent them a letter saying that we were concerned. We thought that this could be a successful project, but they needed to work closely with us.

CHAIRPERSON REID: The letter from your supervisor John Hale addressed those issues without his testimony.

MR. PARSONS: Mr. Rosenstock, let me understand. I guess I understood this retaining

wall to be on the side of the alley that is on their property. In other words, the road would be here, the retaining wall, and the park beyond. Is it your understanding that the retaining wall is abutting the Park Service property?

MR. ROSENSTOCK: As best I could read from the blueprints, yes, sir. I see a retaining wall directly abutting the National Park Service property.

MR. PARSONS: So then the alley would be lower than the Park Service land in your scenario, rather than at the same grade?

MR. ROSENSTOCK: That is what it appears to me, yes, sir. Significantly lower. Such that without a fence, it would clearly constitute a hazard to the users of the Fort Circle Trail.

MR. PARSONS: I assume in order to construct this kind of retaining wall, they would have to get permission from the Park Service to go back into their land to --

MR. ROSENSTOCK: Well, that is archaeologically sensitive land. There is not any way that we could give that kind of permission.

MR. PARSONS: Okay.

MR. ROSENSTOCK: That is -- there are historic earthworks from the Civil War literally a

stone's throw from that point.

MR. PARSONS: I want to make sure. You are not objecting to the development of this property. The Park Service isn't about to acquire it or try to bring it into park land. I mean, it is zoned for use. It is just that this structure is too large, is that correct?

MR. ROSENSTOCK: No, sir. In fact in the letter, we absolutely did not oppose the construction of worship facilities on private property, and indeed park land is bordered by churches in many parts of this city. We enjoy good neighbor relationships almost exclusively.

MR. PARSONS: Thank you.

CHAIRPERSON REID: Any other questions, Ms. King?

MS. KING: The ANC raised the question of the stability of the soil and ecological and environmental issues and so forth. Do you share those concerns?

MR. ROSENSTOCK: Oh, absolutely, yes. The soils throughout that entire portion of town are highly erosive. There is lots of anomalous water springs, seeps. Everybody in the area has sump pumps in their basements. Some people have three or four. It is -- there are difficult conditions with

soils and waters there certainly. Ecologically, it is -- we have very nice woods in that area. Frankly, it is primarily soils and water and the great potential for damage to adjoining property and erosion onto other properties that would concern us.

MS. KING: Thank you.

CHAIRPERSON REID: Thank you very much. Any cross examination?

MR. LYLES: Yes. Your name, again, sir?

MR. ROSENSTOCK: James Rosenstock.

MR. LYLES: Mr. Rosenstock, what is your background educationally?

MR. ROSENSTOCK: I studied mathematics in college. I came to work with the National Park Service and have been trained in the field ever since.

MR. LYLES: Okay. And what have been your major assignments with the Park Service?

MR. ROSENSTOCK: Well, I did public tours and programs at a place called Oxon Hill Farm for about 15 years. For about the past six years, I have done natural resources work, including vegetation surveys and wetlands, tree protection plans at Piscataway Park, adjoining areas issues and park lands all throughout D.C. and Maryland.

MR. LYLES: And how many years have you

been with the Park Service?

MR. ROSENSTOCK: 20 plus.

MR. LYLES: How many years have you been doing what you do now with regard to Mahon and the Fort Circle Trail?

MR. ROSENSTOCK: Six years, sir.

MR. LYLES: Six years. Okay. So you are not an architect by trade?

MR. ROSENSTOCK: No, sir.

MR. LYLES: Okay. You are not -- you have no experience directly with soil erosion patterns on sites like this?

MR. ROSENSTOCK: Oh, yes, sir.

MR. LYLES: What is your experience with that?

MR. ROSENSTOCK: Yes, sir. We have problems with soil erosion in many of the hillside parks. And basically it has been my practical experience in the field that by the nature of the clay and gravel soils and the clay lenses, that the hydrological patterns coming through, that once you cut into these soils, there are often great problems.

MR. LYLES: So what is your experience with retaining walls and architecture as it relates to those soil erosion patterns?

MR. ROSENSTOCK: That they are touchy to construct and --

MR. LYLES: Have you ever constructed any buildings yourself or been involved in the construction?

MR. ROSENSTOCK: No, but I have --

MR. LYLES: Have you been involved in the construction of buildings on soil issues or soil erosion areas that you have just described?

MR. ROSENSTOCK: I have been involved with the permitting and park projects that have involved such like along Baltimore-Washington Parkway at Route 197. I have had personal experience of the great difficulties in encountering soil erosion once a slope has been cut into and in situations similar to this.

MR. LYLES: Okay. Now where the Park Service maintains that there is an alleyway, do you know what grade of slope that is between the alleyway and the Park Service park land?

MR. ROSENSTOCK: No, sir. I don't have that information.

MR. LYLES: Okay. Are you aware of the distance of the building by looking at this chart and the other charts the architects have provided you -- the distance of the building to Park Service

property? Do you know that?

MR. ROSENSTOCK: No. I don't know what the setback of your building is. I understand you need a variance for it. So it is close to the back of your property line.

MR. LYLES: That is all right. No further questions. Now with respect to the area where you said trees were cut, are you aware of how many trees were cut down in that particular area that you allege is Park Service property?

MR. ROSENSTOCK: I don't have an exact count, sir.

MR. LYLES: Okay. Can we see from your pictures that you provided what trees were cut?

MR. ROSENSTOCK: You can get an idea of it. I don't have an exhaustive account. Like I say, the property has not been surveyed.

MR. LYLES: That is all. No further questions. With respect to --

MS. KING: Let him answer you.

MR. LYLES: He did answer my question.

MS. KING: He is answering your question and you interrupted him when you started --

MR. LYLES: He said no. He said he did not know the number of trees. He has answered my question.

MR. ROSENSTOCK: The reason I did not know the number of trees, sir, is that the property has not been properly surveyed.

MR. LYLES: Oh, okay. So when we talk about where your land begins and where our land ends and where our land begins and your land ends, what are you using to determine what that is?

MR. ROSENSTOCK: We are using the D.C. lands map that you have there. It is quite clear from out on the site --

MR. LYLES: This here?

MR. ROSENSTOCK: Yes, sir.

MR. LYLES: Okay. And so this D.C. lands map -- you haven't properly surveyed the land, but using this are you saying then for the Board that the area where trees were cut down were in this little bump here?

MR. ROSENSTOCK: Yes, sir.

MR. LYLES: This bump in the road. Okay.

MR. ROSENSTOCK: And within the green area that is D.C. right-of-way.

MR. LYLES: Okay. So the green area is D.C. right-of-way and you don't have any authority or control over that area, correct?

MR. ROSENSTOCK: No, sir.

MS. KING: But neither do you, sir.

MR. LYLES: Okay. But we are here about his issues.

MS. KING: I understand.

MR. LYLES: And that has to do with his trees being cut down. So we are just trying to determine whether or not he knows how many trees and what effect. He is the one making the case that there was a drastic effect on some trees being cut down. Our argument was that there wasn't a drastic effect and there was an innocent mistake. Given that if you look at this plot here, there is a row which indicates Fort Mahon Trail Park, but no indication that Park Service leaps over the road and abuts the city property. This is a very small area as they provided you. So we are just asking questions to see exactly what he is trying to prove here. I don't have any other questions at this time.

CHAIRPERSON REID: Okay. Thank you.

MS. BAILEY: Madam Chair, may I please ask one question of Mr. Rosenstock?

CHAIRPERSON REID: Sure.

MS. BAILEY: Mr. Rosenstock, it seems as if you are having difficulty with any kind of building on that site. What would you like to see

on that site? Certainly it is not a church --

MS. KING: Beverly, I don't think that is germane. What he wants to see on the site is not germane. What you and I want to see or what John and Sheila want to see is not germane.

MS. BAILEY: I guess my concern is, Ms. King, can anything be built on that site?

MR. ROSENSTOCK: Absolutely. That is privately owned property and it can be developed as a matter of right.

CHAIRPERSON REID: I think that the issue was the mass of this particular structure on that particular site. Correct?

MR. ROSENSTOCK: Yes, ma'am. Yes, ma'am.

CHAIRPERSON REID: All right.

MR. LYLES: I have just one additional question for Mr. Rosenstock. What would you consider -- what do you consider is massive?

MR. ROSENSTOCK: A building that cannot be built within the bounds of the zoning regulations of the site. It is -- that is the reason we are here, sir.

MR. LYLES: I have one further question for the lady in the middle from the ANC. You said that the ANC sent a letter to Holy Christian

Missionary Baptist Church?

MS. WILLIAMS: I have a copy of the letter that was sent out and all -- and I think they said they sent it out twice.

MR. LYLES: Do you know the date that the letter was sent?

MS. WILLIAMS: I don't know the date that the letter was sent, but the meeting was July 9.

MR. LYLES: Okay. But you don't know when the letter was sent?

MR. CREASEY: I might be able to answer that. I believe that letter was sent -- ANC Commissioner Mike Creasey, 7D-01. To the best of my knowledge, that letter was hand-delivered to one of their people. I am not sure who, but it was sent. Because our ANC office is in their 7C district, and we do rent the building. The building that she owns, we have an office there. So it is really no thing where we should have a miscommunication. And I believe she has spoken with Ms. Diane McCain, Commissioner Diane McCain of 7D-02. But they were aware of the meeting.

MR. LYLES: And you -- where is your experience about their awareness of the meeting? How do you come by your knowledge?

MR. CREASEY: I am ANC commissioner and I help draft the letters and so forth.

MR. LYLES: Did you deliver the letter yourself?

MR. CREASEY: As I just stated, I believe that Commissioner Diane McCain --

MR. LYLES: Is she here in the room today?

MR. CREASEY: No.

MR. LYLES: Okay. And you didn't deliver the letter yourself. Could I ask you, was a call made to Holy Christian Missionary Baptist Church?

MR. CREASEY: Not by myself.

MR. LYLES: No further questions.

MR. CREASEY: Could I ask him a question?

CHAIRPERSON REID: Well, no. That actually -- his time for cross examination really should not have included the questioning of you. But that is okay. All right. Now we will have closing remarks by the applicant.

MR. LYLES: We appreciate the opportunity to come before you today and present our case with respect to the variances. We think that we have provided if not ample justification, some

justification for granting the variances. We would appreciate your kind consideration of both the rear yard setback variance request and also with regard to the parking. We would just hasten to add, though, that our attempts to deal with the community and to sit and talk with the community and the Park Service may not have been to the extent that those organizations would have liked, but that is not because we did not try to do that. And we will continue to do that so that we can be integrated greatly into the community. We would just ask that our request for the rear yard setback from 12.8 to 12 feet be granted and also our parking request for a variance from 82 spaces to 16 spaces also be granted, and we appreciate coming before you today.

CHAIRPERSON REID: Let me ask you a question before we end this. Was the property posted?

MR. LYLES: When you say posted?

CHAIRPERSON REID: For this hearing.

MR. LYLES: Oh, yes it was. Yes, it was. There was some discrepancy as to the date, but the 28th -- it didn't have to be posted on the 28th. It had to be posted on the --

CHAIRPERSON REID: For 13 days rather than 15.

MR. LYLES: Well, it had to be posted 15 days. But the difference between the --

MR. HART: They were one or two days late.

CHAIRPERSON REID: But it was posted?

MR. HART: Yes. It was posted, yes.

MR. LYLES: Yes, it was definitely posted, yes. And it didn't have to be posted on the 28th as the Park Service maintains. It had to be posted in July.

CHAIRPERSON REID: Okay. Do you have a survey -- a land survey of that particular parcel?

MR. LYLES: Yes, we do. But the architect, I think, may have taken it with him. We can supplement the record as soon as we can get to the architect today.

CHAIRPERSON REID: If you had a survey -- okay, I don't understand. If you do have a survey, then why was there a problem with the --

MR. LYLES: Well, because the city survey is incorrect and that is where the problem is.

CHAIRPERSON REID: The property lines.

MR. LYLES: Yes. The city surveys show, as the Park Service alluded to in his conversation, it shows that there is this bump in the property,

and it is not properly identified who that bump belongs to. So the city documents that we had and we relied upon when cutting down the trees was incorrect.

MS. KING: Okay. You better supply that. Because none of the maps that we have shows any bump of any variety that could possibly be construed to be anything.

MR. LYLES: And that is what I am saying. That is part of the problem. The alley does not belong to the park, but it is not shown on the --

MS. KING: But it also doesn't belong to you.

MR. LYLES: We know that. But we didn't cut trees down --

MS. KING: Would you -- I would like to have that -- the survey that shows -- that does not show -- that shows that you have a bump of property going into the Fort.

MR. LYLES: Sure.

MS. KING: We would like to see a copy of that, sir.

MR. LYLES: Sure.

CHAIRPERSON REID: All right. Are you done?

MR. LYLES: Yes, we are.

CHAIRPERSON REID: Thank you.

MR. LYLES: Thank you.

CHAIRPERSON REID: Excuse me, that is the end of the case. It concludes with the closing remarks by the applicant.

MR. CREASEY: I just wanted to say --

CHAIRPERSON REID: You can discuss that with staff and they will make sure that we receive the information. Ms. King, you had said something about the applicant trying to acquire additional property. So I am thinking --

MS. KING: Well, it becomes even more problematic because the woman who lives next to some of the property that they have their eye on acquiring is going to oppose it. So it would be yet another case, because they would have to get permission in that residential area to have a parking lot, and there would be opposition at least from one party whose property abuts.

CHAIRPERSON REID: But they were -- they identified three or four possible sites that could accommodate the parking. The question or what I was about to say, and I will ask Mr. Parsons this, if we would like to give some additional time for them to acquire additional parking space before making the

decision? They say that they possibly can. And if that is the case, then we could postpone a decision and give them --

MS. KING: Postpone a decision until the first week in September?

CHAIRPERSON REID: Well, that would be the normal date.

MR. PARSONS: Well, that gives them the impression that if they go out and sign a contract with Safeway, we will approve the application and I am not sure that is where I am.

CHAIRPERSON REID: All right. Where are you?

MR. PARSONS: As I expressed to the Reverend, I think it is too big a building for the site. I think they ought to reconsider the size of the church and get on with their mission. Certainly a church of 400 to 500 seats would probably work here. I am not going to design it. But with adequate parking and a better fit on the property so that they don't have to hold it up with big retaining walls and so forth. So I would be in favor of denying the application if you want to know where I am coming from. So urging them to get parking elsewhere I think is problematic.

MS. KING: I don't buy into that. I

think that --

CHAIRPERSON REID: So the modification of the size, then, which would allow them to build a matter of right? And they won't have to even come back here?

MR. PARSONS: The zone would. I mean, I don't know.

MS. KING: I mean, depending upon -- I mean, if they build a smaller church, they could have more parking spaces. They could have one for every 10 people or something like that. And presumably they wouldn't have to have that 8-foot variance in the rear. And then they could do it as a matter of right without reference to this.

CHAIRPERSON REID: Okay. Are you saying to tell them today?

MR. PARSONS: That is all right with me. I would move that we deny the application.

MS. KING: I will second that for all the reasons that we have discussed.

CHAIRPERSON REID: All right. All in favor?

MR. PARSONS: Aye.

MS. KING: Aye.

CHAIRPERSON REID: If I abstain -- I would like to abstain on this one.

MR. PARSONS: Then by all means do.

CHAIRPERSON REID: All in favor, aye. I am sorry, all in favor -- you all just voted. All opposed? And I will abstain.

MS. KING: Don't we have to have three votes? We have to have three votes. It is a five member board.

CHAIRPERSON REID: We have to have three votes to pass it. If we don't have three votes, it is the lack of a --

MS. KING: Oh, I see. So it fails for lack of --

CHAIRPERSON REID: Lack of a majority.

MS. KING: Is that correct? Is Sheri here or has she disappeared?

MR. HART: It actually fails. It fails.

MS. KING: The motion fails. And, therefore, you are not --

CHAIRPERSON REID: We record two in favor and one abstention.

MS. KING: Therefore, the motion fails --

CHAIRPERSON REID: For lack of majority.

MS. KING: The motion fails, and the motion is to deny.

CHAIRPERSON REID: Right.

MS. KING: So your opposition approves this project.

CHAIRPERSON REID: No. I am abstaining.

MS. KING: That is what I am saying.

CHAIRPERSON REID: So your motion was to deny.

MS. KING: There is no -- we have taken no action. You can't take action with just two votes. Because it is a five member board. We need two votes.

CHAIRPERSON REID: All right. Okay. Let's start over again. All in favor of the motion to deny?

ALL BOARD MEMBERS: Aye.

CHAIRPERSON REID: All opposed? Okay.

MR. HART: Staff will record the vote as three to zero to deny, Ms. King, Mr. Parsons and Ms. Reid.

MR. LYLES: Excuse me, is that on -- which variance is that on?

MS. KING: On all of them.

CHAIRPERSON REID: Well, it had to be on both because it wouldn't serve any purpose to approve one and not the other.

MR. LYLES: Well, it would help us if we had to come back, though. We would be for one

variance rather than two.

MS. KING: No. We have denied both applications.

MR. LYLES: It wasn't clear on the record.

MS. KING: The case is denied. And, you know, I sympathize with your reluctance, and I am not happy about it either.

CHAIRPERSON REID: Oh, yes.

MS. KING: But it is just too massive for that site.

CHAIRPERSON REID: Just for the record, I think that it is certainly a very worthwhile endeavor. But I just -- we have to go by the regulations. Our hands are tied and there is nothing to convince us that that particular church or that size church can work with the parking that is required at this time.

MR. LYLES: Thank you very much.

MS. KING: Thank you.

CHAIRPERSON REID: We will recess for 10 minutes.

(Whereupon, at 3:41 p.m. off the record until 3:56 p.m.)

CHAIRPERSON REID: We will resume the afternoon session.

UNKNOWN SPEAKER: Good morning -- good afternoon, Madam Chair and members of the --

MS. KING: Good evening. The case hasn't been called.

CHAIRPERSON REID: Do you have a preliminary matter as it pertains to this particular case? If you will let Mr. Hart call the case. Mr. Hart will call the case and swear everyone in who is involved in this particular case. And then if you have a preliminary matter, I will allow you to speak at that time.

MR. HART: Application No. 16475 OF 403 C Street, N.E., L.L.C., pursuant to 11 DCMR 3107.2 for a variance from the maximum allowable floor area ratio and from the parking requirements under Section 771.2, 1203.3, and 2101.1 for the construction of an office building in a CAP/C-2-A District at premises at 403 C Street, N.E., Square 814, Lot 825. Would those persons intending to testify in this case please stand and raise your right hand to take the oath?

(WITNESSES ARE SWORN.)

CHAIRPERSON REID: Okay, preliminary matters?

MS. SCHMIDT: Could you allow me to approach because my hearing --

CHAIRPERSON REID: No. You have to speak from there so everyone can hear you. Give your name and address.

MS. SCHMIDT: Janet Schmidt, 14 4th Street, N.E. 403 C Street lies in my single member district. It has come to my attention this afternoon prior to the meeting that there are concerns of the Peabody School, the Parent Teacher Association and other bodies, that were not brought to the attention of the ANC. In error, communication had been sent to ANC Commissioner Gus Ventura. It was not his single member district. The parties -- these interested parties have not had an opportunity to be heard on the matter. They are concerned with respect to the parking variance and safety of the children because this property would be required under present law to have 11 parking spaces. They are concerned, the PTA, with respect to shuttling students and the safety of the children with increased traffic. They would like the opportunity for the 6A Commission to hear their position and their concerns before we take a position with respect to being opposing or proposing this variance. So at this time, the 6A Commission is withdrawing their support of this and asking for a postponement so the parties have the opportunity

to air their concerns with respect to the safety of the children.

MS. KING: Is the PTA or whatever represented here today? Are they here?

MS. SCHMIDT: Yes.

CHAIRPERSON REID: Okay. You are saying that the notice was inadvertently sent to --

MS. SCHMIDT: ANC Commissioner Gus Ventura, who it was not his single member district. In addition --

CHAIRPERSON REID: And it should have been sent to you?

MS. SCHMIDT: Yes. In addition, it has come to my attention that the posted sign did not address the parking areas requested -- the notice for the hearing today.

CHAIRPERSON REID: What did it address? Just one second, please.

MR. BROWN: Madam Chair and members of the Board, my name is Patrick Brown from Greenstein, DeLorme & Luchs. I'd like to respond to the preliminary matter. One, the applicant made a presentation to ANC 6A earlier in the month. There was a quorum present. There is a letter in the file where they came out voting in support without reservation. To come at the day of the hearing

without having another meeting or any opportunity is inappropriate. They have had their meeting voted with one member voting not present, but otherwise unanimously, and I quote the letter -- "In support without reservation." So that they can't now change their mind and cause this hearing to be continued. Can I add one other thing? I don't want to belabor the point. Clearly everybody -- the entire commission had complete notice of this case. They acted upon it based on that notice. So the fact that one SMD got the application and not the other doesn't at the end of the day mean anything, because the entire group, it is my understanding, heard and acted on the matter. That is not to say that we are here to prevent anybody who is interested, and there have been discussions with the Peabody PTA group about their issues. We are not here to prevent anybody from appearing and testifying and making their thoughts known. But for the ANC to come in at the last minute and withdraw their vote of support I think is inappropriate.

MS. KING: Excuse me, madam, what is your name?

MS. SCHMIDT: Janet Schmidt.

MS. KING: And you voted yes on this? You are the single member district person?

MS. SCHMIDT: Yes. May I correct the characterization, please? What happened that evening was that I was not advised that this was my single member district and did not have an opportunity to consult with interested parties and homeowners in the community. We decided since none of the Board members had this opportunity to hear from the community that we would follow the decision of the Stanton Park Neighborhood Association. So what we voted to do was not unanimously support this, but we voted to follow the decision of the Stanton Park Neighborhood Association. And we did that and the minutes of our meeting reflect that. We took that position because we felt that the Stanton Park Neighborhood Association did have the opportunity to hear from the community, and we wanted to assist Mr. Scallan in moving forward and not hold him up if Stanton Park Association agreed. We have been advised today that in fact Stanton Park did not speak or meet with the PTA. And so, for that reason, we nor Stanton Park in their recommendations had the opportunity to hear from the PTA, the school, the parents and the homeowners.

CHAIRPERSON REID: Okay. But the PTA -- the members of the PTA are here today?

MS. SCHMIDT: We have one member.

CHAIRPERSON REID: Okay. Then why could they not just testify today in support or opposition?

MS. SCOTT: If I -- my name is Laura Scott. I am the chair of the LSRT. Our concern is --

MS. KING: Of the what?

MS. SCOTT: Of the Local School Restructuring Team of the Capitol Hill buffer school.

MS. KING: What does that mean? What is that?

MS. SCOTT: It is a body elected by the parents and teachers of the local school. DCPS is the --

MS. KING: It is public schools?

MS. SCOTT: Yes, these are public schools.

MS. KING: And the Peabody is a District public school?

MS. SCOTT: Yes, it is. By part of the Capitol Hill cluster schools. Our concern with the opportunity to speak today as opposed to returning it to the ANC is the great weight that is given to the ANC's vote. As they have said without reservation that that is going to be given great

weight, perhaps greater weight than what we say today.

CHAIRPERSON REID: But how --

MR. PERNELL: Madam Chair?

CHAIRPERSON REID: One second, please, Pernell. How can we, without any letter -- another letter from the ANC reversing their previous position -- there is nothing -- we don't have anything to allow us to do that. Because what we have in our file is the position of the ANC.

MR. BROWN: And that is exactly the point, Madam Chair. You impose some strict standards in what is an appropriate ANC response with the quorum and certain other issues, notice and whatever. And to judge one letter by one standard, which imposes rather high standards which are met by this letter, I believe, and then to judge by a lesser standard what was occurring today doesn't seem appropriate. And it basically -- for an applicant, whether it is this applicant or any other applicant, it doesn't mean anything if you go to the ANC and make a presentation and get a vote. Because if circumstances change, they can change their mind. And I think if you are going to do it, it has to be the same way each way.

CHAIRPERSON REID: Well, Mr. Brown, I

have no problem with that, even if in fact the ANC had submitted a subsequent letter to reverse the first position, which we don't have.

MR. BROWN: Yes.

MS. KING: What was the vote for the first position? Just two members who voted yes on the 7th of July changed their minds this afternoon.

CHAIRPERSON REID: If they felt strongly enough about it, I would think that they would have sent a subsequent letter reversing their decision.

MR. PERNELL: Madam Chair, Daniel Pernell of the 6A Commission. I was present at that meeting. That was a combined meeting with our subcommittee on that day, July 7. We were acting as a body according to the requirements from the BZA to comply within 7 days before the hearing date and we were trying to do that. At the same time, we were trying to be fair to the constituents in the area. At the last minute, I told Ms. Janet Schmidt, Commissioner Janet Schmidt, that it was in her single member district and not in Gus Ventura's. We don't know where the material went to, but it didn't come to the chair, me, for me to inform Ms. Janet Schmidt. Therefore, she didn't have the opportunity to inform Peabody School or anyone in that single member district.

MS. KING: But you were aware of that the night of July 7th when you voted, correct?

MR. PERNELL: Yes.

MS. KING: And you both voted for this resolution?

MS. SCHMIDT: No, we did not. We voted to follow the decision of Stanton Park Neighborhood Association.

MS. KING: The 6A Commission voted to support Mr. J. Andrew Scallan development without reservation. There is no reference here in the document that I have to the Stanton Park Civic Association. Madam Chair, I move that we do not postpone. We can go forward tonight.

CHAIRPERSON REID: Just a moment. Let's allow this gentleman in here because he is trying to say something.

MR. SCALLAN: I would only say that I had received --

CHAIRPERSON REID: Your name and your address.

MR. SCALLAN: Andrew Scallan. I am the applicant. I had talked to someone from the PTA weeks before this. They knew the position of Stanton Park. They had -- there was someone at that meeting -- at your meeting that was from the PTA and

understood their position -- you know, understood -- Jan, you were there and said they understood that they had some reservations. They are here to tell you what the reservations are. I mean, I just --

MS. KING: We can impose a condition.

CHAIRPERSON REID: Thank you. This is the last one.

MS. LORD: Hi, my name is Victoria Lord. I am --

MS. KING: I can't hear a word you are saying.

MS. LORD: I am sorry. My name is Victoria Lord and I am Vice President of the PTA for the Peabody School. I am the person from the PTA who has been handling this matter. Mr. Scallan has, indeed, been in touch with people, but they are not official representatives of the PTA. We did not have a representative at this ANC meeting because we were not informed that this issue would be presented to the ANC that evening. So we had no opportunity to gather any of our membership to attend that meeting and to make our views known at that meeting. It is also our understanding that this meeting was a rather disorganized meeting and Mr. Scallan made his presentation on the street.

MR. PERNELL: I beg your pardon on that,

Madam Chair. This was an organized meeting and it has been for the last three or four years. And I beg your pardon on that.

MS. SCHMIDT: Madam Chairperson, if I can make an additional point.

CHAIRPERSON REID: Okay. The last comment and then we have to take a vote.

MS. SCHMIDT: I first would like to explain the background which stated without reservation. We stated without reservation because discussions of Stanton Park Neighborhood Association, which were done in the absence of Mr. Scallan, was that it was the neighborhood association's hope that if they backed it without reservation that in fact a swap of property would take place where the school board would substitute this property for other property for Mr. Scallan to develop. And that is why the statement without reservation is included. And with respect to Ms. Lord's comments that the meeting was disorganized, I will tell you that the meeting was continued outside the J.O. Wilson School on the street because we were asked to leave the school as they were closing.

CHAIRPERSON REID: Thank you. Thank you very much. All right, now --

MR. HOOD: Madam Chair, I would just

like to add that I very much so disagree with Mr. Brown. I believe that just like applicants have a chance to change their mind when they come down to this Board, so do ANCs and other community groups. But I would like to see us at least keep the record open so that the ANC can go back and work out the issues of the Peabody School. Because I too had that as a concern before we even got into the case. So if we can keep the record open, then I will be willing to go forward.

CHAIRPERSON REID: All right. Then I think that the Board -- Ms. King has already put a motion to go forward today and Mr. Hood is seconding?

MR. HOOD: I don't know if I want to second it, but I will second it.

MS. KING: Go forward with it today provided that we would not make a --

MR. HOOD: Provided we keep the record open.

MS. KING: It cannot be a bench decision and we will make our decision at a subsequent meeting by which time the -- you know, we will give ample opportunity. We will keep the record open until -- I don't know -- 10 days or whatever the usual thing is. Two weeks or whatever.

MR. HOOD: Commissioner King, especially to give the Peabody School and the ANC a chance to express and resolve some of their concerns.

MS. KING: And we also always encourage the developers and the community to make some kind of an accommodation so that everybody gets something that they want or ends up reasonably happy. But, you know, to postpone this means that we won't be hearing it until sometime in late October, and I think that is unnecessary delay.

CHAIRPERSON REID: And we want this to be done correctly. So, if in fact the ANC has reversed their position, then they need to go ahead and have a meeting and have a vote with a quorum that are present and then submit that to us. That would then basically replace or reverse the decision that we have before us, and that is the only thing we can go by right now. All right.

Now that having been done, Mr. Brown.

MR. BROWN: Madam Chair, members of the Board, my name is Patrick Brown from Greenstein, DeLorme and Luchs. With me and to my left is my co-counsel, Gene Rested, also from the firm.

To my right is Mr. Andrew Scallan, the applicant. And next to him Professor Dorn McGrath who will be testifying on behalf of this

application.

It's an application to permit the construction of a 3 story building with a cellar in the C-2-A CAP overlay district. In order to accomplish this three variances are required; variances from the 2.5 maximum on FAR, a variance from how that FAR is allocated. And then also a parking variance.

Now, this sounds like a full plate. This type of case, and in fact in the types of variances the Board has dealt with previously right down the street at 5th Street. And this case, as the testimony will present, the practical difficulties that justify the variances are, if not the same, more compelling based on the specific limitations of this property; the limitations imposed by the governmental authorities and also a significant realization and shift as it relates to Ward 6, the Capitol Hill overlay district and the comprehensive plan having to do with those areas which clearly point in support of this application.

I would particularly like to reference, and it's been presented to the Board, there's a BZA case for 518 and 520 C Street, N.E., which is substantially on all floors involving variances from the various restrictions both inherent in the CAP

overlay district as well as in general for FAR and parking, which goes through a similar site. And I recommend that reading to the Board because I think it's well a thought out decision by the Board.

With that, I'd like to introduce Mr. Scallan, who is here on behalf of the applicant, the 403 C Street Limited Liability Corporation, and ask him to present his testimony. Written copies of that have also been presented to the Board members.

MR. SCALLAN: My name is Andrew Scallan. I live at 3018 44th Place, Washington, D.C. I'm a member of the 403 C Street, L.L.C., the applicant in this case.

Before you today is a request to build a small office building on vacant land near the southeast corner of 4th and C Streets, Northeast. The lot overlooks Stanton Park and there's a small six foot wide alley that extends to 4th Street at the rear of the lot.

Our request is to build a 3 story plus cellar office building on the site. The variances sought are for allowable FAR of 2.5 non-residential and for lack of parking.

Previous to this date the Historic Preservation Review Board reviewed our plans and approved on a conceptual basis the building before

you that is the subject of this application. In summary, this building is 25 feet wide, 83 feet deep and 40 feet tall to the ceiling of the top floor. At the same time, in spite of our requests for a curb cut at one of several locations, HPRB did not approve a curb cut and, thus, denied us even minimal parking.

The allowable density in the CAP overlay C-2-A District is 1.8 FAR. Outside the CAP overlay district in the C-2-A zone the allowable density is 2.5.

We have also asked to use it for residential purposes. We do not believe this modest increase in FAR will have an adverse effect on the neighborhood, the Capitol Hill interest district, nor the integrity of the zoning regulations or map.

This small, narrow 2500 square foot site represents a number of practical difficulties in light of current building code requirements for egress in Americans With Disability Act, ADA, regulations. Larger rest rooms, an elevator shaft and wide stairways take up a large proportion of the available area for each floor. The relative percentage of the area needed for core requirements in this case is significantly larger than competing buildings with larger floor plates.

In addition, the cost of these items, including a budgeted $45,000 for an elevator and $15,000 for an exterior stairs, is disproportionate to the total cost of the project. For instance, the $10,000 fee for a 4 inch water connection needed for a sprinkler system is divided by a much smaller area than competing buildings with greater land area.

In summary, these governmental regulations impose substantial practical difficulties in development of this site. These difficulties are not new. The last building built on Stanton Park is located at 518 C Street, almost across the street from this one, catty-corner across the park, and was constructed as a result of BZA decision 14573 in 1987. A 2.5 FAR plus .44 interior garage was approved on a 4,025 square foot lot -- which is about 1500 square feet larger than mine. The case reads, and this is the decision, "Any new construction on the site must comply with the requirements of BOCA code, fire code, handicap code and Historic District guidelines. It is not economically feasible or physically desirable to comply with these code requirements on a site as small as this one." Obviously, our site is even smaller and, thus, magnifies the resulting practical difficulties.

Secondly, denying of any parking is also a significant practical difficulty. While experience has shown that the vast majority of office workers in this neighborhood use public transportation, particularly the nearby Union State Metro Station, public parking or walk to work, some on site parking is highly desirable. Parking is restricted in front of the site because of the adjacent school and parking in the surrounding residential neighborhoods is restricted to residents. The effect is to deny a commercial owner any nearby parking since they cannot park on their property and they cannot park on the street. In contrast, an existing building would likely be eligible for a waiver of all parking loading requirements based upon its contribution to the character of the historic neighborhood.

This building is in compliance with the changes of the zoning regulations recommended by the recent comprehensive plan amendments. These recommendations create an overlay in Ward Six for Historic Capitol Hill neighborhood and the A Street commercial corridor. Now the FAR of 3.0 is recommended for C-2-A and 2.5 for the Capitol interest district. No change in building is recommended. A distinguished planner instrumental

in drafting those changes, Dorn McGrath, will testify as to difficulties in small lot development.

We have presented our case to three community organizations. The Stanton Park Neighborhood Association voted to support this application. The ANC-6A voted to support this application without reservation. The Capitol Hill Restoration Society voted to support one variance, took no position on one and opposed one variance even though they initiated and support the proposed comprehensive plan overlay.

We think it is also noteworthy that they did not oppose in a similar variance for 518 C Street in 1987. Significantly CHRS recognized the site limitation and encouraged zoning relief at the Zoning Commission level.

We have been sensitive to the issues raised by the Peabody PTA. Our partnership and the landowner before us have allowed the PTA to use the land for a garden project for some 20 years. We are willing to stipulate that the windows facing the school yard be constructed in nonbreakable materials and we'll work closely with the school to prevent any hazards to the children during the construction. We will not allow any trespassing by construction vehicles during construction. We also note the

typical office worker in our building will arrive after normal school start hours and will depart well after school is dismissed.

In conclusion, this small site development clearly contains practical difficulties, and that is that the development not only would have no inverse impact on the neighborhood, but indeed, it is in conformance with planned use recommendations currently under consideration.

Thank you very much.

CHAIRPERSON REID: Questions?

MS. KING: Not yet.

CHAIRPERSON REID: Mr. McGrath -- is Dorn going to go next?

MR. BROWN: Yes. Before he gives his testimony, request the Board recognize him as an expert witness, not only with respect to urban planning and land use matters for which you will recognize, but even going even further than that to the specifics not only of the Capitol Hill area and Ward Six where he's been intimately involved in planning issues there, but also to this type of small lot development in that type of context on Capitol Hill. I think his knowledge and background generally as well as specifically in this area is worthy of note and important to examining this case,

and I would ask he be recognized in that regard.

CHAIRPERSON REID: Has he been recognized as an expert witness here before?

MR. BROWN: We have submitted his CV and a list of where he has been expert, including this Board as well as many others and courts in this area and throughout -- I guess throughout the country.

CHAIRPERSON REID: You submitted a CV?

MR. BROWN: Yes.

MS. KING: We received it today.

CHAIRPERSON REID: Oh, I haven't seen it.

MR. BROWN: And on top is a one page list that kind of summarizes his expert testimony.

MS. KING: Page 10 of his CV is the original --

MR. BROWN: Well, actually, it should be a separate page, which --

MS. KING: It is, but I mean it constitutes a tenth page.

MR. BROWN: Yes. Yes.

CHAIRPERSON REID: Okay. I have no problem with him being accepted as an expert witness.

MS. KING: No, I think he's well known as a land use planner.

CHAIRPERSON REID: Okay.

MR. BROWN: Thank you very much.

PROFESSOR McGRATH: Good afternoon, madam Chairman and members of the Board. I'm Dorn McGrath, Jr.

I am a resident of the District of Columbia. I live at 2710 Brandywine Street, Northwest. And I'm here to testify today on behalf of the applicant, 403 C Street, Northeast, L.L.C.

I'm employed in the District as a professor of urban and regional planning at the George Washington University, and I serve there also as chairman of the Department of Geography and Director of the Institute for Urban Development Research.

As Director of that institute I oversaw the preparation of a ward plan for Ward Six some years ago carried out under my direction and my associate by graduate students in urban and regional planning in collaboration with many citizen groups and businesses, all of whom provided substantial financial assistance for the project, and I might say entirely for the students.

Now, this project was completed in 1988, after more than two dozen meetings with the community groups. And the City Council approved and

adopted the Ward Six plan in 1989. And I admit that I live in Ward Three, but I've become quite familiar with characteristics and many details of Ward Six as a result of my continuing experience with development trends and issues in the Ward for 20 odd years.

Our city has to live with the awkward legacy of a zoning ordinance that first was prepared in 1958, which has added to all of our tribulations, yours particularly. Local zoning regulations have been amended countless times since them to accommodate the needs of rapidly changing building and environmental technologies.

Our analyses of the framework of zoning regulations in the mid 1980's revealed widespread handicaps to otherwise desired types of development on Capitol Hill and elsewhere in the Ward. The local zoning regulations imposed artificial, quite obsolete
unrealistic requirements on many historic properties preventing their use and maintenance in keeping with evolved technology and commercial standards.

Another factor that emerged in the 1980's was the federal requirement to modify buildings to make them easily accessible to persons with disabilities. This was the Americans with

Disabilities Act. The federal mandated ADA requirements dictated specific dimensional standards for ramps, hallways, elevators and bathroom facilities at buildings that old and new were required to meet. I would add that my own university spent many millions of dollars trying to adapt old buildings to meet those standards at great difficulty.

The standards imposed disproportionately heavy penalties on older buildings and on small narrow lots because there can be no compromises with finite dimensions of a 25 foot wide lot and the resulting flurry available when the ADA required dimensions become part of the design and layout of individual floors.

The building proposed for 403 C Street, Northeast, has been designed to meet these ADA requirements. And the FAR of 2.5 as recommended some time ago for the C-2-A Capitol Interest District is needed to enable this building to meet the remainder of its basic use space use program within the lawful building envelope.

The variance is sought to permit development of Lot 825 in square 814 with this lot appear to be reasonable and appropriate for the property. Developing the presently empty lot as

proposed for an office building keeping with the scale and other architectural characteristics of the Stanton Park neighborhood seems to be entirely consistent with the trend of nonresidential use of the southside of Stanton Park between 4th and 6th Streets.

Nearly all of the present C Street frontage of the park is in use for commercial purposes, including the National Association for Home Health Care in the far corner, lawyers' offices, a court reporter, a notary public office, Townhouse Furniture Store, a former residence now for sale for commercial use. Such uses are not only permitted under existing zoning, the C-2-A Capitol Interest District, but they're encouraged by the specific language of the most recently adopted version of the Comprehensive Plan Act of 1984 which was adopted in December of 1998.

Now, I've listed all the sections with which that is in compliance which actually encouraged this, but I didn't attempt to read them here. But they're all as they are listed with respect to the Ward Six plan in that whole chapter of the original ordinance.

As recognized also, the D.C. Historic Preservation Review Board has approved the proposed

design for the building to occupy the now vacant premises except for any curb cut. Accordingly, in my opinion, the proposed office building for this site would be consistent with the character of the neighborhood and its logical development and that its performance characteristics would compliment other functions performed by commercial uses and public facilities in the immediate vicinity of the Capitol Hill Historic District.

Thank you. I'll be glad to answer questions if there be need.

MS. KING: I have questions.

CHAIRPERSON REID: Okay. Ms. King, begin.

MS. KING: The red building is the addition and the gray and white building are the existing structures?

MR. SCALLAN: No, the red building is the new structure. The white building is the adjacent property.

MS. KING: It's the adjacent property

MR. SCALLAN: Yes, ma'am.

MS. KING: Oh? Well, now there's an existing building?

MR. SCALLAN: No, ma'am. This is a vacant lot.

MS. KING: Oh, I see. The existing building doesn't belong -- I mean where it says here "existing building," that doesn't belong to you?

MR. SCALLAN: Yes. It probably should say adjacent property owner.

MS. KING: Yes. I mean, I thought well they're adding on, but no.

MR. SCALLAN: No.

MS. KING: All that you're involved in is this piece of property, the one that's outlined in red on here?

MR. SCALLAN: Yes, ma'am.

MS. KING: Okay.

Now, if you had been given a curb cut, where were you going to put your parking?

MR. SCALLAN: Well, I first asked to -- I designed a building that would have a garage in the front.

MS. KING: I see. Okay.

MR. SCALLAN: And then I was told by the neighborhood associations that was not desirable and they suggested maybe on 4th Street there is --

MS. KING: Yes, the Historic Preservation Review Board is very tough about curb cuts.

MR. SCALLAN: Right. There is a six foot alley on 4th Street and I asked for conceptual approval if I could work a deal with the adjacent property owner to get an easement, that we could at least park something in the back. That was also denied.

MS. KING: Okay. All right. It's clear.

And the school playground, do we have a photograph in the file that shows a view looking across your property to the school playground?

MR. SCALLAN: Yes, you should. You should have something in the file that shows both the property and the school.

MS. KING: And how wide is that playground?

MR. SCALLAN: That playground in the front there, I'm going to say is 150 feet wide. There's probably 150 feet, I would think. Maybe 100 to 150 feet between our lot and the Peabody structure itself.

MS. KING: Okay. Great.

No further questions at this time.

CHAIRPERSON REID: Mr. Hood.

MR. HOOD: Mr. Scallan, have there been any discussions, your proposed use is office --

MR. SCALLAN: Yes.

MR. HOOD: Have you had any discussions on what type of tenants you're going to attract or what you're going to do?

MR. SCALLAN: Well, I think that your type of tenant that you'll attract or owner, it very well could be a build-to-suit building, would be a nonprofit type office user, probably. That's the typical small association representing someone in Washington.

MR. HOOD: Has anyone had any contact if this is approved to be able to go into the facility? Do you have anybody at the moment?

MR. SCALLAN: No, I do not have a purchaser in hand or a user.

MR. HOOD: No further questions.

CHAIRPERSON REID: All right. Is she going to testify?

MR. BROWN: No, she's my co-counsel.

CHAIRPERSON REID: I forgot. You said that. I'm sorry.

MR. BROWN: In case I get struck by lightening.

CHAIRPERSON REID: Okay. We have no further questions at this time.

Can we have questions and closing

remarks.

MR. BROWN: Reserve closing remarks.

CHAIRPERSON REID: Let me see if there's any cross examination before you leave.

The ANC -- did you have any questions?

MS. SCHMIDT: May I ask a question so -- spoke here today?

CHAIRPERSON REID: All right. Single member district representative?

MS. SCHMIDT: Okay. Excuse me. Could you tell me your name over again, please? I didn't hear you.

PROFESSOR McGRATH: McGrath.

MS. SCHMIDT: McGrath.

CHAIRPERSON REID: Who do you want to ask questions of?

MS. SCHMIDT: I wanted to ask Mr. McGrath a couple of questions.

CHAIRPERSON REID: Mr. McGrath, please come back up. I'm sorry.

PROFESSOR McGRATH: Yes.

MS. SCHMIDT: Mr. McGrath, could you tell me to what extent or percentage wise the ADA requirements which was enacted in 1992 would require the building to be enlarged?

MS. KING: You know, I can't hear you or

see you. Why don't we move this now that we've dealt with, and why don't you stand near one of the microphones so that the recorder can hear you. And will you speak up so we can all hear you?

MS. SCHMIDT: First of all, let me ask you, are you paid for your testimony here today?

PROFESSOR McGRATH: Yes.

MS. SCHMIDT: What is your fee?

PROFESSOR McGRATH: My fee?

MS. SCHMIDT: Yes.

MR. BROWN: I object to that.

PROFESSOR McGRATH: I don't know that I have --

CHAIRPERSON REID: Sustained.

MR. BROWN: I mean he's --

MS. KING: Sustained.

CHAIRPERSON REID: Sustained.

MS. SCHMIDT: It is correct you are paid for your testimony?

PROFESSOR McGRATH: I am.

MS. SCHMIDT: Are you an expert witness in these type of cases?

PROFESSOR McGRATH: Yes.

MS. SCHMIDT: All right. Now you stated that the ADA which was passed in the 1980's, but it was in fact passed in 1992, effected the size --

MS. KING: Would you share your remarks with the Board?

MS. SCHMIDT: Yes.

MS. KING: Okay. You've got to speak up.

CHAIRPERSON REID: We can't hear.

MS. KING: And this segment is for to be given the opportunity to ask questions and you can't testify. You cannot testify.

MS. SCHMIDT: All right.

MS. KING: Pose whatever you want to say in the form of a question.

MS. SCHMIDT: Could you please -- excuse me. Could you please respond and tell me to what extent the regulations enacted under the ADA would require Mr. Scallan to increase the size of the property?

PROFESSOR McGRATH: Well, they do not require him to increase the size of the property. The property is finite in its dimensions. What the requirements do is impose a larger spacial requirement on the floor plate of the building because you simply can't make an elevator of a given size smaller, you have to insert it into whatever the space of the floor plate is.

MS. SCHMIDT: Well, what percentage would it increase the floor plate of the --

PROFESSOR McGRATH: It depends entirely on the design. There's no fixed percentage. That's not a good question.

MS. SCHMIDT: Well, you had stated that FAR was needed for that reason, so I'm asking you --

PROFESSOR McGRATH: No, I did not. I stated that the FAR is needed for all such buildings on Capitol Hill because the way they were originally built, the design, they're quite narrow and long and there was a notion that at one time they would have to have a residential component above an office or a retail use. And that frustrated development of properties all over Capitol Hill for many, many years and, thus, changes were adopted in the earlier Comprehensive Plan and recommended a 2.5 FAR for a location such as this for both old buildings and new.

MS. SCHMIDT: So you opine as to whether or not -- how much you would need in excess of 2.5 to comply with ADA?

PROFESSOR McGRATH: You don't need anything in excess of 2.5. All you need is 2.5

MS. SCHMIDT: So he could build a building and comply with ADA without having a variance for the -- in coverage of the building on the property?

PROFESSOR McGRATH: No, no. Probably not. I mean, he designed the building, it is building and he designed it this way accommodating all the ADA requirements on that site.

MS. SCHMIDT: Could a smaller building be built on that property and accommodate ADA but it would only be less financially advantageous to the owner?

PROFESSOR McGRATH: I could not say. I did not design the building.

MS. SCHMIDT: You said that you felt that this would not negatively impact the neighboring area. Have you taken into account the school and talked to members of the school when you reached that conclusion?

PROFESSOR McGRATH: No.

MS. SCHMIDT: You also said that it would not impact the neighboring premises. Could you tell me how it will not impact or have you looked at what the use of the neighboring commercial property was when you reached that conclusion?

PROFESSOR McGRATH: Well, to answer your questions in reverse, yes, I have walked the entire frontage of C Street between 4th and 6th. and looked down each street and walked each street and inspected the properties. And in all likelihood a

new building on that site would enhance rather adversely effect any properties.

The building on the corner presently in ambiguous use is not a marvelous building. This building is designed much more carefully, the proposed building, and would probably enhance the value of that one as well as some others in the area.

MS. SCHMIDT: I'm not speaking to value, but could you talk about how it would enhance the neighborhood? Not with respect to value of the commercial premises.

PROFESSOR McGRATH: Well, the neighborhood, I believe, would be enhanced by the introduction of more people using the neighborhood facilities; the streets, the parks and would provide opportunities for employment and all the things that go with employment in the neighborhood. And a rather small number of people it probably would be.

MS. SCHMIDT: How would that impact children going to and from the school and the shuttle buses? Have you looked at that issue and what's your conclusion?

PROFESSOR McGRATH: Well, I realize that the hours of operations of a normal building on the site are rather different from the hours of

operation of the school. And so the people would be leaving this site usually after school hours, probably 2 or 3 hours later. And the same would be the case in the morning, particularly if the people come as is expected by mass transit.

MS. SCHMIDT: Do you know what the --

CHAIRPERSON REID: How many questions do you have?

MS. SCHMIDT: Just one more.

Do you know what the tenant will be in the building and what kind of traffic they will bring to bear on the neighborhood?

PROFESSOR McGRATH: Well, I do not know the tenants. As I think Mr. Scallan testified, he does not have a tenant in mind right now. But quite typically judging from the character of the many occupancies along that frontage and in the immediate vicinity, it would be likely to be clerical employees and executive employees of some association or some office retail group that would occupy the building. It would not involve manufacturing; it could not. It would not involve heavy industry, it could not. It would not involve heavy delivery vehicles. It seems it would be a rather light on the ground use.

MS. SCHMIDT: Just one more question.

Are you aware when you arrived at that conclusion it wouldn't impact the school and the children coming and going that they have a shuttle bus to another satellite facility that comes back and forth during the day?

PROFESSOR McGRATH: Yes, I'm familiar with that.

MS. SCHMIDT: And you took that into account in reaching the conclusion that there wouldn't be negative impact?

PROFESSOR McGRATH: Of course.

MS. SCHMIDT: Thank you very much.

CHAIRPERSON REID: Mr. Pernell, did you have any questions?

MR. PERNELL: Not for cross examining, no.

CHAIRPERSON REID: Okay. All right. Mr. Hood?

MR. HOOD: Mr. Brown, I just have a quick question for you.

MR. BROWN: Sure, if I can.

MR. HOOD: Are you aware of the Stanton Park Neighborhood Association letter July 10 of 1999?

MR. BROWN: Yes.

MR. HOOD: Could you briefly just tell

me what some of the concerns were of the Peabody School and have you been working with them, and have you addressed any of them?

MR. BROWN: Can I ask Mr. Scallan to answer that.

MR. HOOD: Okay.

MR. BROWN: I think it's better. There are a lot of questions that I think it's best for him to answer.

MR. HOOD: Just briefly, if you could just describe for me some of the concerns of the Peabody School, and I would like to get it from you before they come up.

MR. SCALLAN: Well, the first concern is that they -- specific concerns are, the first concern that I heard mentioned was that they were concerned about the windows on the side of the building. And I have said that we will create those -- make those windows out of unbreakable material.

I was told that the Peabody School was concerned about if there was any construction, this building or anything, that the children could get hurt and fall into a site. And my point is that we will make every effort to make sure -- I'm not more interested in that than anybody is, you know, that we do this in a safe and sound fashion.

I'm told that people are concerned about parking, but I've been denied parking. I mean, I can't do anything about parking.

You know, those are the concerns that I know of.

Now, I will say that it was brought up, you know, I have been asked if I would swap this property for something else. I have allowed and the previous land owner has allowed, Peabody School PTA to use this property for years. When I bought the property 3 years ago, the PTA president called me up and asked if they could use it, and I allowed them to use it for that purposes. I've paid insurance on it in the meantime, didn't ask them to do that. I mean, I have maintained the property and kept a gardening contract on the property in that time.

I understand the PTA would like this to be part of school property, and I have said that I am amenable to discussion along those lines. But, you know, the point is that I have to -- you know, I have my lot and I want to be able to go ahead and plan to build a building there. And I did not feel that mixing those 2 together was appropriate.

I will say that no one from the PTA, other than the call to use the property, has directly called me regarding any of these issues.

MR. HOOD: Okay. Thank you.

CHAIRPERSON REID: Thank you very much.

We now go to government reports. Was there a report from the Historic Preservation Review Board? Yes.

MR. BROWN: There was a staff report attached as an exhibit to the applicant's pre-hearing statement.

CHAIRPERSON REID: I'm sorry, Mr. Brown, what are you saying? What did you just say? I didn't hear you.

MR. BROWN: Historic Preservation Review Board was attached also an exhibit to our pre-hearing statement.

CHAIRPERSON REID: And basically in a letter dated May 27th the HPRB recommended approval of the project and concept, but denied the curb cut. That's the gist of it.

MR. BROWN: That's exactly it.

CHAIRPERSON REID: Okay. Mr. Pernell.

MR. PERNELL: Good morning Board members and members of the audience. My name is Daniel M. Pernell, III. I am Chairman of the 6A Commission.

My realm of training is 14 commissioners and we're responsible for 28,000 constituents on Capitol Hill.

Members of the Board, I would like to say that 6A Commission stands up and on its record of serving the public.

The 6A Commission has spent so far more than 41 hours and about 14 days of their personal time in dealing with BZA and PUD applications in our community.

The 6A Commission has been confronted with numerous responsibility and personal issues in the community, and we have tried our best to adhere to those concerns.

I would like to say that the ANC Commission has not met all of its responsibility in the community, but we're trying. And most of its responsibility is listening to our constituents in the area. There are institutions and there are business and schools in the area that do not come to our 6A Commission meetings. We are posted by law every first Monday -- I mean every first Thursday of the month for these people to attend. We are on the Internet. We're on Channel 24, 25, 26, 16, 13 as far as our meetings in the community. We have changed a couple of times from the Midlin Hospital to GO Wilson presently.

What I'm trying to say here today is that this application here today came before us on

July the 7th, and what we heard at that meeting is the best of knowledge that we know about this concern. But when we have additional concerns coming from constituents in the area, such as Peabody School, we have the right to change our vote. And changing our votes to not to pease our constituents but to satisfy them in what they want in their community, what they want in their school. We have the right, the community, the 6A to scrutinize the business in our community. And that's what we're here for.

Madam Chair, I'm going to turn it over to the single member district Commissioner Janet Schmidt. She is one of our newest commissioner. She's trying to do her homework in answering the concerns in our community. We have these meetings. We try to do the best we can as commissioners. I just want the public remind -- to remind them of that. We're volunteer, we're doing the best -- we're not the best of knowledge in doing these PUD, but we do the best we can.

If there's a concern that comes to me, which did come to me today, as Chairperson I have spoken and concur with Commissioner Janet Schmidt that there's some changes that should be made, and she tried her best to do so. It didn't work in our

favor or in the favor of the opposition group. But nevertheless, we're faced here with the Board today to give as much of the facts and information we just received.

And now I'll turn it over to Ms. Janet Schmidt.

CHAIRPERSON REID: Thank you.

MS. SCHMIDT: I would like to thank the Board for allowing a continuation with respect to bringing forward additional facts after speaking to concerned members of the school and the community with respect to safety issues of the children and parking.

We will return to the Board a letter indicating what resulted after the ANC-6A reconvenes and meets with members of the community that have come forth today.

CHAIRPERSON REID: I'm sorry, Ms. Schmidt, I can't hear you.

MS. KING: I can't hear you. I can see your mouth moving, so I know you're speaking. I mean, you started out okay and then your voice went down.

MS. SCHMIDT: All right.

CHAIRPERSON REID: Remember also that the people in the back of the room also would like

to hear.

MS. SCHMIDT: I'd like to at this time, again, thank the Board for allowing for a continuation so we can hear from parents of students of the Peabody School, the PTA association and other concerned bodies--

CHAIRPERSON REID: Excuse me. We didn't allow a continuation.

MS. SCHMIDT: I think -- excuse me. I thought that you were going to keep -- excuse me.

CHAIRPERSON REID: It's open.

MS. SCHMIDT: Excuse me.

CHAIRPERSON REID: That's different.

MS. SCHMIDT: And within the 10 day period we will get to you a letter after having the opportunity to speak and meet with parents.

And please allow for misstatement. I'm 47% hearing impaired, so I do the best I can. Thank you.

CHAIRPERSON REID: Thank you.

MR. PERNELL: And Madam Chair, just to in the record besides the 41 hours and the 14 days that the Commission has convened this year since January 7th, 1999, this is not including special meetings called by the Mayor in our single member district or in Ward Six by Council Woman Ambrose.

It's not even counting those meetings that we have to attend on our personal time in that community.

Also, I would like to say that, again, the timing of our meeting by law since 1974 is posted in Channel 24, 25 and 26, 16 and 13. And I have seen it myself, it's there. So, I just want to end it on that note.

CHAIRPERSON REID: Thank you, Mr. Pernell.

MR. HOOD: Madam Chair, may I ask a question?

CHAIRPERSON REID: Yes.

MR. HOOD: Are we allowing them 10 days, the ANC 10 days to respond?

MS. KING: No. When we come to an end to decide when we're going to hearing this, then we'll determine --

CHAIRPERSON REID: We'll determine.

MR. HOOD: Oh, okay. I think we already determined that.

MS. PRUITT: Madam Chair, for the record, so I can keep this straight, are we accepting the ANC's position, this letter that was in the record or are they --

CHAIRPERSON REID: We understand there has been a change and they are going to submit a

subsequent letter that reflects the most up to date current position of the ANC.

MS. KING: We're going to hold the record open until we --

MS. PRUITT: So we should then strike this from the record, is that correct?

CHAIRPERSON REID: Not until we receive something else.

MS. PRUITT: I guess my question comes then we don't know is -- right now if the ANC is giving great weight, but are you giving great weight to support or not?

MS. KING: We're not making a decision today, so we're holding the record open.

MS. PRUITT: Okay. Well then I would suggest that in their letter that they send that they ask that this -- they rescind their previous letter.

CHAIRPERSON REID: We've indicated that earlier.

MS. PRUITT: Okay. Thank you. Just wanted to be sure.

CHAIRPERSON REID: Thank you.

MR. BROWN: Now I'm confused. The letter that's now in the record, it will remain in the record and --

CHAIRPERSON REID: That letter will have to stay until we receive something otherwise. But once we receive a letter rescinding that letter and giving --

MS. KING: Should we receive a letter rescinding that letter?

CHAIRPERSON REID: Should we receive a letter rescinding that letter -- this letter and also giving us the most up to date position of the ANC with a quorum and a vote, then they will be --

MS. KING: In a duly advertised meeting.

MR. BROWN: And my concern, Madam Chair, is that --

MR. PERNELL: Madam Chair, point of order. I believe the state of the District of Columbia --

CHAIRPERSON REID: Just a moment, Mr. Pernell, allow him to finish. Mr. Pernell --

MR. PERNELL: -- is still speaking and I'm trying --

MS. KING: Mr. Pernell.

MR. PERNELL: I'm trying to get a point of order. I'm --

MS. KING: Excuse me, sir. Mrs. Reid has--

MR. PERNELL: Commissioner Schmidt and I

are still here and we have a point. The state of the District of Columbia is still sitting here giving a presentation, have been not concluded.

CHAIRPERSON REID: Your presentation was concluded --

MR. PERNELL: No, it's not. I have another comment to make, and we have an opponent sitting here with us.

MR. BROWN: I would like to --

CHAIRPERSON REID: Okay. Let's just get this straight.

MR. PERNELL: I would like for it to be broken up --

CHAIRPERSON REID: Okay. Mr. Pernell.

MR. PERNELL: Yes.

CHAIRPERSON REID: In the first place, in all instances let's try to be considerate and polite.

MR. PERNELL: I'm trying to. But I don't want anyone talking over me and my commissioner, that's all I'm trying to say.

CHAIRPERSON REID: All right. Number one. Number two is that if I'm not mistaken, I heard you say that is the end of my presentation and --

MS. KING: Indeed you did, Madam Chair.

CHAIRPERSON REID: And I then thanked you, and I was under the impression that you had concluded it.

MS. KING: In fact, that was what you said.

CHAIRPERSON REID: And then Ms. Schmidt --

MR. PERNELL: And that was -- it was concluded after I heard this gentleman say something else, and I had something to say to back that up, to end the record at that. And I still want it say when I'm finished hearing what you're trying to tell me.

MS. KING: Well, why don't you say it now and conclude your testimony.

MR. PERNELL: Okay. If I have the reason that no one else will come up and say anything for me to say anything to be concluded.

I would like to say for the record that that letter that you have there presently is based on what the single member district ANC, Ms. Janet Schmidt wants to do and the body will concur with her because she received additional information, I received additional information and we want to concur with her, is her wishes, not the body.

MR. HOOD: Let me just ask a question,

Madam Chair.

Mrs. Smith?

MS. SCHMIDT: Schmidt.

MR. HOOD: Schmidt.

Obviously, I understand you're taking the concerns of your constituents. Have you had a single member district meeting?

MS. SCHMIDT: No, and I would like the opportunity for that. Thank you.

MR. PERNELL: She got that notice. I didn't tell her the day of -- until July the 7th that it was in her single member district. We're thinking that the information that should have been forwarded to me to give to Janet Schmidt was forwarded to another commissioner by mistake.

MR. HOOD: Right. What I understand that the single member district is not getting weight, it's still a process through the ANC process, and I just wanted to put that on the record.

MR. PERNELL: Yes.

MR. HOOD: The SMD meeting should take place and then and only then should the ANC vote on it as a whole. I just put that on the record.

No reflection on 6A, but I just wanted to put that on the record.

MR. PERNELL: Right. We did that because Ms. -- Commissioner Schmidt had the understanding that there weren't any opposition. She listened to several groups in the area. She attended several meetings. She didn't have the time to call a single member meeting. And now that we have not done that, we want to do that.

MS. SCHMIDT: That's correct that I did not have the opportunity.

MR. HOOD: Mr. Pernell, are ANC commissioner paid?

MR. PERNELL: I beg your pardon?

MR. HOOD: Are ANC commissioners paid?

MR. PERNELL: Not one cent.

MS. KING: Of course, they never have been. Never have been.

CHAIRPERSON REID: Mr. Pernell?

MR. PERNELL: Yes.

CHAIRPERSON REID: Have you concluded your presentation?

MR. PERNELL: Yes, ma'am.

CHAIRPERSON REID: Now, let me allow you to leave the table before I ask anyone else to come forward.

MR. PERNELL: Okay.

CHAIRPERSON REID: So we won't have that

kind of a misunderstanding. Thank you very much.

Mr. Brown?

MR. BROWN: And I didn't want to object or interrupt the ANC's testimony, but I think it's important the point Mr. Hood made, is that this is not the SMD working individually, this is the entire commission. And the opportunity for my client, Mr. Scallan, to participate in that. He participated the first time and there's great concern that he be able to participate. I was most distressed by one particular characterization that Mr. Scallan and myself reviewed as the opponents, and I don't think that one is borne out by the process nor the reality, and I'd like to clear that up with Mr. Pernell and Ms. Schmidt, wherever you are, that Mr. Scallan is not an opponent.

MS. SCHMIDT: I understand that.

MR. BROWN: Okay. And he's been to the commission before and he wants to come back again and discuss these issues, and that goes also for the Peabody School and others. So I think that's important. But also it's process, that it went through the ANC process and, Mr. Hood, you have a good characterization of it, that a group activity and it needs to continue to be that way.

So that, I want to make sure that's on

the record.

MR. HOOD: Mr. Brown, I want to make sure you understood my point. I just wanted to put that on the record, and I think that the people who live in any particular neighborhood have the right to speak and say how they should shape and mold and try to see their neighborhood come. I'm saying that all the time that community groups are right, but I think that -- see, the applicants can go home but people who live there are already at home.

So, I was just hoping that maybe -- because, I mean, ANC 6A has a unanimous vote here in the record. And it's obviously there's at thin line between some few small little problems. So, hopefully, you can work that out before the time limit that we take a vote on it.

MR. BROWN: I'm sorry. I think you and I are in complete agreement that the community both at the SMD level is the critical building block to this, but also it is part of a larger community and larger commission. And you and I see eye-to-eye on that, so I don't think there will be any difficulties.

Thank you.

CHAIRPERSON REID: All right. Now, Mr. Brown, did you wish to have any cross examination of

the ANC?

MR. BROWN: No, I do not. No, thank you.

CHAIRPERSON REID: All right. Then persons in support of the application? Seeing none.

Persons in opposition to the application? Please come forth.

MS. KING: Would you son like to come up and sit with you?

MS. LORD: He just told me I'm bored, I'm getting a big reward.

MS. KING: Go for it.

MS. LORD: He's a product of our DCPS.

My name is Victoria Lord, I'm the Vice President of the PTA for the Peabody School. I want to just explain a little bit about our school, because we're a little bit complicated.

We are a D.C. public school, but we have 3 campuses to provide for our children. The Peabody campus specifically provides only for pre-K and kindergarten students but it also serves as a collection point for our elementary school students, those are our 1st through 4th graders to come and take a shuttle bus from the Peabody School over to the Watkins Building, which is at 12th and Pennsylvania, Southeast. So it is the site of a lot of coming and going early in the morning and, in

fact, that is really the crux of our concern.

In asking for the variance Mr. Scallan has claimed that there's a hardship that's been imposed upon him by the denial of a curb cut and the subsequent parking he expected to get out of that.

One of the things that has to be recognized is that that curb cut would have provided at most 2 parking spaces. The petition before you is for a variance for 11 parking spots, which is a substantially larger number than two. This large number of parking variances is necessitated by the oversize of the building. The building is 38% larger than the lot is zoned for. And as a consequence of that, it will see subsequently more traffic, and the traffic is, as I say, one of our biggest concerns.

This is an area which already sees a great deal of traffic in the morning. Not just for the school, but because C Street serves as a main artery for people coming in from Maryland to work at the Capitol and downtown areas. We already have a lot of concern about the speed of the cars that come in through that area. And if you increase the traffic, you only increase the issue.

Another consideration that we would like you think about is that the Senate Day Care Office

Building on Mass Ave almost directly adjacent to this is opening in the fall of 1999, and that building also will have its own traffic issues and therefore, increase the traffic in that area.

One of the claims also made in the application is that there are adequate nearby surface lots to provide parking for cars. In fact, there are no public surface lots in this area. There are surface lots, they are reserved and owned by Medlin Hospital for the use only of their employees and visitors. They are owned and reserved by the Heritage Foundation for the use only of their employees and visitors. And by the standard office buildings for their employees and visitors. There are no nearby surface lots provided for the public, that means random visitors to any of these office buildings.

The only parking available is some metered parking across the park, across Stanton Park, a few metered spots. Otherwise you are talking about trying to have people park in the neighborhood on residential streets, which as any resident will tell you, is already incredibly parked up. In fact, as one resident who signed our petition objecting to this variance said to me, she said "I hate the school, too, because you guys come

in here and park." We do have shuttle buses, they come in every morning and stop directly in front of the school building to pick up our youngsters and to drop off youngsters. Because of the extremely young age of some of our students, we're concerned that an increase in traffic is going to create a possible problem.

We do have a security guard on duty. Our parents are always present when our children collect to wait for the bus. There's always at least one, usually four or five adults there. But, as you know, young children are very impulsive and move quickly, and this is a serious concern for us.

The basic concerns that we have are those two.

The school hours issue is also something I wanted to address. Our school is feeding site, some of our children come as early as 8:00 in the morning for breakfast, in addition to which we have after-care located at our school. Many of our children stay in that after-care program until 6:00 or 6:30 in the evening. In other words, we will have small children getting into and out of cars right in front of the building during exactly those hours at which you would have employees arriving or departing from an adjacent office building. And

again, the larger the building the more employees you're talking, and that's really our objection is the oversize of the building and the subsequent increase in traffic.

In addition, Mr. McGrath talked about the current use of the building on the corner directly adjacent to the lot. That building he doesn't seem to be aware is used as a day care facility for adult handicapped. They move in and out of that building at different times of the day, and they do use a van and need to park directly in front of that building to provide for the wheelchairs to be lifted in and out of the van. There's an elevator that does that. So that's also a traffic issue that really substantially limits the parking and even the drop off and pick up area right in this area.

So, we would really ask that the oversize variance be denied.

CHAIRPERSON REID: Thank you.

MS. SCOTT: Well, you've covered everything. I was going to cover the last -- couple of new things.

My name is Laura Scott. I am the chair of the local school restructuring team for the Capitol Hill Cluster School. Peabody, as Ms. Lord

said, is our pre-K and kindergarten campus; that means it serves children only 3 to 5 years old. There are 220 children 3 to 5 years old in our building everyday. They're in our building from 8:00 in the morning until 6:00 at least, and they're there for summer programs as well.

There is no parking on most of C Street.

MS. KING: Excuse me. May I clarify this? MS. SCOTT: Yes.

MS. KING: You have 3 year olds who come at 8:00 in the morning and stay until 6:00 at night?

MS. SCOTT: Yes, ma'am. Yes. It's a very long day.

MS. KING: And this is a public school facility?

MS. SCOTT: Yes, ma'am, it is. It's public pre-K and kindergarten and it has before and after care as well.

CHAIRPERSON REID: That would be after care, before and after care?

MS. SCOTT: And is a feeding site as well.

MS. KING: You have 225 students, how many are there at 8:00 in the morning.

MS. LORD: It's almost impossible to tell because the number does change. The children that

come at 8:00 in the morning are two separate groups; the feeding group and then we also have a safety patrol which are the older students who hold -- the kindergarten students who hold the door open for the pre-K students so their fingers don't get mashed. And they come at 8:00 in the morning as well, and that's about 15 or 20.

MS. KING: Well, can you guess how many of the 3 to 5 year old are there?

MS. LORD: Of the 3 to 5 year olds, I would say between 20 and 30 in the morning, at 8:00 in the morning.

MS. KING: Approximately 10 percent?

MS. LORD: Yes.

MS. SCOTT: And a good deal more in the afternoon.

MS. KING: And how many are there in the evening?

MS. LORD: That really depends, because the after care varies wildly. I would say anywhere from again 20 to 30 all the way up to 50 if there are special programs after school.

MS. KING: And that's also the 3 to 5 year old age range?

MS. LORD: Yes. Yes, it is.

MS. KING: Thank you.

MS. SCOTT: Which was one of our primary objections to a curb cut at all cutting across where the little children were working.

Again, C Street from almost the edge of that building all the way to the corner of 5th Street there is already posted no parking during school hours to provide for our shuttle buses and drop off and pick up. And there's constant encroachment on that no parking zone and requiring the buses to pull up in a lane of traffic to load our children. Adding an oversized building that is for business use would, obviously, add to that parking congestion.

There's also no parking right around the corner on 5th Street for half a block because of the school, which adds enormous parking pressures to the neighborhood. This is not like the previous case on Benning Road where apparently there are miles and miles of available parking. This is Capitol Hill and parking is a nightmare.

Parents dropping off their children in the morning double park the entire width of -- the entire length of 5th Street from C Street to Constitution already.

MS. KING: You're permitted to block the street like that?

MS. LORD: It doesn't block the street and we're not permitted to, and we're ticketed. A lot of these parents are ticketed constantly. I fortunately live 2 blocks away, so we walk. But it is an extremely -- it's an area that suffers extremely strong pressure in the early morning and late --

MS. KING: A lot of the pressure is coming from Peabody School?

MS. LORD: Yes, it is. Yes, it is. And, as I say, the residents of the area, and I do reside 2 blocks from this area, object to it. We love our school but we hate the parking.

MS. SCOTT: I would also call to your attention the really -- the different nature of the 400 block of C Street as opposed to the 500 block of C Street that Mr. Scallan is using for comparison. Almost the entire 400 block is the school and the playground. There is this little tiny bit of commercial development on the corner. The playground, the school is the whole block. It is not a commercial block. It is not a place with a lot of other businesses. This is not a -- a huge office building is particularly consistent with the nature of the block.

Further, the size of the lot is,

obviously, an impediment given current regulations. The lot was this size when it was purchased, the regulations were in place when it was purchased. It's a small lot. You can't build a great big building on a small lot without having impact; that's why there are zoning regulations.

Finally, I would note that the parking variance on the posted notification for this hearing, parking was not originally listed on the notification. That was amended, but it was not amended within the appropriate time frame. I submit that because as parking is such an issue in the neighborhood, you would be hearing much more from neighborhood residents about parking had that been properly posted.

CHAIRPERSON REID: Thank you. All right.

MR. HOOD: Could I ask a question?

CHAIRPERSON REID: Yes.

MR. HOOD: To the two young ladies, and forgive me for not remembering your name. But are you objectionable to anything being built?

MS. LORD: No, of course not. This is private property and Mr. Scallan's more welcome to build on this lot. What we're objecting to is the fact that he's designed a building that's 38%

percent larger than the lot is zoned for with a subsequent and, obviously, completely inevitable increase in traffic to the area.

MS. SCOTT: And the resulting parking requirement of a building that large.

MR. HOOD: Okay. I'm trying to think, does the area have zoned parking?

MS. SCOTT: Yes.

MR. HOOD: Does it start on 4th and C?

MS. SCOTT: The whole neighborhood is zoned parking, with the exception of where there are meters.

MS. LORD: There are meters across the street, which is --

MS. SCOTT: Across the park.

MS. LORD: Across the park, which is where the businesses are located in that are.

MR. HOOD: And just reemphasize for me how you see if this project built, how it will effect traffic again in the morning?

MS. LORD: Well, one of the things that you can't really see very well from this plot is that this corner is actually -- if I might get up and just stand straight a little bit.

MR. HOOD: Sure.

MS. LORD: This particular corner of the

building sees the intersection of Maryland Avenue at an angle. Massachusetts Avenue comes in and dumps onto 4th.

MR. SCALLAN: You're at the wrong side. You're at the wrong side.

MS. LORD: Am I -- sorry. Okay. Over here. Okay. So then Maryland comes from here. Massachusetts Avenue comes shooting up here, dumps all of its traffic onto 4th Street, which subsequently dumps on to C Street.

So, you have all of these intersecting streets coming together it would carry heavy traffic in the morning. Coming together and shooting down C Street, which is at that point 4 lanes wide, but because of an island it's all sort of trodding very rapidly. And it's a continual concern for us, as I say, we do have parents posted out there. And to my knowledge, there's never been an accident, but if you keep increasing the amount of -- increasing your odds.

MR. HOOD: My last question, I understand that he allowed you to use the land. What did you use the land for?

MS. LORD: The land has been used for gardening projects for the science school. Our school is actually a special school. It's an early

childhood education center. Some of our teachers have an expertise in teaching very young children science, and we've gardened in that area, although for the last year or so we haven't. But one of the projects that the children do is they plant seeds, they see what comes up, they actually roast the corn that they grow. They planted corn again this spring in a different area of the playground and they'll be roasting it in the fall at their own little Thanksgiving banquet.

They learn physics as well as environmental science there as well. They learn things about how water works and how dirt moves when you pour water on it, and all those wonderful things. It's great.

MR. HOOD: Okay. Thank you.

CHAIRPERSON REID: All right. Now, have you -- is there any cross examination of these two witnesses?

MR. BROWN: I don't wish to cross examine. I would like to invite both these two individuals to get together with Mr. Scallan as soon as possible. That's very much his desire. Maybe bring Commissioner Schmidt involved.

CHAIRPERSON REID: Closing remarks by the applicant? In all instances, we like to try to

encourage the applicant and anyone opposing the ANC to try to come to some mutual meeting of the minds, some resolution of any issues. And then to cooperate wherever it is that you all come to us, and that of course, makes it a lot easier for us to come to a decision.

MR. BROWN: And I think that's exactly where the parties will be proceeding. I would just like to make some closing remarks generically.

Putting aside the issues that are to be discussed, I think you'll see based on the Board's previous experience as well as the testimony provided here that we've provided a compelling case with respect to the practical difficulties that are inherent in this property and its location in Capitol Hill, in the Capitol Hill Historic District and the Capitol Hill overlay district. And in relationship to the current zoning as well as the Comprehensive Plan Development that, again, focused on those issues that this project can go forward in a way that protects and maintains those. Leaving aside, which obviously we're going to have discussion with the ANC and the Peabody School officials, and then be able to further supplement the record. So, I'd like to leave it at that.

CHAIRPERSON REID: Well, let me ask you

this one question, and that is with regard to the curb cut part of the argument may be on the opposite with that, you would not be allowed any parking by virtue of the government decision of not allowing the curb cut. If it, in fact, it's a historic district, so there is no parking requirement, per se, does that mean that they it would not allow --

MS. KING: It's a contributing structure.

MR. BROWN: Yes. Can I clarify? I'd be happy to. They're two separate but interrelated issues.

CHAIRPERSON REID: Okay.

MR. BROWN: In a historic district or with a historic landmark, you are eligible for a parking and loading waiver providing that the property contributes to the character of the historic district. In this case because we're talking about new construction, we don't have a building that's contributing to the character --

CHAIRPERSON REID: Oh, it has to be an existing building?

MR. BROWN: If the building were here and he was adding to it and asking for the exact same variance relief, parking would not be an issue potentially because of the parking and loading

waiver.

CHAIRPERSON REID: Yes.

MR. BROWN: On the issue of the curb cut, because the Historic Preservation Review Board with their jurisdiction in the historic district denied permission for a curb cut, there is no ability for Mr. Scallan and the project to gain access to the site and the zoning regulations require that you gain access from a public street. So that he's landlocked. Regardless of his desire to provide parking, he has no way to get from the street to his property, and so he's unable to, physically and legally unable to.

CHAIRPERSON REID: Well that's where I'm difficulty comprehending the Historic Preservation Review Board's support of the application. Isn't that contradiction? They supported it but at the same time they're not allowing access to the --

MR. SCALLAN: Can I clarify?

MR. BROWN: Sure.

MR. SCALLAN: They supported the bulk and density of the building. They approved a building that's -- and 40 feet tall.

CHAIRPERSON REID: Well, that's fine.

MR. SCALLAN: And with respect to the parking, they have denied me any parking. I think

that in every case on Capitol Hill in development over 20, 30 years you cannot provide enough parking in any of these small sites to strictly meet the requirements of the zoning regulations.

CHAIRPERSON REID: Well, that's not my questions, Mr. Scallan. My question was I don't understand why the Historic Preservation Review Board can support their application in regard to you said the bulk and the height --

MR. SCALLAN: Right.

CHAIRPERSON REID: And not allow access to the site. That confuses me. I'm not a zoning specialist, but --

MR. BROWN: Well, they have a slightly different -- they have a different mandate.

CHAIRPERSON REID: I'm trying to kind of grapple with understanding this.

MS. PRUITT: Madam Chair, we actually and I believe counsel, earlier this year you had a case where a person was landlocked on Capitol Hill and they required a variance from parking.

CHAIRPERSON REID: It was on Pennsylvania Avenue.

MS. PRUITT: Correct.

CHAIRPERSON REID: I remember that.

MS. PRUITT: And HPRB refused to give

them a curb cut.

CHAIRPERSON REID: But it seems like they could -- in that instance --

MS. PRUITT: They couldn't go through the alley either because it was a private alley, so there was --

CHAIRPERSON REID: But all they needed was to get permission from the people who had the condo.

MS. PRUITT: No, they couldn't because it was a private alley.

CHAIRPERSON REID: I know, but --

MS. PRUITT: And it was never granted, so they --

CHAIRPERSON REID: No, it wasn't granted but they did have an option. But in this instance there seems not to be an option.

MS. PRUITT: But essentially for a zoning regulation it is a landlock thing.

MS. KING: Well, in this case you tried to get accessed through an alley and were denied it, is that correct?

MR. SCALLAN: That's correct.

MS. PRUITT: The point is though is that the zoning regulations can be in opposition to historic preservation issues and not be incorrect.

It's a very bizarre way it works, but that's it. And historic preservations issues are policy issues. Zoning's are regulations.

CHAIRPERSON REID: All right. That doesn't make a lot of sense, but okay. That's just the way it is.

MS. PRUITT: Exactly.

CHAIRPERSON REID: All right. Thank you.

Mr. Brown, I think that we have agreed to allow time for the PTA and ANC to submit subsequent reports to us and Mr. Hart will give us a time line so that we can --

MS. KING: Well, and I think that Mr. Brown and his client have to be given time to respond to anything --

CHAIRPERSON REID: Well, Mr. Hart got to give a time line for that and then we will determine what date will be set for a decision.

MS. PRUITT: Well, if you'd like to hear this -- if you'd like to make a decision date on September 8th, submissions and the letter from the ANC, the placement letter, would be due on September 25th to responses -- I'm sorry. August 25th with responses to the submission and the ANC letter by September 1st.

MS. KING: I have in my calendar that we have a meeting on the 1st of September.

MS. PRUITT: September 8th.

CHAIRPERSON REID: She erroneously said the 1st -- right exactly.

MS. KING: We set a special hearing for the waste management on the 22nd of November because we were meeting, we were told, on the 1st and the 15th.

CHAIRPERSON REID: Don't you mean September?

MS. KING: No, I mean at our last meeting 2 weeks ago we set a special meeting the 22nd of September to hear waste management because, as Paul told us we were meeting on the first Wednesday and the third Wednesday.

MS. PRUITT: I can't speak to that, I wasn't here and unfortunately we don't have transcripts that can go back to that. But the September 8th date was agreed upon by the Board.

CHAIRPERSON REID: That's the first Wednesday, the 8th?

MS. PRUITT: No, it's the second Wednesday. A few weeks before that because it's the Wednesday after Labor Day and not before Labor Day and there were some issues about whether or not

everybody would be back in town, and that was why it was decided that it would be on the 8th on that September. And public hearing notice, which went out 40 days ago.

MS. KING: Well, I must not have been here when that was --

CHAIRPERSON REID: The 8th is the second Wednesday?

MS. PRUITT: Yes. The public hearing notice went out 40 days ago, so it's already been printed.

CHAIRPERSON REID: No. We should be clear, we're not meeting on the first Wednesday.

MS. PRUITT: No, it was decided that on that particular it would be the 8th.

MS. KING: Okay. So we're going to hear waste management and our full agenda for the 22nd all in one day? We set a special date of the 22nd for waste management and we gave them that information at the meeting two weeks ago today.

MR. HART: I'll have to check on that.

MS. KING: I can promise you, I've got it written in my calendar.

MR. HART: I will check on it. I can see where it was done that way because normally you meet on the first and the third Wednesday of each

month.

CHAIRPERSON REID: But instead we have the second Wednesday.

MR. HART: Second and third -- second and fourth.

CHAIRPERSON REID: Okay.

MS. KING: And then we will not be hearing waste management until October, is that correct? You're going to reschedule waste management?

CHAIRPERSON REID: Yes, waste management was supposed to have a day all to itself.

MS. PRUITT: You mean you're going to schedule the decision?

MR. HART: All by itself, yes.

MS. KING: The date was set for waste management to have the 22nd.

MR. HOOD: It was set for the 22nd, because I was present when we made that date.

MS. KING: Absolutely.

CHAIRPERSON REID: And that's a third Wednesday. Well, we're going to have schedule a day for waste management. I don't know how that happened, but nonetheless. What's the last Wednesday in September?

MR. HART: Last Wednesday is the 29th.

CHAIRPERSON REID: Somehow we need to make that adjustment.

MR. PERNELL: Madam Chair, I understand that we have to have a response by August 25th.

CHAIRPERSON REID: Correct.

Mr. Hart --

MR. PERNELL: The ANC, for the record, the ANC are out in August. None of us will be in town. We're not going to call a special meeting, so I want to say is it okay for the single member district to address a letter to the concerns that we've had here today.

MS. PRUITT: It would not be given great weight. I mean, our regulations require that it be.

MR. PERNELL: We don't meet until September.

MS. PRUITT: So that's an issue we need to deal with. I mean, if the Board then would -- if they want to consider the ANC based on what you're stating, means it would have to go on our October agenda.

CHAIRPERSON REID: There are two things. You don't think that in the month of August there could be a special meeting.

MR. PERNELL: From January 7th, Madam Chair, we've had 3 meeting a month already taken out

of personal time and from work, and they're not being compensated for it. They do not, everyone has said the same, when they found out that we were out in August, that's when all of them planned their vacation for August.

CHAIRPERSON REID: We'll fix that time because until the ANC can meet, we cannot -- you know, we don't have another letter to replace this letter.

MR. PERNELL: That would be up to the single member Janice Schmidt, and I don't know if you're going to be out of town in August.

MS. SCHMIDT: Just until August -- I'll be available after --

MS. PRUITT: But that is the understanding that the single member district letter would be coming as a letter, it would not carry the great weight as a full ANC.

MS. SCHMIDT: We have a regular meeting scheduled in September.

MR. PERNELL: In September.

MR. HOOD: When is your regular meeting?

MR. PERNELL: I think it's September the 7th, if that's the first Thursday in September.

CHAIRPERSON REID: The second is the first Thursday.

MR. PERNELL: The 2nd is the first Thursday.

MS. PRUITT: That's just before Labor Day, so I don't know if you meet.

MR. PERNELL: Is Labor Day, what, on a Monday? We'll still meet.

CHAIRPERSON REID: Yes, August is over, so vacation should be out of the way, right?

MR. PERNELL: Monday is the holiday, that's the --

CHAIRPERSON REID: The 6th.

MR. PERNELL: You said the first Thursday of September is the second?

CHAIRPERSON REID: Yes.

MR. PERNELL: Yes, we meet.

CHAIRPERSON REID: Okay. You meet at that time.

MR. PERNELL: We had that before.

MR. BROWN: So, Madam Chair, I'm getting concerned, but under that schedule I think we could go forward on decision on the 8th.

MS. PRUITT: Well, that's if you then waive your right for 7 days to respond to the ANC, because that really is what's being --

MR. BROWN: I'll waive my right to respond. We can proceed in that fashion. So that

if they meet --

CHAIRPERSON REID: So you can do it -- you can respond in less than 7 days.

MS. PRUITT: That will be less than two days because we meet on the 8th. No, I am sorry, it would be less than 7 days. We would like to have it probably by the Friday so we can get out some packages.

CHAIRPERSON REID: Wait, wait.

MS. KING: However, since they are being so accommodating, there is no reason we can't waive our rules in order to receive it even on the day of our hearing. I mean, presumably they are not going to write --

CHAIRPERSON REID: Well, the next day is just not --

MR. HOOD: Madam Chair, I believe we should be fair across the board. I am concerned about the two groups getting together, the applicant and the community working together. I hear us talking about the time, but I don't see that we will be making time for that resolution. So like you said, Madam Chair, our decision will be a lot easier --

MR. SCALLAN: Mr. Hood, I am available to meet --

CHAIRPERSON REID: From this day on the 21st of July, all of August and into September, they have the time to try to get together to have this meeting.

MR. HOOD: Let me just say this. This is probably far-fetched. But a lot of community groups and other groups, whether the group is getting paid or not, they are not going to do a whole lot of work in August. Let's face the reality of it. I know the Zoning Commission, we don't even have a meeting in August. We plan our vacation -- I am not sure about the BZA, but that is something I think we need to take into consideration.

MR. PERNELL: Madam Chair, 6A has taken that under consideration. We are volunteer and we have worked extremely from January 7 to the present on special PUDs that came before us by way of the BZA. So we are not going to make any exception in August. We are allowed that under the law and we are going to continue with that. That doesn't preclude the body here to meet with the single member ANC to get that meeting on and bring it back for a September vote from the body of the 6A Commission.

MR. HOOD: As long as everybody -- all players feel confident.

MS. PRUITT: Madam Chair, could I hear some clarification for the record so that we will be sure everything gets in? ANC meetings on September 2, is that correct?

MR. PERNELL: Is that the first Thursday? MS. PRUITT: Yes.

MR. PERNELL: Correct.

MS. PRUITT: When would you be able to get your report into the office?

MR. PERNELL: The very next day.

MS. PRUITT: Friday? Because Monday is a holiday. I am just trying to be sure. Excuse me one second. Once Commissioner Janet Schmidt has had a meeting in her community sometime in August when she is off her vacation, then she will bring that as a recommendation from her single member district to the body of 6A on the 2nd. We will vote on it at that regular meeting and I will forward it. I already have the letter drafted of what we are probably going to say and the gist of what she is going to say and we will forward it.

MS. PRUITT: So you will that submitted to this office by September 3, that Friday?

MR. PERNELL: September 3.

MS. PRUITT: I just wanted to be sure.

MS. KING: Can you fax it to Mr. Brown?

Mr. Pernell, can you fax a copy -- when you fax it over here, can you fax a copy to Mr. Brown?

MR. PERNELL: I will bring it down personally, Madam Chair.

MS. KING: I am not the chair. To Mr. Brown?

MR. PERNELL: I know. But at one time you were.

MS. KING: To Mr. Brown?

MR. PERNELL: Mr. Brown? Specifically to Mr. Brown?

MS. PRUITT: He is the party. I mean, he is the applicant. So if you can serve it on the applicant or fax it to him, that would be very helpful. And then the Board is waiting to let Mr. Brown submit anything up to the day of the meeting, correct?

MR. PERNELL: Okay. My first responsibility is to get a copy to the BZA, right?

MS. PRUITT: Both.

MS. KING: Both.

MS. PRUITT: Because he has -- he is waiting --

MR. PERNELL: I never had this put on me before. I know I have a responsibility by law to respond to the BZA, but no other parties. But --

MS. PRUITT: Well, that is because we are also -- we are shortening the time.

MR. PERNELL: I will -- since I have Peabody here and I am trying to be fair to the community, I will do that.

MS. KING: Oh, you are wonderful.

MR. PERNELL: This has never been upon me before.

MS. PRUITT: For the record, Madam Chair, then you are going to allow Mr. Brown up until the meeting date to respond, is that correct?

CHAIRPERSON REID: Yes.

MS. PRUITT: I just wanted to be sure so we have it in there. If it is ever contested, we will have what is needed.

CHAIRPERSON REID: Now, is the PTA going to submit something through the ANC or are you --

MS. LORD: We will -- Madam Chair, we will submit our own separate letter. We already did submit a petition signed by 70 of our members --

MS. KING: I am sorry, what?

MS. LORD: I am sorry. We will submit a letter detailing our objections if you would like.

MS. KING: By the 25th of August?

MS. LORD: Absolutely. Absolutely. I could do it by next week. And we already did submit

a petition and you should have copies of that in your application.

MS. KING: That has not been received. I haven't seen it.

MS. LORD: I submitted it yesterday in person.

CHAIRPERSON REID: No, we don't have that.

MS. PRUITT: Yes, we do. We didn't have it -- we had no -- there was no case number or anything on it. We had a hard time identifying that.

MS. LORD: I am sorry. I gave it to the young woman and told her the case number.

MS. PRUITT: It was not written on there. We can put it in the record. I looked through that and I asked everybody in the office.

MS. LORD: I was just making sure you had it. Thank you.

MR. HOOD: Madam Chairman, I thought the reason that the ANC rescinded their position was because of the position of the school. I thought they would be working together along with the school. I may be incorrect. But to submit your letter --

MS. LORD: We will work also with the

ANC. We would like to work also with the ANC.

MR. PERNELL: I just wanted an objection to what you said. Also, because I thought that once we work out an agreement from the two bodies meeting that there would be no need for your letter. We will work it out so that we can make a vote on it.

CHAIRPERSON REID: Right. Well, if that is the way you all want to do it, then the ANC will --

MR. PERNELL: If Peabody is going to submit a letter of opposition, there is no need for the ANC to convene.

MR. HOOD: So you are saying the ANC would continue to keep their position?

MS. SCHMIDT: I think Mr. Hood's point is he would prefer that you didn't send a letter tomorrow or next week but until after the parties have had an opportunity to meet.

MS. LORD: Okay. That is fine.

MS. SCHMIDT: That is what I think he is saying.

MS. PRUITT: Excuse me, Madam Chair, but we have a procedural issue now again.

CHAIRPERSON REID: All right.

MS. PRUITT: The applicant has the right to respond. So we need to get information -- if you

are going to keep this on the September 8 meeting, the applicant has the right to respond -- has 7 days to respond. We are waiving that requirement for the ANC because they don't meet in August. So that is a special exception. But if Peabody or the school would like to participate in the process and being able to follow due process and let the applicant have his right, then they have to have it in by September 25.

MR. HOOD: August 25.

MS. PRUITT: I am sorry, August. In order to make it September 8.

MR. PERNELL: Well, we hope that the applicant will -- excuse me, Madam Chair, we hope that the applicant will attend that meeting along with us so that they would be privy to any information said at that meeting. And, therefore, they will be abreast of what is going on and be able to track, and I will make sure that we follow up as the chairperson that we are saying the same thing and that is what the purpose of the --

CHAIRPERSON REID: Mr. Brown, is that all right with you?

MR. BROWN: It is fine that the Peabody group would like to submit a separate letter. I would like to have that in advance so that I am not

responding. Number one, they may be the same or they may not. So I would like to take --

CHAIRPERSON REID: August 25th?

MR. BROWN: Staff's suggestion and have a deadline for the letter.

CHAIRPERSON REID: Okay. August 25 for your letter to be in. Thank you. All right. I think that that basically sums up and wraps up this difficult case.

MR. BROWN: Thank you, Madam Chair.

CHAIRPERSON REID: Thank you very much. All right. The next case, Mr. Hart? 16473?

MR. HART: Application No. 16473 of Parkmont School, Inc., pursuant to 11 DCMR 3108.1, for a special exception under Subsection 206 to establish the use and to continue the use of a private secondary school for 65 students and 8 staff and under Section 3107.2 for a variance for renewal of the parking, basement, first and second floors in an R-1-B District at premises 4842 16th Street, N.W., Square 2654, Lot 34. Would all persons intending to testify please rise and raise your right hand?

(WITNESSES ARE SWORN.)

CHAIRPERSON REID: All right. Give your name.

MS. COOK: My name is Susan Cook and I am with Hogan and Hartson and we represent the applicant, Parkmont School.

MR. MCCLAIN: My name is Ron McClain and I am the Director of the Parkmont School.

CHAIRPERSON REID: There is no -- there does not appear to be anyone here in opposition to your case and we have not received any letters.

MS. COOK: That is correct.

CHAIRPERSON REID: So in that instance, what the Board typically does is to allow you to stand on the record of your submission, because you are basically asking for a renewal, right? And just give us the salient points so we can get through this relatively quickly. Okay? If you have something you would like to say or if you would like to put remarks on the record, you are perfectly welcome to do so.

MR. MCCLAIN: No. Nothing much. I have been the director of the school for the last eight years and I think we have done a good job of working collaboratively with our neighbors.

CHAIRPERSON REID: All right, give your address.

MR. MCCLAIN: The address of the school is 48 --

MS. KING: No, your home address.

CHAIRPERSON REID: I am sorry, give your name and your address.

MR. MCCLAIN: My name is Ron M C C L A I N. And my address is 14 Jefferson Avenue, Takoma Park, Maryland.

CHAIRPERSON REID: And give your title.

MR. MCCLAIN: And I am the Director of the Parkmont School.

CHAIRPERSON REID: All right. Do you have some remarks that you would like to make?

MR. MCCLAIN: Actually, I have nothing to add to the petitions we have written. We have been working very closely with our neighbors over the time of my directorship of the school and I am pleased to see that we have by and large their support.

MS. KING: I would note for the record, Madam Chair, that we have a number of letters from neighbors written with great care and attention to detail and strongly in support of this school.

MS. COOK: And, Madam Chair, we would like to request if the Board is inclined to approve our application that the variance be extended to five years instead of five.

CHAIRPERSON REID: Do you have a

previous order?

MS. KING: I have not the entire previous order, but I have the conditions from the previous order, which are that the operation of the school should be limited to the Somerset School. It is the identical school? You just changed the name?

MR. MCCLAIN: It changed its name.

MS. KING: There has been no change in the management or the Board of Trustees except for the usual turnaround? I mean, it is the same legal entity?

MR. MCCLAIN: For the structure and purpose, absolutely.

CHAIRPERSON REID: Okay.

MS. KING: The number of students shall not exceed 65 and the number of faculty and staff shall not exceed 8. No non-school related activities on the premises. Landscaping in accordance with the exhibit that was in the record earlier. It was for the period of five years. Three parking spaces provided on the site. Do you actually provide more than three or is three the number you have? And there should be no enlargement of the existing paved area on the site.

CHAIRPERSON REID: I have one question. Generally, the ages of your students are what?

MR. MCCLAIN: They are middle school and high school students.

CHAIRPERSON REID: What are the ages?

MR. MCCLAIN: 12 to 18 or 11 to 18.

CHAIRPERSON REID: 12 to 18?

MR. MCCLAIN: Junior high school and high school.

CHAIRPERSON REID: Let me see, we have ages in the conditions --

MR. MCCLAIN: I am not sure we --

MS. KING: It just says students are 65 and the faculty and staff not to exceed 8.

MR. MCCLAIN: 65

CHAIRPERSON REID: Oh, okay. All right.

MS. KING: Do you have a formal arrangement with Carter Barron for parking? Because you mentioned that when your students -- because when you get into the secondary school, a lot of students as soon as they legally can get cars. And you mentioned that you use the parking at Carter Barron. Do you have a legal arrangement to do that?

MR. MCCLAIN: Not that I am aware of. We had two or three students as an average over the last five years who used that parking lot. There is about 25 to 30 cars in that lot on a daily basis. It has space, I am guessing, for between 300 and 700

cars.

MS. KING: Yes. When there is an event going on and so forth, it is packed.

MR. MCCLAIN: Right. And my experience with that just in the eight years that I have been there is that that happens primarily during the professional tennis tournament which takes place fortunately from our point of view during the summer.

MS. KING: Yes. And also the Shakespeare Festival and so forth. But again, that is at night and during the summer.

MR. MCCLAIN: Right.

CHAIRPERSON REID: Now you said that you would like to ask for additional time.

MS. COOK: If that would be possible.

CHAIRPERSON REID: Okay. Now your current BZA order expired, did it not?

MS. COOK: It did.

CHAIRPERSON REID: When?

MS. COOK: It was issued in August of 1991 and it expired in August of 1996. Parkmont filed an application in July of 1996 to start the process for the renewal and due to a technical glitch in the application, it was required to engage in a series of correspondence back and forth with

the BZA and the BLRA and has finally gotten the opportunity to come before you today.

CHAIRPERSON REID: So your delay has been as a result of getting through the red tape and the bureaucracy? Is that what you are saying?

MS. COOK: A combination of it, yes. To some extent, that is true. And to some extent, it has also been a result of the individual who was handling the matter for the firm has subsequently left the firm.

CHAIRPERSON REID: But also you had another order in 1983 that you renewed in 1989. And I think that was also --

MS. COOK: The one that was renewed in 1989 was -- the hearing occurred in 1989. But if you look at our application as attached, the 1989 hearing, the order was not issued until 1991.

CHAIRPERSON REID: Okay.

MS. COOK: For whatever reason.

CHAIRPERSON REID: How much time are you requesting?

MS. COOK: We would request 10 years.

CHAIRPERSON REID: Well, I would like to see that your renewal -- that your renewal fee is done in a timely manner. So given your history, we may have to -- just let us give some thought to that

for the moment. Let us do the rest of the case. Do you have any other statements? Questions for them?

MR. HOOD: Madam Chair, the only thing I would say is I too am concerned about the 10 year piece. Was that put on the table when you -- with anyone in the community about 10 years before you come back in front of the BZA? Was that put out before you came here today? As opposed to getting what you had, 5 years? As opposed to -- you had 5 years I believe, right?

MS. KING: Yes, but the 5 years expired three years ago.

MR. HOOD: Right. I understand that. But I am saying now they are asking for 10. Has that been put out to anyone in the community? Have you --

CHAIRPERSON REID: The ANC and --

MR. HOOD: ANC or anyone.

CHAIRPERSON REID: Has they got a feel --

MR. MCCLAIN: You know, that is actually a very fair question in terms of the procedure. Because the discussion at the ANC was along the lines of us simply renewing. And as you read the conditions of these, one of the conditions was the five years. That was one of the 8 conditions that

got carried over. So I think it would be fair to say that the ANC didn't have -- was not given the opportunity. And I, myself, as the only person who went to the ANC and I also went to the single member meeting before that and had discussions that I thought were --

CHAIRPERSON REID: And they didn't send a letter --

MR. MCCLAIN: We did not address -- we have a letter.

MS. COOK: Do you have the ANC letter?

MS. KING: Yes, I do.

CHAIRPERSON REID: What does it say?

MS. KING: That they are duly --

CHAIRPERSON REID: What ANC is that?

MS. KING: 4C.

CHAIRPERSON REID: 4C.

MS. KING: ANC 4C. It is signed by the chairperson, Willie Flowers. They met on the 13th -- Tuesday, the 13th of July. There was a quorum. Public notice was given. All 9 commissioners voted in favor of adopting the application.

CHAIRPERSON REID: Did it specify the return?

MS. KING: It did not.

MS. COOK: We would, of course, be

delighted with 5 years.

CHAIRPERSON REID: Yes. You see, the thing about it is our hands are kind of tied. Because once you go to the ANC and you discuss -- well, you don't discuss anything to the contrary, the assumption is that the renewal is going to be predicated upon the previous order and it was for 5 years. So not unless we were convinced or persuaded to change that, that probably will end up it.

MR. MCCLAIN: Mr. Hood, it would be appropriate, one, for us to obviously be more timely. But the time that we do this again, we would raise that. If that were the singular thing that we were going to address differently, we would point that out to them at that point. That we are going to go in and ask for a straightforward renewal with the change that we could possibly get an extension. And then we would ask them to note whether or not they approve that in their letter to you so that you would have evidence that we had talked with them and had dealt with them above.

MR. HOOD: Right. That is the way to go.

MR. MCCLAIN: Okay.

CHAIRPERSON REID: To your knowledge, have you had any complaints -- has there been any --

from the abutting neighbors in regard to traffic, parking, noise in regard to your program operation or your school operation?

MR. MCCLAIN: The letters in the packet include our most immediate neighbor, and a neighbor who is most directly impacted by any -- if there were any parking problems, because they are right across the street from us. We have one other neighbor that we abut with who was a participant in earlier processes but at this point has no complaint that I am aware of.

CHAIRPERSON REID: All right. Well, there is no one here in opposition or in support. So do you have any closing remarks?

MR. MCCLAIN: No. You have had a long day.

MS. COOK: Would you like to have a summary order or bench decision?

MS. COOK: Bench decision.

CHAIRPERSON REID: Are you going to make the motion?

MR. HOOD: Yes. I make the motion that we approve Case No. 16473.

MS. KING: I second that motion.

MR. HOOD: And I will ask, Ms. King, that we also put on the conditions, which I don't

have in front of me.

MS. KING: We will duplicate the conditions in the existing -- in the order that expired in 1996, with the following -- with the sole exception, that the name of the school is the Parkmont School and not the Somerset School. The five-year provision will remain in.

MS. COOK: The conditions in 1996, there were actually only three. That approval shall be for five years. Three parking spaces shall be provided on site. And then the conditions from the prior order sh all remain in effect. And that would pull in the ones from the earlier.

MS. KING: Okay. All right. Whatever. So I guess I just ripped out the stuff from the original order.

MS. COOK: Just to clarify.

MS. KING: So let's be economical about it and do the same thing. Say it is for five years, change the name of the school, and incorporate the previous conditions.

CHAIRPERSON REID: Okay. All in favor?

ALL BOARD MEMBERS: Aye.

CHAIRPERSON REID: Opposed?

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

Ms. King.

CHAIRPERSON REID: Thank you.

MR. MCCLAIN: Thank you very much for your time.

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

MR. HART: Application No. 16478 of East Friendship Baptist Church, pursuant to 11 DCMR 3108.1, for a special exception under the provisions of Section 205 to establish a child development center with 20 children ages 5 through 11 years and 4 staff persons on the first floor in an R-2 District at premises 231 44th Street, N.E., Square 5136, Lot 59. CHAIRPERSON REID: There is only one person?

MS. JOHNSON: Someone else was here but he had to leave.

CHAIRPERSON REID: Okay. All right.

MR. HART: Please raise your right hand to take the oath.

(WITNESS IS SWORN.)

CHAIRPERSON REID: Please give your name and address.

MS. JOHNSON: Alberta Johnson.

CHAIRPERSON REID: Ms. Johnson, there does not appear to be any opposition to your case

either. As such, if you would like, we can expedite this. You can stand on your record which you have submitted for the most part.

MS. KING: I am sorry, I don't think that the record has hit the issues.

CHAIRPERSON REID: No, no, let me finish. Your request is under 205 for a child development center. And what you've got to do is just demonstrate that you comply with the conditions or the stipulations under that section. Are you familiar with that?

MS. JOHNSON: The stipulations under that section?

CHAIRPERSON REID: 205. That is what you are here for.

MS. JOHNSON: Yes.

CHAIRPERSON REID: Do you have that?

MS. JOHNSON: Do I have what? Okay.

MS. PRUITT: Do you have Section 205 from the zoning regulations with you?

MS. JOHNSON: Yes.

CHAIRPERSON REID: That is what you have to respond to. That is all. Basically go over that and we can basically expedite your case.

MS. JOHNSON: Okay. It is a split level house that the church purchased and we wanted a

daycare center there and they said that it had to be zoned because it wasn't zoned for that. We wanted 20 children. We have a school across the street from the church, so we wanted a before and after daycare center in addition to having children from age 2 to 5 or 2 to 6.

CHAIRPERSON REID: What else do you have?

MS. JOHNSON: I sent the letter here stating that we wanted 20 children and we wanted to open up from 6:00 to 6:00.

CHAIRPERSON REID: Okay. Will you give us a copy or did you get a copy of Section 205. That is what you are going to have to address here today. Let me show you.

MS. JOHNSON: I don't understand what you are asking me.

CHAIRPERSON REID: All right. Have you seen this before? Come forward. Have you seen this? This is what your case is all about.

MS. JOHNSON: Yes.

CHAIRPERSON REID: Did you see this before?

MS. JOHNSON: The one I had was --

CHAIRPERSON REID: You have to give it to staff.

MS. PRUITT: Madam Chair, I can help, please. She has an application from DCRA for the C of O, which is what precipitated her coming here. And she has our application, which isn't actually signed. So I guess you filled out one that you signed and you left it with us, which is in there.

MS. JOHNSON: Yes.

MS. PRUITT: So, no. It appears that she has not looked at at all the regulations that she needs to address.

CHAIRPERSON REID: Well, then let's do this.

MS. JOHNSON: What I was -- excuse me.

CHAIRPERSON REID: Let me finish, please. Then the thing to do was I was assuming that you had
-- I was, I guess, taking the liberty to assume that you had already completed your application and you had responded to the Section 205, which is what you have to answer. Those are the -- that is the section in the regulation that you have to respond to. Okay? Now what we can do is to -- rather than to continue your case, it is pretty straightforward. We can allow you to sit over there and to respond to that section, each of the different subsections under it -- under 205. And then we can proceed with

the next case and then take your next case after.

MS. PRUITT: Madam Chair, may I make a suggestion? Mr. Nyarku, the project manager, did try to contact the applicant but was unable to. Maybe at this point, he can sit down and talk with her and walk her through what she needs to address so hopefully we can then --

CHAIRPERSON REID: You mean now?

MS. PRUITT: Correct.

CHAIRPERSON REID: Okay. All right.

MS. PRUITT: And then maybe we can -- that will help --

CHAIRPERSON REID: When you come here -- and I realize that there is sometimes for some reason or another persons coming who are not prepared. I was hopeful that you had -- although you didn't submit it, that you had it there with you and that you could do it orally. Since you didn't, don't worry about it. You can do it. Mr. Nyarku will you assist you and we will continue through with another case and if you are ready, we will take you after that.

MS. JOHNSON: Thank you.

CHAIRPERSON REID: All right. Next case, please?

MR. HART: Okay. Application No. 16459

of Marquette University pursuant to 11 DCMR 3108.1 for a special exception under Subsection 206C for purposes of a private school for 20 students and two staff persons in an R-4 District at premises 502 East Capital Street, N.E., Square 840, Lot 23. Would you please raise your right hand for the oath?

(WITNESSES ARE SWORN.)

MS. KING: Mr. Simon, are you testifying? Were you sworn in?

MR. SIMON: No, we weren't.

MS. KING: Why not?

MR. SIMON: Well, I was --

MS. KING: Anybody who -- Paul, we've got some more people to be sworn in.

CHAIRPERSON REID: Mr. Pernell, are you testifying?

MR. PERNELL: I have been sworn in.

CHAIRPERSON REID: For each case, sir.

UNIDENTIFIED SPEAKER: Madam Chair, an inquiry, please. Two of us are here as neighbors and witnesses and would like to request party status.

CHAIRPERSON REID: Let's swear in and then we can do that. Are you Jean Marie Neal?

MS. GARRISON: No, I am not. I am Loretta Garrison and this is Holmes Brown.

CHAIRPERSON REID: Okay. Let's do the swearing in first.

MS. PRUITT: Because if you testify in whatever status, you have to be sworn in.

MS. KING: Is Ms. Neal out in the hall?

MR. SIMON: Yes, I think so.

MS. KING: Well, would you go get her so we don't have to do a third swearing?

MS. PRUITT: Can you wait a minute to make sure we swear everyone in?

MR. HART: Is everyone here? Is everyone here for Marquette University?

MR. SIMON: Yes.

MR. HART: Please raise your right hand to take the oath.

(WITNESSES ARE SWORN.)

CHAIRPERSON REID: Okay. Now you requested party status. I know a Jean Marie Neal, can you come forward? And you, also, ma'am. Are those the only two requesting party status?

MS. GARRISON: No, there are three of us.

CHAIRPERSON REID: All right. Come forward, please. Are you two together?

MR. BROWN: No, we are neighbors.

CHAIRPERSON REID: Neighbors? And you

are a neighbor too?

MS. NEAL: Yes.

CHAIRPERSON REID: Okay. Is there any reason why your concern can't be aired through your ANC?

MS. PRUITT: Basically, ma'am, you need to prove to the Board that you are more affected and/or aggrieved to a greater extent than the surrounding community and that you don't have the same general concerns as your surrounding community.

MS. GARRISON: If I may?

CHAIRPERSON REID: Sure.

MS. GARRISON: I live at number 843 --

MS. BAILEY: Name and address?

MS. GARRISON: Loretta G A R R I S O N. I reside at 8 Fourth Street, S.E., which is adjacent to the building that Marquette University has been using as its dormitory for the past two or three years, and we have been very directly and adversely impacted by the operation of the unsupervised dormitory there because of the students and a whole host of problems that have ensued.

CHAIRPERSON REID: Okay.

MS. GARRISON: And we did not receive notice of this hearing because we are outside the radius of the address at 502 East Capitol Street,

N.E., which is where, I believe, the educational offices of Marquette University are located, and we only happened to notice the sign on Sunday night, which is the only reason that we happen to be here today. So we had very little notice of this.

CHAIRPERSON REID: Excuse me, ma'am. You are adjacent to, but you are more than 200 feet --

MS. GARRISON: No, no, no. It is two different buildings. The building where Marquette University -- the applicant before you today concerns 502 East Capitol Street. However, as a part of that operation and as a part of the application to run a school, they are housing and have been housing their students in a dormitory in a small apartment building which is right next door to me.

MS. PRUITT: Madam Chair, while I understand that is true and I am not disputing the fact, this particular case only goes to the property at -- I am sorry, I just lost the address.

MS. GARRISON: 502 East Capitol.

MS. PRUITT: 502 East Capitol.

MS. GARRISON: But the reason that we are here, Madam Chair and members of the Board, is because the operation of this school cannot be

considered without the consideration by the Board of the overall operation, which includes how and where they are going to house the students that they are going to have attending the school. And in fact, they have been operating or using the building right next to me as the dormitory for these students for the past two to three years. So, that -- and clearly the way they run that goes directly to the way they intend to operate their facility.

MS. PRUITT: Madam Chair, you might want to ask the applicant. This dorm is in a residential neighborhood?

MS. GARRISON: Yes.

MR. COTTINGHAM: Well, if I may, it is not a dormitory. It is an apartment building.

MS. PRUITT: Is it allowed by matter of right?

MR. COTTINGHAM: It is an apartment building used for residential -- for students to reside. It is not the building that is part of this application.

MS. KING: But it is part of your campus in Washington?

MR. COTTINGHAM: No. We don't own it. We rent space in it.

MS. NEAL: We beg to differ. If we

could present --

CHAIRPERSON REID: Your name?

MS. NEAL: I am sorry, I have never testified before you before. So I apologize.

CHAIRPERSON REID: Name and address.

MS. NEAL: Jean Marie Neal. I live at 621 A Street, N.E. I think there is a lot more to this application -- a lot more is involved with Marquette than just the application you have before you for 20 students.

MS. KING: But, we are not hearing your case now. What we are deciding is party status.

MS. NEAL: I am just saying that if we could present our information, I think you would see the tie in.

CHAIRPERSON REID: Okay. I think this is what we have to do. Your relationship to this case is not germane to what we are here for today. However --

MS. NEAL: I am here to give testimony on 502 East Capitol.

CHAIRPERSON REID: Let me finish.

MS. NEAL: No, there is a difference.

CHAIRPERSON REID: Let's get a clarification. You are -- you did not receive notice.

MS. NEAL: That is correct.

CHAIRPERSON REID: You are not within 200 feet of the school.

MS. NEAL: 502. But we are --

CHAIRPERSON REID: Okay. Now, the residence is not a part of this case today. So --

MS. NEAL: Well, but I think our point, Madam Chair, if I may, is that in fact wherever and however they house the students for the school that they run is in fact germane and the issue is the adverse impacts --

CHAIRPERSON REID: Would you let me finish? Let me finish. Let me finish. Again, we have to follow procedure. Okay? We have regulations that we have to follow. And as such, because of the fact that this particular address -- you are not within 200 feet of the address. Therefore, while you will not be able to get party status, you will be given the opportunity to testify in support or in opposition. But you cannot receive party status. That is an altogether different category. So, I think that the objective would be achieved basically and you will be able to testify here today. That is what you want to do?

MS. NEAL: Yes, ma'am.

CHAIRPERSON REID: Okay. The party

status is reserved for people or persons or parties or entities within 200 feet of or they are more aggrieved.

MS. NEAL: That is fine with me as long as I can testify today.

CHAIRPERSON REID: Sure you can.

MS. GARRISON: Okay. But madam Chair, I believe that our interest -- and Holmes Brown is also directly adjacent to the building that is used as the dormitory. Our particular interest is in fact the way they operate this facility and the adverse impact on us and what we are concerned about is if -- and the reason that we are requesting party status is if in fact there is a decision to move forward and to approve this school, we are extremely interested in ensuring that there are certain conditions attached to this which directly affect or directly impact the way they operate the dormitory, wherever they happen to have that dormitory.

CHAIRPERSON REID: But it is not a dormitory.

MS. GARRISON: It is a dormitory.

MS. PRUITT: Excuse me, ma'am. But that is not in our jurisdiction because that case is not before us. The Board does not have the authority to impose --

MS. GARRISON: I understand that you are drawing strict bright lines here, but in fact the two are connected.

MS. PRUITT: It is not strict lines. I mean, it is just -- we can only act on what is before us, ma'am.

MS. GARRISON: What we are trying to do is to ensure that we have --

MR. HOOD: Madam Chair, I think we can resolve this by her testifying. And her party status is just so that they can ask the applicant questions.

CHAIRPERSON REID: But, Mr. Hood, our procedures will not allow us to grant party status to someone --

MR. HOOD: But you didn't let me finish.

CHAIRPERSON REID: I am sorry.

MR. HOOD: I was just going to say that I agree with you. I don't think that she has to have party status. I think she can get her point across just testifying.

CHAIRPERSON REID: That is what we said earlier.

MR. HOOD: That is my point. I am saying we are belaboring the point as we are going on and on. CHAIRPERSON REID: But over

and beyond that, Mr. Hood, she is insisting on party status irrespective of the fact that we just said that she can't be given party status.

MR. HOOD: If we take a vote --

MS. KING: And we are denying it.

MS. PRUITT: And you've denied it.

MR. HOOD: Oh, we have? Oh, I must have been -- excuse me. I was out of the room.

CHAIRPERSON REID: We can't.

MS. KING: Party status is denied.

CHAIRPERSON REID: We cannot grant you party status on a property that is not a matter of this particular proceeding today.

MR. BROWN: How far does the 200 foot radius --

MS. PRUITT: 200 feet from the boundaries of the property.

CHAIRPERSON REID: 200 feet from the subject property. Is it 502?

MR. BROWN: I understand. But I am just wondering who the last -- I didn't have a tape measure, so I am just wondering who the last person notified was.

CHAIRPERSON REID: Circumference.

MR. BROWN: I am sorry. I --

MS. GARRISON: The specific address.

CHAIRPERSON REID: Your issue is with a different building. And that building is not --

MR. BROWN: I am simply trying -- I was unaware of the 200 foot notice, and I am just curious about if you take 200 feet from the building in question, how far down towards the Capitol on East Capitol Street did you get? 416?

MS. PRUITT: I would have to look in the large file.

CHAIRPERSON REID: And also --

MR. BROWN: Okay. I heard the answer.

CHAIRPERSON REID: And also, any concern that you have can be aired through your ANC representative as well. So if you wanted to make sure that you are sure of the conditions or whatever, then that has to be discussed with your ANC, which is the body that we recognize as representing that particular geographical area.

MR. HOOD: Madam Chair, for the record, I also would like to be recorded as voting to deny her party status. I wasn't in the room, so I just wanted to put that on the record.

CHAIRPERSON REID: Oh, we didn't really vote.

MR. HOOD: Oh. I thought it was a vote.

CHAIRPERSON REID: We just did it by

consensus.

MR. HOOD: Oh, okay.

CHAIRPERSON REID: And if you would like, we can take a --

MR. HOOD: No, that is fine.

CHAIRPERSON REID: All right.

(Whereupon, at 6:00 p.m., the proceedings went immediately into Evening Session.)

E-V-E-N-I-N-G  S-E-S-S-I-O-N

(6:00 p.m.)

MR. COTTINGHAM: I would like to start by introducing who we are for the record. My name, for the record, is Steve Cottingham, I am Assistant Vice President and counsel for Marquette. I am an attorney for the University, but I am also an administrator at the University and may testify because I have been involved with this project back to 1995, when we acquired the building.

CHAIRPERSON REID: All right. Will you please project your voice. And can counsel testify?

MS. PRUITT: We have had this problem before.

MR. COTTINGHAM: I won't say much.

MS. PRUITT: If he testifies, I would say we would not take him as an expert witness. But he may testify.

MR. COTTINGHAM: It will be factual matters of which I have factual knowledge.

MS. PRUITT: All right. And you were sworn in, because generally counsels aren't. Thank you.

CHAIRPERSON REID: All right.

FATHER O'BRIEN: I am Father Timothy O'Brien. I am the Director of the Marquette

University Les Aspin Center located at 502 East Capitol. I also reside at that facility.

MR. COTTINGHAM: If you'd like, we thought what we would do is open with Father describing a little history of the program and the proposed use of the premises.

FATHER O'BRIEN: Okay. I think what is really important for you to understand is that what we are talking about is the basement at 502 East Capitol, which is used occasionally for seminars for students that we train in a congressional internship program and with federal agencies. I think part of the misperception is when we put the notice out in front of our building for the special exception -- and I'll get to how that came about in a minute -- it gave the impression that we were going to move 20 students into my residence -- into the building. The Board of Zoning Adjustment sign suggests that we are switching our status in some way. We are not switching our status at all. We will continue to operate the way we always have. And we began in good faith in securing a permit following the rules and regulations of the District of Columbia under the rubric of a private club, because it in no way is a full university. Our students register in Milwaukee, where Marquette is located. I submit

grades to Milwaukee where the students are located. This is just a tangential experiential learning program for a semester or a summer. And it is not exclusive to Marquette. We have got people in our neighborhood, one of whom has their daughter at Boston College, that is interested in having their young one study with us. Another neighbor has a son at Miami of Ohio.

The whole issue of housing is a completely separate issue from I think what we are here today for. And the reason we are here today is because the Capitol Hill Restoration Society had challenged our private club status.

MR. COTTINGHAM: If you could, why don't we go back a little bit to 1995. I did submit a letter yesterday that you should have in your packets that sort of details the history of how we purchased this building and the conditions under which we purchased it initially.

MS. PRUITT: It is in your supplemental package?

FATHER O'BRIEN: But in Mr. Cottingham's letter to you, he details exactly the chronology and the issuance of certificates of occupancy. And as a Catholic university and a value-centered educational institute, we did absolutely everything to conform

to the District of Columbia requirements. And I give you that as my solemn word. We did everything. We operated in good faith. We would not have bought that building if we did not have the assurances from the District of Columbia that we could operate for the purposes that we are operating.

Now there have been rumors in the neighborhood over time that we are misrepresenting and that we don't have any concern for the District of Columbia. That is very painful and it is just plain not accurate. Our students volunteer in inner city schools. They work in Habitat for Humanity. We do a great deal of good to help build up this community. And to show our demonstration of good behavior to the community, when the Capitol Hill Restoration Society challenged whether or not the private club status was the rubric that we should have gone in under, I believe -- and I believe Mr. Schauer is here -- the challenge was that there wasn't public notice given to the purchase of this property for this particular use.

MR. COTTINGHAM: If I may just interject for a second, the property is zoned R-4, and under that classification, private club status is accorded as a matter of right. And so, therefore, no public hearing was required. It simply --

MS. PRUITT: Excuse me, sir. Could you speak up? I think the audience is having a hard time hearing.

MR. COTTINGHAM: I am sorry. The building is zoned R-4. Under that category, the private club status is available as a matter of right, so no public hearing is required. You simply obtain the building permits and then the subsequent issues of occupancy following the inspected build-up of the basement. That private club status continues, again only with respect to the basement of the entire building. The rest of it is strictly residential.

FATHER O'BRIEN: And then, if I might continue, when the Capitol Hill Restoration Society challenged -- I think that is the correct term -- our private club status because of lack of notice to the community, we entered into an agreement with the Capitol Hill Restoration Society after enormous costs of legal bills to us, that we would cooperate with the community in whatever way we could. That is what brings us here today is a request for a special exception. That was the agreement that was struck between Capitol Hill Restoration Society and Marquette University. And I believe I just saw the letter Mr. Schauer is going to show you where now

they withdraw that objection and support what we have requested in terms of this special exception.

So I thought it would be all done today. That we only had one party opposing us several years ago and that we served the public notice. I went to the ANC meetings, the ones that I was -- except for the 6B meeting, which was held without my knowledge. I arrived on June 8 for their meeting to find people coming out of the hall saying, Father, forget it, they canceled the meeting. And then 6B, which is not the ANC in which 502 East Capitol is located -- that is ANC-6A -- I went to their meeting and have gone to their meetings since 1998, and we have a unanimous decision from our ANC, the ANC of jurisdiction of 502 East Capitol. And then I was shocked when Mr. Gottlieb Simon told me on a phone conversation a) that they had a meeting, and b) that they voted against us, and c) that I didn't have a chance or Marquette University have a chance to participate. I don't think you will find many groups that are more neighborly conscious than we are. And not to give us a chance to even express our view -- and then if you noticed, even on that letter -- and that is what got me suspicious of the veracity of some of the things that I was told by the representative of ANC-6B, that Northeast is even

eliminated from the letter that is written to you, as if to give the impression that ANC-6B has the jurisdiction. Now I think an important question for you to resolve is how can the ANC, where I go to to represent the university and participate and share in whatever questions they have, how can they vote unanimously, the ANC of jurisdiction, which you, as I understand it, are to give great weight to their decision? The adjacent ANC holds a meeting without our knowledge. We are the party that they are going to make a determination of, and I am not able to make any sort of presentation to them. And I asked for the minutes of their meeting and they tell me they are not available until September. I asked for a resolution that was coming down to you, and well it will be in the mail. And then I believe they filed their resolution this Monday, July 19.

So I am asking you to expedite as rapidly as you can this entirely long process that I think the University, at enormous expense -- and I am in a little bit of trouble with the University President because no one at the University can understand how this possibly could happen. And the more we prolong this, the more expense obviously it is going to cost the University. We will see it to the end because we believe we are absolutely right.

We are good neighbors and I can take the three of you up and down East Capitol and introduce you to the neighbors who are absolutely good friends, who welcome the students, the program, the diversity that comes into that neighborhood. A few squeaky wheels all of a sudden get so much attention that I think is disproportionate to the case we have before you. That is all I have to say. I will be happy to answer questions.

MR. COTTINGHAM: If I might before that just a couple of things. I think you said them, but just to make this clear. You are not proposing any change in the current operation of the program if this special exception is granted, correct?

FATHER O'BRIEN: Correct.

MS. KING: What are the hours during which this club or school or whatever it is called operates?

FATHER O'BRIEN: During the semesters, we have classes on Tuesday afternoons and Thursday afternoons. They are seminar experiential learning.

MS. KING: What time?

FATHER O'BRIEN: They are in the offices 3.5 days a week. We have seminars --

MS. KING: Tuesday and Thursday afternoons what hours?

FATHER O'BRIEN: 1:00 usually until 4:30.

MS. KING: And that is it?

FATHER O'BRIEN: That is it.

MS. KING: The rest of the --

FATHER O'BRIEN: That is in the basement now. Visualize this building. I live in the building with my excellent dog. And the basement is all that is used for the seminars.

MS. KING: And it is just used for 3.5 hours twice a week and the rest of the time it is vacant?

FATHER O'BRIEN: Nearly vacant.

MR. COTTINGHAM: You have a board of visitors.

MS. KING: What else is it used for?

FATHER O'BRIEN: We have a board of visitors that comes for meetings once a quarter and we use it then. We have on occasion a reception for the -- someone at the university. Like the Dean of the School of Nursing had some of her alumni people from the School of Nursing in the Greater Washington area, about 14 or 15 people.

MR. COTTINGHAM: And your board of visitors, if you might explain who those --

MS. KING: I am sorry, I can't hear you.

MR. COTTINGHAM: I am sorry. If you might explain who those board of visitors are.

FATHER O'BRIEN: Well, the board of visitors are comprised of about I think 20-some people of high political notoriety -- Senators and several Congressmen, a number of people who have helped contribute to the purchase of the building and the activities of the University.

MR. COTTINGHAM: They are supporters of the program essentially.

FATHER O'BRIEN: Right.

MR. COTTINGHAM: It is a support group to the program.

CHAIRPERSON REID: Is that it?

FATHER O'BRIEN: If you have questions.

CHAIRPERSON REID: Do you have any questions? All right, is there any cross examination? Okay.

MS. PRUITT: He is not the affected ANC.

MS. BAILEY: He is not the ANC.

CHAIRPERSON REID: I am sorry, I thought you were with the ANC.

MR. SIMON: No. Advisory Neighborhood Commission 6B.

MS. PRUITT: But you are not the affected ANC, so you are not granted party status.

MR. SIMON: But given that we are on the boundary lines, it is my understanding that old ANCs have concurrent jurisdiction.

MS. PRUITT: No.

MR. SIMON: That is not correct?

MS. PRUITT: No. Sorry, Mr. Gottlieb, no. And that is not how the Board has enforced that. I mean, we had the same issue with Angola -- I mean, New Guinea. So it is the affected ANC that is the automatic party.

MR. SIMON: We received a --

MS. PRUITT: Yes. That is a courtesy that our office extends.

MR. SIMON: Well, let me clarify that.

MS. KING: You can testify but you can't cross examine.

MR. SIMON: Well, I understand what you are saying, but I did have some cross examination.

CHAIRPERSON REID: Where is the affected ANC?

MS. SCHMIDT: I am right here.

CHAIRPERSON REID: Okay. Then can you give her your questions?

MR. SIMON: Yes, I can. But just for clarification, is it my understanding that I needed to have raised the question of party status for the

ANC earlier in the process?

CHAIRPERSON REID: Well, my understanding is that only the affected ANC.

MS. PRUITT: Yes. If he is requesting party status for his ANC, yes, he would have had to raise it earlier. Because it is not an automatic. It is automatic for the --

CHAIRPERSON REID: Well, why can't he raise it now?

MS. PRUITT: Well, I mean it is a procedural issue.

CHAIRPERSON REID: Yes, I have no problem with it. I mean, if that is all he has to do and he didn't know he was supposed to do that, I have no problem with it. Go ahead. Unless there is an objection.

MR. HOOD: I am concerned of the precedent we are setting here. I think very few of that whole ANC process -- 6A and 6B -- one is in favor. But anyway, I think the most affected -- the ANC that is most affected should be the one. I believe that is how we previously have done it.

CHAIRPERSON REID: Yes. Unless -- Ms. Pruitt-Williams said unless the other ANC asked for party status.

MS. KING: But Mr. Gottlieb says that

the boundaries of his ANC are directly across the street from this. I mean, in fact, Capitol Street is, you know -- whichever Capitol Street it is, east, north or south, would always be the boundary of an ANC. So that there would always be one that has --

CHAIRPERSON REID: Okay. But let's not belabor this if it is okay.

MR. HOOD: Yes. That is what I am saying. Let's move forward.

CHAIRPERSON REID: All right. Go ahead.

MS. PRUITT: And just for the record -- so I put on the record that you are granting party status to 6B.

CHAIRPERSON REID: Yes.

MR. COTTINGHAM: If I may, the precedent there would be --

CHAIRPERSON REID: It is not a precedent. We just didn't do it earlier. He didn't ask -- he didn't know to ask.

MR. COTTINGHAM: Not so much on that question. But then wouldn't that say that every time an ANC is adjacent that you are going to give them party status?

MR. HOOD: This is a very unique situation, I believe, Madam Chair. This normally --

from my experience --

CHAIRPERSON REID: This is right across the street. So the idea of being affected is germane to both.

MR. COTTINGHAM: But whenever somebody is on the -- I won't belabor the point. It has been a long day. But --

CHAIRPERSON REID: If it is, then we will take it up at that time.

MR. COTTINGHAM: Okay.

CHAIRPERSON REID: All right, Mr. Simon.

MR. SIMON: Thank you very much. Could you please explain your understanding of what the parking requirements are on this special exception?

MS. KING: There was no testimony on parking.

MR. SIMON: All right. But parking is a requirement.

MS. KING: Cross examination goes to the testimony that was provided.

MS. PRUITT: You can do that in your testimony, Mr. Gottlieb.

MS. KING: You can do that in your testimony.

MR. SIMON: All right. I will limit myself then to just a simpler point at this point.

Father O'Brien, is your name on the application as the person to be notified with regard to this application?

FATHER O'BRIEN: I believe the University representative's name would be on that.

MR. SIMON: Mr. Cottingham, is your name on the application as the person to be notified?

MR. COTTINGHAM: I believe it is.

MR. SIMON: And were you ever notified by me that there was an ANC-6B meeting and you were invited to come?

MR. COTTINGHAM: Of a June 15 meeting, no.

MR. SIMON: Mr. Cottingham, the question was were you ever notified --

MS. KING: What was the answer to that question, Mr. Cottingham? If you keep your hands in front of your mouth and turn away, we can't hear you.

MR. COTTINGHAM: I am sorry.

MR. SIMON: Were you ever notified by me of an ANC-6B meeting and invited to come or send a representative?

MR. COTTINGHAM: I don't recall.

MR. SIMON: If I were able to show you my long distance telephone bill would that help you

recall?

MR. COTTINGHAM: I know we obviously had notice of the June 8 meeting because Father O'Brien showed up to attend that meeting.

MR. SIMON: Father O'Brien, do you have an assistant Richard Ficuda? I may be mispronouncing his name.

FATHER O'BRIEN: No.

MR. SIMON: Do you have someone that sounds like that?

FATHER O'BRIEN: We have an assistant Tom Ficuda.

MR. SIMON: Ficuda. I apologize.

FATHER O'BRIEN: Yes. Who you say you called who said you never called. You told me that you left a voice mail and you did not. So continue.

MR. SIMON: I will be happy to continue with your forbearance. Did you say -- is it your testimony that Mr. Ficuda told you that I never spoke to him?

FATHER O'BRIEN: No.

MR. SIMON: Did Mr. Ficuda ever tell you of our several conversations?

FATHER O'BRIEN: I don't know what several means. He told me he had talked to you.

MS. KING: Madam Chair, I don't recall

any testimony in direct testimony about Mr. Ficuda.

CHAIRPERSON REID: Mr. Simon, please keep your questions germane to the testimony here today.

MR. SIMON: Yes. I was trying to relate to the question of whether or not the University and Father O'Brien had ever received any notification of the ANC-6B meetings, whether or not he had ever had an opportunity to come and whether he had been deprived of an opportunity to come.

CHAIRPERSON REID: All right. Go ahead.

MR. SIMON: Did Mr. Ficuda tell you that that our May meeting had been postponed or our consideration of this item had been postponed because of your unavailability?

FATHER O'BRIEN: Yes, we requested a postponement.

MR. SIMON: All right. And did you understand that when you came to the June 8 meeting that the meeting was postponed -- that it had been postponed because of a death -- the murder of ANC Commissioner Dennis Golinger?

FATHER O'BRIEN: I understood later that was the reason for the postponement. But if I might add, I called your voice mail recording at 4:30 in the afternoon and the meeting was still scheduled.

There was no notification that it had been canceled. I moved a number of other meetings aside so I could attend your meeting, only to find out that it was canceled. The point here is June 15, I was not notified and Tom Ficuda was not called by you and there was no message on the voice mail. We had no ghost of a notion that that meeting took place. And if you can deny that, you are dancing with the truth.

MR. SIMON: I am not able to say that you never received any efforts by me or anybody from the ANC to tell you about our June 15 meeting. Let me simply ask when did you next have occasion to ask us when we would be considering the matter? You came to a June 8 meeting and it was postponed. When did you next have occasion to ask us when we would be holding a meeting? Was it the next day? Was it later that week?

FATHER O'BRIEN: I can't really recall.

MR. SIMON: Was it perhaps in July?

FATHER O'BRIEN: I can't recall.

MR. SIMON: Okay. Thank you.

CHAIRPERSON REID: Thank you very much, Mr. Simon. Any other cross examination?

MS. SCHMIDT: Yes, I am Janet Schmidt. I represent 6A. We had supported the application for

Marquette for the variance as you know.

MS. KING: I can't hear you.

CHAIRPERSON REID: They supported the application.

MS. SCHMIDT: We supported the application. But I do have some questions that I want to confirm with Father O'Brien -- certain understandings that we arrived at at the last 6A meeting. And I also would like to ask questions. You raised the issue today that the basement is the only part of the premises used. Is there a separate entrance for the basement?

FATHER O'BRIEN: Yes.

MS. SCHMIDT: Thank you. You had mentioned today that there are positive relationships with the neighbors up and down East Capitol Street and support in the neighborhood. I was contacted today or in the last couple of days by neighbors who have questions about conduct of students, and you have placed this in issue by mentioning that the students go to work in the community. So I believe this is relevant. Could you discuss if there have been any complaints about students living in an apartment building on 4th and East Capitol Street that have been directed to you?

CHAIRPERSON REID: Your question has to

be germane to what was testified to during --

MS. SCHMIDT: He testified that the students are involved in the community and there was a positive view towards --

CHAIRPERSON REID: It has to refer to --

MS. SCHMIDT: That is right, but these students visit the building.

CHAIRPERSON REID: But you can't ask about that residence. That is not a part -- that is not a dormitory of this particular application.

UNIDENTIFIED SPEAKER: Madam Chair, the only --

MS. PRUITT: Excuse me, ma'am. You can't speak from the audience. This is her opportunity to cross examine. You will have that opportunity to do that.

MS. KING: There is still the opportunity for testimony. This is cross examination on the basis of anything that they have testified to. But you can enter -- anybody can enter additional information into the record when they are testifying. But cross examination is not a time to enter new material into the record.

MS. SCHMIDT: Is this the only premises used by Marquette University with respect to the operation of a Les Aspin Center? The one at 502 East

Capitol Street?

MR. COTTINGHAM: Isn't that going after the same question?

CHAIRPERSON REID: With respect to the what?

MS. SCHMIDT: The operation of the Les Aspin Center. The Les Aspin Center -- Marquette University.

CHAIRPERSON REID: Right.

MR. HARRISON: Is this the only premises used to conduct classes and office operations?

FATHER O'BRIEN: Yes.

MS. SCHMIDT: And at the ANC meeting on July 7, I asked you if all the students lived in the house, and I will tell you as I have told everyone, I have hearing loss. Was your answer to that question yes or no?

FATHER O'BRIEN: Do all of the students live in the 502 East Capitol residence?

MS. SCHMIDT: Yes.

FATHER O'BRIEN: None of them do.

MS. SCHMIDT: No students live there. Who resides in that building?

FATHER O'BRIEN: I do.

MS. SCHMIDT: Just yourself and the dog?

FATHER O'BRIEN: Yes.

MS. SCHMIDT: Do visitors come and stay in the residential part of the house?

FATHER O'BRIEN: Rarely, but yes. My guests do.

MS. SCHMIDT: Like, for example, a letter was distributed to the ANC about visitors from Africa. Now will they stay on the premises?

FATHER O'BRIEN: No.

MS. SCHMIDT: All right. All I want to do now is just go through our understandings if that is possible. Father O'Brien agreed to certain conditions that --

MS. PRUITT: Excuse me, ma'am. This is only questions. That can be handled --

MS. KING: That is for your testimony.

MS. SCHMIDT: Okay.

MS. PRUITT: That can be handled in your testimony, okay?

MS. SCHMIDT: All right. Do you maintain a close relationship with the students and oversee their conduct when they are on the premises and in the neighborhood?

FATHER O'BRIEN: I am the director and I am their professor.

MS. SCHMIDT: That is the answer.

FATHER O'BRIEN: And I am a priest.

MS. SCHMIDT: Thank you very much.

CHAIRPERSON REID: Okay. Now thank you very much. If you have nothing else -- no more questions from Board members, we will move now to the Government reports and ANC reports.

MR. COTTINGHAM: Do we have an opportunity here to supplement?

CHAIRPERSON REID: You will have an opportunity to come back and have closing remarks.

MS. KING: And also to cross examine any other witness.

MS. PRUITT: Unless you want to add something at this point.

MR. COTTINGHAM: Well, that is what I guess I am asking you.

CHAIRPERSON REID: Go ahead.

MR. COTTINGHAM: Obviously traffic or parking rather is going to come up, so we should address that.

FATHER O'BRIEN: Our students are not allowed to have cars. That is an issue that I think several letters -- when I examined the BZA file to see what neighbors were saying, and I called several of the people who had written in -- one was complaining about the Michigan license plates and that we should build our school in Michigan. Well,

Marquette is not located in Michigan. It is Wisconsin. And another lady was concerned about parking. We do not allow students to have cars. So we take no parking spots. I park in the garage, so I don't use a parking spot. The assistant that works at the center, the staff person, parks behind me so I can't get out of the garage when I want. So we use no parking whatsoever.

CHAIRPERSON REID: But nonetheless, you under the provisions of Section 206.3, you are supposed to provide parking.

MS. KING: One parking space.

CHAIRPERSON REID: And you do.

FATHER O'BRIEN: Yes.

CHAIRPERSON REID: Okay. And the only other thing is that in regard to adverse impact to your knowledge, is the school located in such a way that it does not cause any objectionable problems to the adjoining neighbors in regards to traffic and number of students or otherwise?

FATHER O'BRIEN: Oh, absolutely not. Right across from us is Jimmy T's, a restaurant. There is a bed and breakfast two doors from us. There is a grocery store right across the street from us. East Capitol is a main bus route. There is lots of activity there. One of the reasons we

wanted to be there was to be in an urban setting because our university is committed to urban life. We are in downtown Milwaukee, and that is why we selected that place, as well as the proximity to the Capitol for our students doing their internships. So we enjoy the vibrancy of diversity and living in an urban environment. And I hope others would feel the same.

CHAIRPERSON REID: Okay. Well, thank you very much. Now you can sit back and we will have the ANC come up. We have already gotten their reports, right?

MS. KING: Not that I am aware of, no.

MS. SCHMIDT: I think you all know I am Janet Schmidt. I am with 6A-05. I represent the interests of my constituents living in the zone where the Les Aspin Center is operated. As you know from our July 14 letter to the Board, the 6A Commission supports the special exception requested by Marquette, if an only if certain conditions which Father O'Brien agreed to in the July 7 meeting of 6A.

And those conditions are that the University limits the enrollment to 20 students in this program, which is exactly what the special exception asks for. That the Les Aspin students or

the Marquette students attending the Les Aspin Center as a condition of enrollment are not permitted to bring their cars to Washington. In addition, that no officials or individuals related to Marquette University will assist any student in obtaining a zone 6 residential permit or temporary visitor parking which would take up space. As you may know, to get student parking in the District, you merely need a letter from the school you are attending stating that you are a full-time student and you need to pay a fee. So we have asked and Father O'Brien agreed that they would not assist students in obtaining such permits. We have also requested and Father O'Brien at our meeting agreed to the condition that the Les Aspin Center of Marquette University is not used for functions other than official Marquette University events. And we had some discussion about what that would mean. The interpretation was that Marquette University events are ones that the University does not obtain unrelated business taxable income or income from. There is no rental. We also asked that the premises, and Dr. Father O'Brien agreed to this, surrounding the footprint of the building will not be used for garden parties of either students or attendees. We are aware, however, that Father

O'Brien barbecues in the backyard. We have no problem with that kind of incidental use. Please note in our letter there is a typo. We said the grounds surrounding the premises will not exceed 20 students, but we ask that they not be used for Marquette functions other than incidental ingress and egress to the property, which obviously would be necessary for any kind of function.

Since we took this position, I have had calls complaining about students residing at an apartment at 4th and East Capitol. I have no knowledge of this myself. But I would ask Father O'Brien, and I tried to get to this in cross examination, that if in fact that is the case, that he would take great effort to try and control the situation if such a situation does in fact exist. Because he has stated at prior ANC meetings that he is closely involved with this students, and I would ask as a graduate of the University of Wisconsin who lived in a sorority house that perhaps such rules as house rules might be enforced and that he would take that to heart and take into account any concerns of the neighbors. And I would think that he would be more than willing to abide by that or try to assist or allay any concerns of the neighbors.

CHAIRPERSON REID: He is shaking his

head. Okay. Thank you. Mr. Simon?

MR. SIMON: Thank you very much. As you know from the July 14, 1999 letter from Chairperson Walden, ANC-6B voted 8 to 0 to oppose this application. This is an application for a special exception in a residential zone. I would have asked the Marquette representatives a moment ago if I had been able to do, why this was a special exception that they were requesting. I heard no testimony to indicate that this was special -- that there was a problem or that there was an issue or that there was something that required them to have special. I heard what I refer to as a 4C exception. This exception is comfortable. It is convenient for the University. But it is corrupting and it is corrosive. It is corrosive of the residential neighborhood and it is corrupting of the zoning code. It is not in any way that has been demonstrated here today something special. And the Commission -- excuse me, the Board is not required to grant a special exception simply because it facilitates or helps a program. This is not the only location that this program can be at. Mr. Scanlan, who was here earlier, received some assistance from the Board a few months ago for a building on 8th Street across from Eastern Market.

It is going to have offices there. That would be fine. I am familiar also with Waterside Mall. It sits right on top of the subway station. They have plenty of space. I don't know if Marquette University has asked them about it. Link and Learn is sitting right up in the top of that. That is an educational activity.

The point is without my trying to inventory all the alternate spots in the city is that there was absolutely no case made here today why this location -- this residential location -- other than the convenience and the comfort to the applicant, requires a special exception to the residential zone in which it was located. This was not a surprise when Marquette took over this location. This was an R-4 then. It is still an R-4 now. There are many opportunities in the city to put a school, if that is in fact what we are talking about here. And I mention it that way just to -- for Mr. Hood's benefit. I raised a question as a preliminary matter as to whether 206, the school exception, was the correct one, or 210, the university and college exception was the special one. We have gone forward today at the Board's request, and so we are talking within that context. But we still raise an objection with regard to which

section it is in.

CHAIRPERSON REID: Mr. Simon, you said that you did submit a letter. I don't have it. I have the 6A letter. I don't have your -- the 6B letter. I don't have that.

MR. SIMON: I have another copy. I saw that --

MS. KING: Here it is.

MR. SIMON: Ms. King has a copy of that. Does anyone else need a copy?

MR. COTTINGHAM: This is the one that --

MR. SIMON: Yes, that is the copy -- that is the letter. Just by way of some other background, there was an allusion made before about the fact that this was a club. In our letter it talks about the Commission is concerned about the loss of residential housing on a residential street in a residential neighborhood. Marquette originally applied to do this as a club. It is my understanding that the reason that that use or that particular mechanism didn't go forward wasn't simply that there was a question of notice. Father O'Brien didn't get into the question of whether or not that use in fact met the statutory requirements of avocational use versus vocational use. And that is, I think, detailed in the hearing on the appeal that

you have available to you. So I won't go into that now. But it was more than simply a question of whether or not there was a notice requirement. It is whether or not they really met the requirements.

The Commission is concerned that a school use located in the basement may not always stay in the basement. That there will be an irresistible attraction to using the rest of the facility. And after all, who is going to be there to monitor whether or not something happens on the first floor or the second floor or whatever.

There are other locations. There are other places where this educational activity can go on. No case is made why it needs to be there except that it is convenient or it is comfortable. But it is corrupting and it is corrosive. We want to maintain and protect residential housing stock. Simply no case has been made not to keep it residential.

On the notice requirements for today, some of us had notice, but other people didn't. And that was the issue that we wanted to present. I just mention that again so that it is part of our testimony. Thank you very much for your attention.

CHAIRPERSON REID: Thank you very much. Do you have any cross examination of these two

witnesses?

MR. COTTINGHAM: I do of Mr. Simon. A couple of things. I understand that there were exceptional circumstances that caused you to cancel your June 8 meeting. Have you given the Board or us any written notice of the rescheduled June -- have you submitted as evidence any written document notifying people of the rescheduled meeting?

MR. SIMON: I have not.

MR. COTTINGHAM: How did you notify people of the rescheduled meeting?

MR. SIMON: People were notified by phone calls for all those people that we were expecting to be there. And it was my belief that a phone call was made to Marquette. Apparently it was not received. We also put the information out on an e-mail list, and it is my belief -- but I don't know for a certainty on this particular case -- but it is my belief that in addition to that, we put two notices on lamp posts in every single member district.

MR. COTTINGHAM: But you acknowledge that 502 East Capitol would not be in one of those districts?

MR. SIMON: Absolutely.

MR. COTTINGHAM: Okay. You talked about

the residential nature of --

MR. SIMON: Of East Capitol Street, that is correct.

MR. COTTINGHAM: You are familiar with that area?

MR. SIMON: Yes.

MR. COTTINGHAM: You are familiar with the 400 and 500 blocks of East Capitol, of which 502 East Capitol is part of.

MR. SIMON: Right.

MR. COTTINGHAM: Are you familiar with two grocery stores in those blocks?

MR. SIMON: I am familiar with the Congress Deli. I am not sure I am familiar with the other one.

MR. SIMON: Are you familiar that there is a laundry in those blocks?

MR. SIMON: Yes.

MR. COTTINGHAM: A chiropractic center?

MR. SIMON: I am not familiar with the chiropractic center.

MR. COTTINGHAM: The Irish National Caucus, which is in your district?

MR. SIMON: The Irish National Caucus is on the 400 block of East Capitol on the south side.

MR. COTTINGHAM: The Society of Women

Geographic -- Geography --

MS. KING: Geographers.

MR. COTTINGHAM: I said the 400 and 500 block of East Capitol.

MR. SIMON: If your point that there are other or some non-residential uses on the block, I will stipulate that that is true.

MR. COTTINGHAM: So you would stipulate to the pediatric center, the restaurant, the two bed and breakfasts all in those two blocks?

MR. SIMON: I am stipulating that there are other non-residential uses.

MR. COTTINGHAM: Okay.

MR. SIMON: And that the special exception use -- and I am not sure which of those uses, by the way, were grandfathered in or existing before and whether or not any of them have had to come forward.

MR. COTTINGHAM: I am not asking you that. I am simply --

MR. SIMON: I understand.

MR. COTTINGHAM: I am asking you about your testimony about the overwhelming residential nature of that neighborhood or street.

MR. SIMON: Well, my testimony was that it was a residential zone. That is correct.

MR. COTTINGHAM: Just one more question. You talked a little bit about the certificate of occupancy as a private club. Are you aware that in fact that certificate of occupancy is still in effect?

MR. SIMON: I am aware that -- yes, I am.

MR. COTTINGHAM: Did you today receive a copy of a letter that I submitted to the Chair detailing the history of obtaining that certificate?

MR. SIMON: I am aware of a lot about the history --

MR. COTTINGHAM: Did you receive a copy of the letter that I gave to the chair?

MR. SIMON: Yes, I did.

MR. COTTINGHAM: Thank you. So you saw in that letter that that certificate -- the occupancy certificate was granted in 1996.

MR. SIMON: I believe that that is what the letter says.

MR. COTTINGHAM: And before today and before your June 15 meeting, has ANC-6B filed anything with the Board of Zoning Adjustment or any other government authority complaining about the presence of 502 East Capitol?

MR. SIMON: We complained about the

granting of the certificate of occupancy.

MR. COTTINGHAM: Have you filed anything? Has your organization filed any --

MR. SIMON: If you will give me a second just to check my file. Well, let's see, on January 27, 1997, we filed a resolution with regard to the certificate of occupancy for the Les Aspin Center for Government and that was filed with the BZA on January 27. And the state stamp says it was 204.

MR. COTTINGHAM: Thank you. That is all.

CHAIRPERSON REID: All right. Thank you.

MS. SCHMIDT: May I have an opportunity to comment in light of what 6B has testified to?

CHAIRPERSON REID: Not usually. But can you state a good reason?

MS. SCHMIDT: I just think that maybe I can allay some of their concerns here. I think 6B is concerned about -- and I hope I am not speaking out of turn here -- but --

CHAIRPERSON REID: You speak to us.

MS. SCHMIDT: I think 6B is concerned with respect to properties starting to look commercial, and I would assume Father O'Brien -- as

they have not put up commercial signs saying Les Aspin Center at this time, that they probably do not put signs up on the property in the future.

FATHER O'BRIEN: Right. And it is my residence. It is residential.

MS. SCHMIDT: Yes. And that is something that 6A took into consideration, is that it does lend -- unless somebody told you it was the Les Aspin Center, you probably would not know. I had a couple of other calls which I am sure are no brainers to agree to. Some people were concerned that parties would exceed fire code limits. I would assume that you would agree not to have parties that exceed fire code limits in the house. And there was some concern about tour buses parked, but you had assured us at the 6A meeting that we would not have a problem with tour buses being parked on East Capitol Street as that is a violation of the law anyway. So I would think you would have no problem agreeing to that, which would allay some of the concerns of citizens.

And I finally wanted to comment on something that you said here. When we considered this at 6A, I was aware that there would probably be some other incidental use other than the basement. Father O'Brien lives in the house. Students convene

in the kitchen and have breakfast together. I didn't feel that was a major impact and I don't think the other commissioners did either. And we also felt that supporting the certificate of occupancy would actually give 6A an opportunity to limit the impact of the Les Aspin Center on the residential neighborhood. Because with the present certificate of occupancy being private club status, we were not able to limit the growth of it in any way. And here these variance is for 20 students, and we support that because it will limit the impact on the neighborhood and they can only have the certificate of occupancy if it doesn't exceed 20 students. They would have to come and revisit us if they wanted to grow. So we felt there were actually better safeguards by supporting this than there would be by opposing it. Thank you.

CHAIRPERSON REID: Thank you.

MR. SIMON: Madam Chair, just one quick follow-up. And that is with regard to what the ANC-6B's concerns were, in the letter that you received, you will see that the Commission wishes to protect and preserve the residential character and actual residential use. So it isn't simply a matter of appearance that 6B is speaking to. It is a matter of whether or not buildings are used and available

for residential use, not simply how the outside facade.

CHAIRPERSON REID: Thank you.

MR. HOOD: Mr. Gottlieb, in an R-4 zone, it can be permitted upon the Board's approval. I guess you are aware of that. So it is not that it is prohibited. It can be permitted.

MR. SIMON: No, no. Exactly. It is permitted where it doesn't have any of the negative influences or impacts upon the neighborhood that are listed. The traffic won't be a problem or the parking won't be a problem or that the number of students won't be a problem. And any other use such as whether or not the facility becomes used for entertainment or whatever might be going on. But that is a special exception granted. And I am assuming -- my understanding and maybe I don't have a good enough understanding -- is it is not there to be used willy nilly. It is to provide the Board with some discretion. With the ability to shoot -- with the ability to cut the rough edges off of the zoning when they don't fit quite right. But this isn't one of those strange, unique, bizarre, difficult, special situations. It is just an ordinary situation. And the problem is how much Swiss cheese does the zoning code come to be. When

every person says, well gee, it would be nice if I could use my basement for some other purpose other than a residence. And if the city were hard-pressed to find office or educational uses someplace else, we would have to look at that. But we have a city where there are lots of spaces. Spaces that are convenient to federal agencies, spaces that are convenient to the Metro.

MR. HOOD: Okay.

MR. SIMON: That is the point.

MR. HOOD: All right. Thank you.

CHAIRPERSON REID: Okay.

MR. COTTINGHAM: May I follow up on that point?

CHAIRPERSON REID: I am sorry?

MR. COTTINGHAM: May I follow up on that last point just for one second?

CHAIRPERSON REID: Comment or cross?

MR. COTTINGHAM: Cross.

CHAIRPERSON REID: Okay. Very quickly, please.

MR. COTTINGHAM: We had a earlier conversation today about whether it should be under 206 or 210. So you acknowledge that both of those sections at least contemplate the possibility of schools and universities being in residentially

zoned neighborhoods. So it is not --

MR. SIMON: Yes. A special exception for both schools and for universities and colleges.

MR. COTTINGHAM: Right. So the code contemplates that that is permissible under the right circumstances.

MR. SIMON: The argument isn't whether it is possible. It is whether or not it is necessary.

CHAIRPERSON REID: Okay. All right, thank you. Now persons and parties in --

MS. PRUITT: Excuse me, Madam Chair. For the record, we have a letter from councilman member Ambrose, I believe.

CHAIRPERSON REID: Well, I haven't gotten to that yet.

MS. PRUITT: Oh. I thought you were doing government reports.

CHAIRPERSON REID: No, I did government reports earlier. But that was not in my opinion a government report. That was a letter in opposition.

MS. PRUITT: Okay.

CHAIRPERSON REID: All right. Persons and parties in support of the application -- in support -- persons or parties in support of the application.

MS. KING: Other than the ANC.

CHAIRPERSON REID: Then when we get to the persons and parties in opposition, someone can read Council Member Ambrose's letter or just give the salient points of it. Okay, Mr. Schauer?

MR. SCHAUER: Madam Chairperson and members of the Board, my name is Lyle S C H A U E R. I reside at 1107 Independence Avenue, S.E. I am the zoning chair of the Capitol Hill Restoration Society, and our offices are at 420 10th Street, S.E. I have a written report in the form of a letter which I would like to present to you. And if I might, Madam Chairperson, I would just like to summarize it. Many of the facts that are in this, even these short two pages, have already been introduced. Mr. Cottingham's letter gives some of the factual background. I don't intend to go over that except to mention that in February of 1997, the Society appealed -- that is, the Restoration Society -- appealed a decision of the zoning administrator to issue a private club C of O for the basement at 502 East Capitol. We objected to that really on two grounds. One, we felt that the matter of right non-residential uses in R-4 zones should be strictly interpreted. And when we looked at the definition of the private club, we found that it was restricted

to avocational activities only. And we objected strongly to the fact that it was being used in our view for vocational activities. As a result, we filed the appeal from the zoning administrator's decision because we felt she had misinterpreted the definition.

But our second point was that we wanted a public process. And the granting of a matter of right use as a private club does not involve a public process. There is no notice given to anyone. The zoning administrator, if she feels the matter meets the test of the definition, grants the C of O, and no notice is given to anyone.

Before the case came to hearing before this Board, Marquette and our Society reached an agreement that they would apply for a special exception as a private school, and that is the matter that is now before the Board. If an order for a special exception is granted as a private school with conditions that are acceptable to Marquette and the neighbors, Marquette under the agreement will then apply for a C of O for a private school and ask that the present C of O as a private club be rescinded. If, however, you decide not to grant the special exception or that it would be subject to conditions that are unacceptable to

Marquette, then the say of the appeal that we and Marquette had agreed to would be lifted and the appeal would continue. Now I don't mean that as a threat to the Board to bring this revived appeal back to you. But that is the situation where it stands. The agreement provides that the Society will not propose in its own right any conditions to be placed on the final order, nor will it support any conditions that neighbors, other community groups or the ANCs may propose. On the other hand, the Society is not required to oppose any conditions proposed by others.

Could I just say a few words of my own on this case beyond this statement? I am reminded of the blind men and the elephant. You all know the story of the blind men and the elephant. Depending on which part of the elephant a blind man fetched up on, he declared it was either a wall or a rope or a snake or whatever. And I really think that we can't look at just this one house in this case. I think there are community issues here. And I think this is something that we have to work out. I would hate to be in your position because it is a no win situation for you. You cannot meet the needs of the neighbors and of Marquette at the same time. So if it is at all possible, we want to try to work out an

arrangement so that Marquette can live there. After all, they established themselves as a result of a decision by the City Administrator, the Zoning Administrator, and in good faith they entered into that house. We don't really feel comfortable with trying to remove them. But we would like to see a better arrangement worked out so we aren't stuck with these narrow little legalities of what they do somewhere else isn't germane to this case. It may not in fact be germane, but it is very important to the community. So we've got to work these things out. Best do it among ourselves, I think. And I don't give up hope of doing that. I am sorry, I shouldn't have gone on. But I really feel that is the situation that we find ourselves in.

CHAIRPERSON REID: So, Mr. Schauer, basically you would like to see some type of meeting of the minds with the ANC and the neighborhood and Marquette, whereby there is a special exception granted and that there are conditions -- mitigating conditions that the community can live with and at the same time allow Marquette to be able to operate? That is the objective?

MR. SCHAUER: That is the first step. But I think we as a community have to take the next step, and that is to try to work something out.

Because tempers are getting a little high. It is not good for our community. I mean a little bit of that is fine. It keeps the juices flowing. But this is getting a little bit out of hand.

CHAIRPERSON REID: Well, I think that this is not unlike what is typically the case when we have applications before us that have some opposition and tempers start to flare nonetheless. But when people kind of get a grip on the emotions and start looking at how they can work together to live together and work out compromises, then usually typically we have seen that things work out most positively in the end. And I think that I am -- I don't know yet until we hear the opposition, but I am hearing some give and take on both parts. I have not -- Marquette seems to be very amenable to trying to work out what is being asked as far as conditions are concerned and I am hearing some give and take on the community. So we will see. But hopefully we will get some resolution, some positive resolution, particularly with the inclusion of the conditions to mitigate the negative impact, if there is any negative impact or to ensure that there would not be any negative impact.

MR. SCHAUER: Thank you, Madam Chairperson. I certainly hope that happens.

CHAIRPERSON REID: Thank you. Did you wish to cross examine?

MR. COTTINGHAM: Actually just following up on that topic with one question for Mr. Schauer, who I finally get to meet after talking to about four years on the phone. You mentioned a settlement agreement.

MR. SCHAUER: Yes.

MR. COTTINGHAM: And one condition in that agreement. There is a declaration of restricted covenant. Could you describe -- if this special exception -- it is contingent -- Marquette will sign that if the special exception -- you talked about if the special exception is approved with appropriate conditions that were acceptable, then we will sign this covenant. If you could just describe that to the Board?

MR. SCHAUER: I would be glad to. I had hoped, Steve, that you would cover that in your presentation and I wouldn't have to get into this legal stuff. But if the settlement agreement is carried out, that is, a special exception is granted and Marquette gets its new C of O and asks the zoning administrator to revoke the old one, then Marquette further agreed to place a covenant on the property at 502 that prevents them from buying any

other property for the next 10 years on Capitol Hill. Basically that is what it provides.

CHAIRPERSON REID: They agreed to that?

MR. SCHAUER: Yes. And they will execute this once those conditions are complied with, that is, that they get their C of O for a private school.

CHAIRPERSON REID: Okay.

MR. COTTINGHAM: And we have provided a copy of that to 6A. I assume, Lyle, you would have no objection if we also provide a copy to the Board.

MR. SCHAUER: Not at all. I assumed it would be provided to the Board.

CHAIRPERSON REID: For the record, it would be great to have it. We don't know anything about that.

MS. SCHMIDT: 6A did not have a copy of that either.

CHAIRPERSON REID: 6A and 6B as well. ANC 6A and 6B, you should provide them with copies. Okay, are you done, Mr. Schauer?

MR. SCHAUER: I am done if there are no more questions.

MS. KING: No more questions. Nice to see you. Thank you for waiting so late.

CHAIRPERSON REID: Those parties in

opposition please come forward -- persons in opposition please come forward. Okay. And I would ask that given the lateness of the hour that you try to contain your testimonies to no more than 3 minutes and not be redundant. If one person has already aired your particular issue, that should not be repeated unless you continue your testimony without being redundant. All right. Who wants to go first?

MS. NEAL: I will be glad to. I am Jean Marie Neal. I live at 621 A Street, N.E., which is two blocks from the location of 502 East Capitol. I thank you very much for allowing me to testify. As I said earlier, this is my first time testifying. I am a 20-year resident of Capitol Hill. My husband and I very much care about the community. We are very involved. I was just appointed by Council Member Ambrose to be her delegate representative on the Eastern Market Citizens Advisory Committee, and I can't say I am looking forward to it.

MS. KING: It will be worse than everything wicked you've ever done in your life.

MS. NEAL: I know. I just attended my first meeting. But I think as residents and as citizens, we have to do that. And we believe very, very strongly in that. I am here today because I do

care about the community. Real estate in Capitol Hill, as in other areas of the District is booming. That is good. We love it. But one of the negatives that happens is that Capitol Hill is being threatened by lobbying firms, various non-profit groups, and in this case a university, who try to buy or do buy residential homes and turn them into businesses.

I consider myself a pro-business Democrat, and I want a thriving business environment. But everything, as Mr. Gottlieb said, has its place. There is a lot of commercially zoned rental and purchase property in the District and on Capitol Hill. There is no need for business intrusion on what is now residential. I have to tell you, I am tired of those who use our community for their own purposes without regard to the fact that we are a community, just like any other community in this country. You know, we don't have voting rights in the District, but we still can try to hold onto some rights as homeowners. And for some reason, people seem to treat the District of Columbia differently in everything that is done.

I think the next decade is going to be a period of rebirth for the city, I hope. And I think as members of this Board, you are going to have

tremendous, tremendous responsibility and power to help shape that rebirth. The decisions you make on matters like the one before you today will literally determine the day-to-day living environment of those of us who live here. I don't go back to Milwaukee as this attorney does. I live on Capitol Hill. I have no other home and no other place to go, and I have for 20 years.

I strongly oppose the granting of this special exception to the Les Aspin Center. And I am actually in a way -- this is very difficult because of Father O'Brien and they are a wonderful school, et cetera. But the picture you have been painted today is just not very accurate, and I am very sorry to have to say that. There are a couple of commercial properties in the 500 block of East Capitol. They described to you the 400 block. If you look coming up from the Capitol down East Capitol, 200 has gotten very commercial. 300 has gotten commercial. 400 is pretty commercial, but almost all of that has been there a long time. The 500 block we have managed to keep residential. Jimmy T's restaurant has been there a long time and it is a great place. There is a bed and breakfast. I am not quite sure how that happened. But we can't undo the mistakes of the past. But I hope we can surely

prevail on you to prevent more mistakes, more intrusion today and in the future. We are not here to debate a dry cleaner or a grocery store in the 400 block. That is not why we are here.

If we take the 500 block, then the 600 block is next, and so forth and so forth. Capitol Hill is very convenient. Mr. Gottlieb got that perfect. It is comfortable and it is convenient and it is an easy target for commercial ventures, and that is what is happening. This is far, far broader in our community than this one house. If they are allowed to continue to operate, it is going to send a strong message that is heard across on Capitol Hill. And it is going to have a very chilling, negative effect on residential real estate. So if you care about residential real estate, that is all this decision is about. That is the whole issue.

CHAIRPERSON REID: You have one minute.

MS. NEAL: All right. Can I ask you for more time? I am here on behalf of a lot of people. I stayed up until midnight working on this last night. Is it --

CHAIRPERSON REID: Well, the fact of the matter is --

MS. NEAL: Is it too much to ask to hear from a resident?

CHAIRPERSON REID: The fact of the matter is that in your --

MS. NEAL: I have some important information.

CHAIRPERSON REID: In your preface, you went into some other kinds of issues. And what you need to do is specifically stay on point.

MS. NEAL: I will try to do that.

CHAIRPERSON REID: And what is germane to this particular case.

MS. NEAL: I will try to do that. But I hate to go back to my neighborhood today and say, I was cut short because you couldn't hear me.

CHAIRPERSON REID: But in your preface, you kind of -- like I said before, you went into some other areas rather than staying on point.

MS. NEAL: They were all relevant.

CHAIRPERSON REID: You used up a lot of the time.

MS. KING: Well, they were emotional issues rather than legal issues. If you could get to the legal issues.

CHAIRPERSON REID: They were --

MS. NEAL: Your decision is also an emotional issue.

CHAIRPERSON REID: Say what specifically

you want us to hear about your points in this case.

MS. NEAL: I will get into that. I will get into that. We don't feel it is too late to oppose Marquette University just because it has been operating a private college there already. I mean we appeal to you to think what that says. Marquette has been operating illegally. I mean, would you look kindly on somebody operating illegally? Because that is what they have been doing. Marquette University knew they were violating city laws when they purchased this property. It had been a private residence. They have a lot of lawyers and a lot of money, but they purchased a private residence. They paid, I believe, a little bit under $800,000.00 for it. They didn't need to come into our residential area. Residential means residential.

The Capitol Restoration Society, if I can briefly address that. They were in a very difficult position today. I remember that. And Lyle spoke with great emotion because it is a very turbulent issue within the society and the membership. The Society basically felt forced to get a hearing they had to go along with supporting this. And their negotiator at the time felt he had to cut that deal. It was never voted on by the

members. And the members are quite appalled. So I ask you to look at that under that structure.

Marquette moved into the neighborhood and tried to establish themselves as a private club. Now you surely know that that is the most outrageous of use of residential neighborhoods in this city, and I hope we can change that law. The Restoration Society wanted to stop Marquette. That was their goal. They ran out of money and time. They don't have lawyers. They could not continue to fight an appeal in court. So they did what they thought at the time or their negotiator thought was the best thing and cut a deal. We won't oppose you. We will support you if we can at least get a hearing. And that is what is behind that. And I please ask you to put that in perspective.

Let me make you aware of an important fact, which I think by itself should disqualify Marquette. Marquette University has entered into an exclusive arrangement with a catering firm called Capitol Catering. Capitol Catering rents the Marquette property for special events by outside groups. I spoke with Capitol Catering yesterday to Melissa. She told me I could rent any area of the house including the basement, including the front yard and the patio for a reception of up to 150

people. She said it would be ideal for a wedding reception. I asked if I could hold a political reception there and she said, yes, of course, it would be great. I asked if she was sure it was now available, and she did not hesitate to say yes, she was sure of that. When I asked the cost, she said she needed to get the updated book. She came back on the phone to say the rent would be between $850.00 and $1,250.00 plus the catering cost. I asked if I could use it for a night reception for 150 people from 7:00 to 10:00, and she said yes. I asked, what if ran later, and she said, that is okay. But maybe midnight might be too late for the noise because it is a residential area. She knew the structure well and was quite able to describe it.

I would like to ask you to read two things that is relevant to this in Sharon Ambrose's letter. One goes to the nature of this dispute and the fact that Marquette has not been a good neighbor to us all along. From Sharon Ambrose, "I am disappointed that the University finds it necessary to establish a school. When the University first purchase the property, neighbors were assured that the home would be the residence of administrators of Marquette's Semester in Washington Program and would serve as a residence for administrators and as a

place to house Les Aspin memorabilia and just small seminar meetings of scholars." She goes on to say how disappointed she is that that has now changed. Because that is not what the neighbors thought.

She also in this letter brings up the neighborhood impact. She talks about what the other people are going to talk about, and you will probably rule this not relevant, about the so-called dormitory that is being used. I won't get into that since they are going to. But I can tell you that the students coming in and out of 502 East Capitol are not these polite, diversified people you have heard about. I won't relate to you what one of them said to me last week, because I don't use that language, when I was reading the public hearing notice. My husband will tell you I was shaking when I arrived home. He ended his comment -- well, I am not going to get into that. I will tell you there is great concern in the neighborhood. These young men come and go out of that residence at all hours. They are not just there a few hours a week in the afternoon. They come and go at all hours. We don't imagine that. And they are frequently not polite to neighbors. They are frequently noisy, et cetera.

I hope you will deny the application. I hope you will close the facility. It has been

operating illegally. That is not a sign of good neighborship. I would like to extend to you, if you choose not to deny it, a list of conditions that we hope that you will consider. I would like to tell you that I spoke to 14 neighbors in the immediate adjacent area when I saw the orange notice. I didn't realize this hearing was on until the end of last week. We couldn't get our act together in time to be here -- to have them here today. I talked with 14 residents who live within 2 blocks. 12 of the 14 strongly opposed and were astonished at this and had stories to tell. To say this is a very emotional issue, part of it and a lot of it comes from those of us who simply want to protect Capitol Hill and protect the residential nature of the Hill. We know you are probably not going to side with us, but we just wanted to ask you. And if I can close just saying that, we would just like to ask you to think about this as truly do they have to rent or own and operate a private school in the midst of a residential block? No, they don't. There is plenty of other territory for them to purchase, and they knew that going into this. Thank you.

MR. HOOD: Madam Chair, I have just one quick question and I would like a very brief answer.

MS. NEAL: Yes, sir?

MS. NEAL: Which ANC do you belong in, 6A?

MS. NEAL: 6A. And just like Father O'Brien didn't know about and complained about 6B, no one I have talked to knew about that meeting. Maybe it is our own fault. But we all oppose it.

MR. HOOD: But you live in 6A?

MS. NEAL: Yes, sir.

MR. HOOD: And you represent some constituents. What about your commissioner? Where is your commissioner report?

CHAIRPERSON REID: We already had it.

MR. HOOD: No. My question is have you had any dialogue with your commissioner?

MS. NEAL: Yes, I have.

MR. HOOD: Who is your commissioner? Is she in here today?

MS. SCHMIDT: I am right here. Janet Schmidt.

MS. NEAL: And I was not at the meeting. I admit I wasn't at the meeting. I didn't know about it.

MR. HOOD: Well, I guess my question goes to who are you representing. She represents -- from a legal standpoint, she is the commissioner. Who are you representing?

MS. NEAL: I am representing myself and quite a few neighbors who could not be here today because they didn't know and it was too late to get them here.

MS. KING: And did they sign a petition did you say?

MS. NEAL: We haven't had time to do that. We will get it to you. No time. We were hoping for a postponement quite frankly.

CHAIRPERSON REID: Mr. Hood?

MR. HOOD: No. That is okay. Thank you. No, she answered my question. Thank you.

CHAIRPERSON REID: Okay. Thank you very much. Any cross examination? Oh, no, I am sorry. Before that, the other two witnesses. Sir or ma'am?

MS. GARRISON: Yes, thank you very much, Madam Chair and members of the Board. I appreciate your indulgence at this late hour. My name is Loretta Garrison. I live at 8 Fourth Street, S.E. I am here representing my husband, David Garrison, and myself. I am also speaking on behalf -- generally on behalf of neighbors in my block. As I mentioned earlier, I live right next door to 4 Fourth Street, S.E., which is used by Marquette University as the dormitory for the students that they bring to their program and have been bringing.

I disagree with Mr. O'Brien's statement that housing is a separate issue and not in this application at all, and I agree with Mr. Schauer that it is unfortunate that your rules, at least at the outset, prohibit you from considering the housing implications of running the University. Because, in fact, it is the reason that we are here. We believe that our experience, which has not been a positive one, with Marquette University should bear on the application. And regrettably because of that experience and because of the position that the Board has taken today, I am here now opposing this application.

I want to preface my remarks, though, by saying that I am not opposed to diversity in the neighborhood. I enjoy the diversity of an urban environment. My problem here is the neighborhood and neighborliness. What we have is a situation where we have transient, very young population, constant turnover. They live in a very small apartment building. I believe there are six units and there is by testimony today 20 students. That means there are either 3 or 4 to an apartment. They are unsupervised. There is no adult supervision. Now in the conditions on the building at 502, there are to be no parties outside. However, the students

have parties outside and their area fronts on both Fourth Street and East Capitol Street. They have parties at all hours of the night.

CHAIRPERSON REID: Ms. Garrison, you have to keep this to 502.

MS. GARRISON: But I am telling you, Madam Chair, it is linked.

CHAIRPERSON REID: But we don't have any purview on that other building, and I would suggest --

MS. GARRISON: But the behavior of the students --

CHAIRPERSON REID: I would suggest that you take that up with the administrators of the school because we don't have any purview over that.

MS. GARRISON: We have. We have. And this is our last recourse because the --

MS. PRUITT: Excuse me, ma'am, but this is not the correct jurisdiction to address that. That is the whole issue.

MS. GARRISON: But may I point out one thing? Mr. O'Brien was asked directly if he oversees the students conduct on the premises and in the neighborhood, and he very deftly avoided answering the question. His response was I am the director, I am a professor, I am a priest. The

answer to the question is that he does not oversee the students' conduct in the neighborhood and that is the reason we are here. What I want to press for, if the Board is so inclined to grant this special exception, is that you include other conditions on the way they take care of and manage these students. And that is the issue.

MS. PRUITT: Madam Chair, I have some strong concerns procedurally about going down this road. Because if it is testified, we then need to deal with it in the order. I think it will set -- if this is not part of the original application, it is going to set up a case for an appeal. Procedurally we are getting in very shaky ground here.

CHAIRPERSON REID: Again, if you have -- any concerns that you have, you have your ANC Commissioner.

MS. KING: You also have --

CHAIRPERSON REID: That you can use.

MS. GARRISON: We did not know about this until I saw the notice posted on Sunday evening.

CHAIRPERSON REID: But --

MS. GARRISON: We have been dealing as a neighborhood with the landlord and with Marquette

for three years.

CHAIRPERSON REID: I understand that.

MS. GARRISON: And their attitude has been that you may have a problem, but it is not our problem.

CHAIRPERSON REID: Okay, excuse me. You and I cannot talk at the same time. We are trying to give you the opportunity to speak. Nonetheless, when I try to speak, it is not in your best interest to continue to talk.

MS. GARRISON: I do apologize.

CHAIRPERSON REID: Okay. What I was telling you is that your ANC representative is behind you --

MS. GARRISON: I don't believe she is my rep.

CHAIRPERSON REID: She is not?

MS. GARRISON: No.

CHAIRPERSON REID: Then it is Mr. Simon. So through --

MS. GARRISON: Well, Mr. Waldren actually. CHAIRPERSON REID: Well, whoever the person is, those concerns can be best addressed in meeting with and talking to your ANC representative. And if you have conditions, then that can be -- we cannot allow a condition to be

imposed on an order by an individual. So it has to be done with your body -- your ANC or your governmental body that is established for that purpose, and have it proffered through them if that is in fact what you want to do. You just can't -- we can't allow you to do it because we don't have the purview to do that.

MS. GARRISON: Well, I am afraid what has happened is that we are being denied any avenue to address our grievances.

CHAIRPERSON REID: But you are not.

MS. GARRISON: Well, we are because of the procedure that you are operating under. If you move ahead and grant the special exception, then it is done and over with.

CHAIRPERSON REID: We are not doing anything today.

MS. KING: Madam Chair, may I make an exception?

CHAIRPERSON REID: Yes.

MS. KING: If you have a noise problem with that neighboring building --

MS. GARRISON: We have a series of problems. That is one.

MS. KING: Then you should address the Department of Consumer and Regulatory Affairs about

those problems. There is no precedent. It would be totally illegal for us to impose a condition on 502, which we may -- if it is granted, we very likely will impose conditions. But to impose a condition on that property relating to another property is out of the question.

MS. GARRISON: I appreciate that, Ms. King. However, it seems to me that when you agree to establish a school where the school is going to bring in from the outside students and they will have to house them somewhere, whether it is on our block or another block or wherever, that that is going to create an impact, particularly if the University --

MS. KING: We understand your point.

MS. GARRISON: -- refuses to be responsible for its students and leaves them in an unsupervised environment, which is what is happening.

MS. KING: We understand your point. Thank you very much.

MR. BROWN: My remarks would be completely out of order. I have sat here patiently for six hours. I am Holmes Brown. I -- just to clarify one point, I wrote down that I was an opponent with conditions. I didn't know what to

choose because there wasn't an opportunity to say one was neutral or something. I support a multiple use community and I have been supportive of the Les Aspin Institute. However, I share 80 feet of common wall with the residence in which many of the students live, and I do think that if you are looking at the impact of the case before you that it does make some sense at least to talk about it. I have just been told that doesn't make any sense or that you won't do it. So I remember -- well, that is my situation.

I think that the neighborhood has concerns. The testimony earlier said that the folks who are attending occasional classes in the basement are not in 502. They are elsewhere in the neighborhood. The impact comes elsewhere and I think that that is relevant. But I have been told that it isn't relevant and that we have to take it up with other people. We have dealt with Marquette. We have dealt with the owners of the property who have tried to helpful. The Lewis's were supportive of our application here. But --

MS. KING: I am sorry, who are the Lewis's?

MR. BROWN: The Lewis's are the owners of the property in which the students live. But I

think what Laurie has said is that the problem is you have folks coming to town for six weeks who are unsupervised and we just have continuing problems with noise, people parking -- not their cars, other peoples -- garbage and this sort of stuff. We have dealt with everybody else, and I guess we felt at least this was an opportunity to try and make you aware of some of the ancillary problems for the neighborhood that are associated with this application.

CHAIRPERSON REID: And, sir, your point is well taken. And just as we told this lady --

MS. GARRISON: Ms. Garrison.

CHAIRPERSON REID: Ms. Garrison, it is not within our purview to impose any conditions on that property. And we also suggested the procedures that you could best utilize to accomplish your goal. And I don't think -- and I may be mistaken, but I don't think that Marquette would be opposed to trying to work with you in that regard to see to it that that negative impact is somehow mitigated. And that is the way to do it through your ANC.

MR. BROWN: Well, I wouldn't be here if I hadn't made an effort to utilize some of the other options that you've mentioned. I mean, we have talked to Marquette. I have called them. They are

responsive. I am just saying there are some inherent problems.

CHAIRPERSON REID: What about your ANC?

MR. BROWN: Well, if kids are having a party on the roof at 2:00 in the morning, ANC isn't going to help me.

MS. KING: Call the police.

MR. BROWN: I do.

MS. GARRISON: We have done that.

MS. KING: There is a nuisance line for the police. That is who you call.

MR. BROWN: All right.

CHAIRPERSON REID: But again, through your ANC, and having them to basically address your grievances through conditions that can then be proffered to this Board to be put into an order.

MR. BROWN: Okay. Well, once again, because were outside the 200 foot area, I didn't know about this. As I say, I have supported a multi-use neighborhood. I have tried to work with folks. I just saw this as an opportunity. You all have been here just as long as I have.

CHAIRPERSON REID: No, we have been here longer.

MR. BROWN: Well, longer. And I get to go home tonight and you get to come back here for

another round probably in the next --

MS. KING: We have another case if we ever finish this one.

MR. BROWN: I see. So I am bowing out at this point and I appreciate it.

CHAIRPERSON REID: Okay. But this particular --

MS. KING: Madam Chair, the letter from Mrs. Ambrose.

CHAIRPERSON REID: Okay. This particular case will not be decided today. At the end of this case, we will then decide how to best take into consideration all of the various testimony that we have heard here today and what to do to best accommodate you.

MS. GARRISON: Madam Chair, a question. If I understood correctly, at the very beginning at around 1:00, you indicated that the record would remain open to receive written testimony into --

CHAIRPERSON REID: That is exactly what I am referring to.

MS. GARRISON: Okay. So the cutoff date is --

CHAIRPERSON REID: Well, we are not doing that right now. We have to finish the case first. At this point we have to take into the

record the highlights of Council Member Ambrose's letter in opposition to this particular application. And then we will have closing remarks. We will have cross examination and then closing remarks by the applicant and then we will determine a time line for submissions.

MS. SCHMIDT: Will there be an opportunity for me to make one more statement?

MS. PRUITT: No.

MS. KING: No.

MS. SCHMIDT: It is very important.

MS. KING: It is going to be open. The record will be open. You can write it.

MS. NEAL: This is the ANC you just told us to go to.

MS. KING: We have been here since 9:00.

MS. SCHMIDT: One minute.

MS. KING: No. Out of order.

MS. NEAL: This is the ANC.

MS. KING: Out of order, Madam Chair. Out of order.

CHAIRPERSON REID: We have to go in order. She will have an opportunity to do so in writing.

MS. KING: Counsel Member Ambrose has made three points. That this is a fundamental

breach of residential protections. That she is concerned that a school in the sense commonly used. That our planning and zoning discussions did not refer to university use. Third, the concern about tangential neighborhood impacts, which is the behavior of the students elsewhere than at 502. She concludes by saying, "Should the Board determine that the use exception being asked is appropriate, I urge that strict conditions be placed on any order granting such exception in order to both preserve the right of residential neighbors to the quiet enjoyment of their homes and to avoid any precedent setting action that might erode the residential character of close-in East Capitol Street. I also will add as a matter of record that I admire the long and distinguished history of Marquette University and am grateful for the excellent education and happy university experience it provided to one of my children, who is an alumnus. We have been pleased to have Marquette University as a neighbor thus far and look forward to an appropriate resolution of this issue."

CHAIRPERSON REID: Thank you. Cross examination of these witnesses.

MR. COTTINGHAM: Given the lateness of the hour and you have said the record will be open,

there are some things we would take objection to as far as statements of fact or illegality and things.

MS. PRUITT: Those -- Madam Chair, those can be addressed --

MR. COTTINGHAM: In writing.

MS. PRUITT: In closing or in --

MR. COTTINGHAM: I was going to say, maybe we could address them in writing to the Board to avoid a --

CHAIRPERSON REID: Not -- you mean address it in writing to --

MR. COTTINGHAM: Well, to Ms. Neal particularly and you.

MS. KING: The record is going to be open.

CHAIRPERSON REID: The record will be open.

MR. COTTINGHAM: The record will be open. So rather than --

CHAIRPERSON REID: If you choose to do it that way.

MR. COTTINGHAM: Rather than argue about the legality of our presence there, for example.

MS. PRUITT: Well, Madam Chair, we would also suggest that both the applicant and the parties in opposition submit draft orders of proposed

findings of fact and conclusions of law where you can then address the issues there.

MR. COTTINGHAM: Ms. King took my one question for Ms. Neal about the last sentence in --

MS. KING: I beg your pardon?

MR. COTTINGHAM: You took my one question about the last sentence in Ms. Ambrose's letter about her general support of our presence as a university. Ms. Neal had quoted the letter from Ms. Ambrose, and it concludes with the final sentence.

CHAIRPERSON REID: No, wait one second.

MS. KING: I have already read that -- the last two paragraphs.

CHAIRPERSON REID: First of all -- now this part is over. The opposition part. The closing remarks by the applicant, if you would like to address that in your closing remarks, you may do it.

MR. COTTINGHAM: That is fine.

CHAIRPERSON REID: Thank you very much.

MS. KING: Please be brief.

FATHER O'BRIEN: I will be most brief. My closing thought is the same as my opening one. That we have been operating this way. I live at the house. The basement is the private club that we

want to have acceptable to the neighborhood for a special exception. I take exception with some of the comments made that we proceeded illegally and knew we were proceeding illegally. That is patently false, and anyone that could make such a scurrilous allegation should be ashamed. So I just ask you to consider the facts, consider where we are. That we have been there for four years and that we moved to the special exception at the request of a neighborhood organization that when the agreement was signed there would be no further problems. And that is what expected.

MS. KING: Father, to what degree are the students supervised when they are not in your basement or in your house?

FATHER O'BRIEN: Well, it -- we -- it depends on where our students are. If it is 4 Fourth Street -- the students who come in our program are not required to have housing. We provide housing for those students that enroll in our program, if they are unable to have housing. We have had students come in from Arlington and elsewhere.

MS. KING: These are not Marquette students?

FATHER O'BRIEN: What is that?

MS. KING: The students are not enrolled in Marquette University? Is that what you are suggesting?

FATHER O'BRIEN: No. I am suggesting that if they enroll in our program, and we take -- in the fall, we have 16 students enrolled. If they do not have housing, we provide housing for them.

MS. KING: But they are totally unsupervised when they are not under your -- you are the only staff person involved in this operation, is that correct?

FATHER O'BRIEN: Well, we usually have an RA, a resident assistant in the building.

MS. KING: In what building?

FATHER O'BRIEN: In the building where we are housing our students at. We rent at 4 Fourth Street, a block away.

MS. KING: And does this person have --

FATHER O'BRIEN: It is a resident assistant who has been trained at the University in dealing with student issues. Remember, these students are legal adults. They can rent the apartment --

MS. KING: I understand that. But I mean if you are saying that you have somebody there to supervise them and what we have is nothing but a

deafening outcry from the people who live near them.

FATHER O'BRIEN: Yes.

MS. KING: I mean, this is not -- the town gown situation is not unusual, and I am sure everybody who has ever been a student or an academic is well aware of that. But this seems to be particularly difficult at this time. And I just -- do you have a house father or mother or whatever the modern term for it is, in residence?

FATHER O'BRIEN: I will give you an example. This fall, we have a 30-year-old woman who will be living in that residence who is having her own apartment who is an RA, a resident assistant trained by the University in dealing with issues of student problems with roommates and conduct. We have a code of conduct of the university. They can be expelled if certain things happen. I mean, we have a long track record of operating an institution, I think.

MS. KING: I understand that. My brother went there as an E-12 in World War II.

FATHER O'BRIEN: Oh, excellent.

MS. KING: But I -- you know, there is no RA or whatever you call it there now, is that correct?

FATHER O'BRIEN: There are no students

there now. They are gone. We have concluded their program.

CHAIRPERSON REID: Has an RA been there? Is this something new or has the RA been there?

FATHER O'BRIEN: No, no, no. We have RAs there on a regular basis. Someone who has been in the program who comes back and who reports to me or to our assistant, Tom, if there are any complaints about behavior. I haven't gotten very many to be very frank. I don't know why neighbors would not call --

MS. KING: But they know where you live now.

FATHER O'BRIEN: Oh, they sure do.

MS. KING: And I suspect they will come after you.

FATHER O'BRIEN: I went over the other night when one of the gentleman who was here said that there is garbage outside one of the bins. I picked up the garbage, took it and put it into the garbage cans because the kids were moving out. There was a lot of excess garbage.

CHAIRPERSON REID: What is the average age of the students?

FATHER O'BRIEN: They are usually juniors. They are usually 21 years old -- 20 or 21.

Juniors and seniors.

CHAIRPERSON REID: Now I just have one question regarding -- one of the witnesses testified that there was some arrangement with the caterer to have parties at that facility.

FATHER O'BRIEN: I am absolutely unfamiliar -- we do have an arrangement with that catering company if we have a function. If I, as the director, have a function and I invite you all in -- like we have a group of people from Africa that are coming, a delegation from Ghana and Kenya. I will not have 15 different caterers come in. I don't cook.

CHAIRPERSON REID: Was this leased out? I mean leased out for weddings and things of that nature?

FATHER O'BRIEN: No. That goes back to about a four-year program before we even got a private club status.

CHAIRPERSON REID: So that is no longer?

FATHER O'BRIEN: That no longer exists. I don't know if it ever existed. Since I have been in charge, which is from one month before it all started, that has never occurred and it will not occur. Unless it is a Marquette University official function, there is nobody in that building.

CHAIRPERSON REID: Okay. So if there is an official function where you are -- like the group from Africa and you would have -- provide food or refreshments.

FATHER O'BRIEN: Yes. And when we use that --

CHAIRPERSON REID: How often does that happen?

FATHER O'BRIEN: Three times a year maybe.

CHAIRPERSON REID: All right.

FATHER O'BRIEN: And I wanted to correct -- when Ms. King had asked before about the use of that building, I do use it on Sunday. I have Mass there and we have brunch afterwards. I said Tuesday and Thursday afternoons. Every Sunday I have Mass at noon and we have -- the students rotate making brunch at my house.

CHAIRPERSON REID: And the Mass consists of about how many people?

FATHER O'BRIEN: For the students.

CHAIRPERSON REID: Oh, the 20 students?

FATHER O'BRIEN: It depends upon how religious the group is. But usually between 8 and 10.

CHAIRPERSON REID: Okay. Any other questions?

MS. KING: They don't sound very religious to me, Father.

FATHER O'BRIEN: Oh, they are. You know, during exam time, we go up to a full complement.

CHAIRPERSON REID: Any other closing remarks?

MR. COTTINGHAM: No. You've asked exactly the points I was going to raise.

MS. KING: Okay. Thank you very much.

CHAIRPERSON REID: What we need to do is to try to address some of the concerns of the persons in opposition. And you heard what was stated here. So you can see that there is some work that you need to do as far as community relationships and the like and also I think it is very obvious that they would like to see done as far as mitigating some of the negative impacts that they have voiced here experiencing, not directly with Marquette per se, nonetheless some of the peripheral, which in effect while it may not be something that you legally have to do in this purview, nonetheless just from a good neighbor accommodating point of view, it would be wise to try to at least address some of those issues. And Mr. Hart will give you a time line as to -- there are

some things that have to be submitted and in response to and all that, and then we will determine what date we will make a decision. In the meantime, we also would like to have a draft order from both sides, the opposition as well as the applicant that will then address a lot of the issues in regard to the findings of fact.

MS. PRUITT: Are you looking to put this on for September 8? That is where we need to start. Because that is what will predicate when submissions are due.

MS. KING: Yes, don't you think?

CHAIRPERSON REID: Is there room on the schedule? If so, then yes, we can do that.

MS. PRUITT: Yes. I mean, yes.

CHAIRPERSON REID: Okay.

MS. PRUITT: I would just urge that we be very efficient at the meeting.

CHAIRPERSON REID: Okay.

MS. PRUITT: If that is the case -- and the other question is are you leaving the record open for anything to be submitted or just --

CHAIRPERSON REID: Well, we had agreed to leave the record open to have submission by the ANC -- the ANC submission, and then a response by the applicant.

MS. PRUITT: No. But I mean you are leaving the record open --

MS. KING: The ANCs have made their submissions.

MS. PRUITT: Right. So are you leaving it open for anybody to put anything in or only discrete items? That needs to be clear.

MS. KING: I think our agreement was for the community to -- is that -- is this the case? Weren't we going to leave this record open?

CHAIRPERSON REID: No. What I said was that the community, through their ANC -- if there is additional information or if there is additional concerns or what have you, to do it through the ANC. And if they want to formulate conditions or whatever, then you do it through --

MS. NEAL: Then we have to have time to go to the next ANC Commission meeting, which is not until September, like you gave the other applicant.

MS. PRUITT: So we are back in the same process where then the applicant, if we --

MS. NEAL: If you force us to go the ANC, you have to give us time.

MS. PRUITT: Excuse me, ma'am, you can't talk from the audience.

MS. NEAL: I am sorry.

MS. PRUITT: We understand. If you are doing that, then you also need to make sure that the applicant is willing to waive his response time. And that is the same issue. And the other question is the ANC has made their statement. You can leave the record open for individuals to comment.

MS. KING: Yes, I don't see that we have to involve -- both ANCs have made their statement. We have it in writing. It was all duly done. There is no ambiguity about the ANC statement. I think what we are doing is leaving the record open for any members of the community who need -- who wish to make -- to add further to the record, either in favor of or in opposition to this application.

CHAIRPERSON REID: That is fine with me if that is agreeable to everyone. That is fine with me. Basically I just wanted to make sure that the concerns were being addressed in whatever method we could best accomplish it.

FATHER O'BRIEN: With the understanding that ANC 6B --

MR. HOOD: Excuse me. I wanted to associate my comments with Mr. Schauer. As he says, it is a community issue. Let's leave it open and let's see if they can resolve it, whether it is the ANC-6A or 6B, the people in opposition, Marquette.

Let's leave it open and see if they can resolve some of these issues. So when September rolls around, it may make our decision a little easier.

CHAIRPERSON REID: Work itself out.

MR. HOOD: Right. Hopefully. But if not, I will let Marquette know that I do have some concerns that have been addressed -- I mean, that have already been stated. Hopefully within that time frame, they could solve the issue.

CHAIRPERSON REID: Okay, what is the time line, Mr. Hart.

MS. PRUITT: Okay. Given that, we are leaving the record open for submissions from anybody. Submissions would be due August 25. Responses to those submissions by the applicant or anybody who wants to respond would be due by September 1, so that the Board can convene a meeting on September 8 for a decision. We would also like to get findings of fact and draft orders or draft findings of fact and conclusions of law by September 1.

MR. COTTINGHAM: By September 1?

MS. PRUITT: Correct.

MS. SCHMIDT: Who provides --

MS. PRUITT: Excuse me?

MS. SCHMIDT: Who submits those?

MS. PRUITT: The opposition ANC and the applicant.

MS. SCHMIDT: Okay, thank you.

MS. PRUITT: And if you have any questions, you are more than welcome to come to the Office of Zoning and we can show you what a draft order looks like so you can get some idea of what we like to see.

MS. KING: But she -- her organization is in favor.

MS. PRUITT: That is fine. We will take them all.

CHAIRPERSON REID: Mr. Simon?

MR. SIMON: Yes. We are pleased to go with either route that the Board would like. But to be able to respond to Mr. Hood's suggestion about working an agreement out, for 6B to work something out would require an action by the Commission. The Commission meets on the second Tuesday of September. That would bang up against this schedule.

MS. PRUITT: I think the question is 6B has already taken its position unless they are going to rescind that position.

MR. SIMON: Right. But that was Mr. Hood's suggestion as I understood it.

MS. PRUITT: I understand. I

understand. But that is also -- I mean, my concern is keeping the process correct and legal and not allowing the process to be open or subject to challenge for procedural mistakes.

MR. SIMON: I appreciate that, and we won't do anything to interfere with that. I was hearing the suggestion as being very analogous to the ABC Board's use of voluntary agreements, where an ANC which contests an ABC license is encouraged to work out an agreement, and to further that possibility, the Board will provide some extended period. We report at the status hearing. If we can't, then we go to a protest hearing. The advantage to all parties is that there is no longer a contested case.

MR. HOOD: And that is exactly where I was trying to go.

MS. PRUITT: Well this is -- by the nature of the case it is contested, period.

MR. HOOD: But, Mr. Simon, I think -- what are you actually asking? Are you saying you don't have enough time to respond?

MR. SIMON: I am saying that this being August, ANC-6B is out during the month of August. So our next meeting will be in September. In order for the Commission to withdraw its protest, which is

what would be wanted --

MR. HOOD: Can we do the same thing that we did --

CHAIRPERSON REID: Let me ask this. If not on September 8, then the following week is what?

MS. PRUITT: The next meeting date is October.

CHAIRPERSON REID: No. That is true. However, we could have a special meeting prior to the hearing date.

MS. PRUITT: Which would be the 21st, I believe.

MR. HART: The 15th --

CHAIRPERSON REID: The 15th. Can we do it then? Have a special meeting --

MS. KING: Well, we have already -- the whole calendar for September is screwed up because we set the 22nd as an all-day hearing for waste management because Paul told us two weeks ago that we were meeting on the 1st and the 15th. So --

CHAIRPERSON REID: Let us try to have a special meeting prior to the hearing in which we could take this case up, and that would give them ample time to meet and to come to some resolution. How about that?

MS. PRUITT: I just need to get the date

of when you want to have the hearing so I can back up from there.

CHAIRPERSON REID: You need what?

MS. PRUITT: So are you suggesting that you convene a special public hearing on -- oh, excuse me, I have the calendar right here.

CHAIRPERSON REID: No, a public meeting at 9:00.

MS. PRUITT: A special public meeting on the day that we have our hearing on the 22nd?

CHAIRPERSON REID: No. I was thinking more of the -- don't we have a meeting on the 15th or the 16th?

MS. KING: No.

MS. PRUITT: No. It will be on the 22nd.

CHAIRPERSON REID: Right. That is right. Okay.

MS. PRUITT: The 8th and the 22nd.

CHAIRPERSON REID: Would that be adequate, Mr. Simon? Would that be adequate if we did a special meeting on the 22nd at 9:00?

MR. SIMON: Yes. ANC-6B --

CHAIRPERSON REID: For the decision. To give time for the ANC to meet and for you all to try to come to some resolution among yourselves and the

like.

MR. SIMON: Yes, I understand the suggestion.

MS. KING: And in the meantime, you might talk to Mr. -- to the Capitol Hill Restoration Society and to Marquette and to all of the players and maybe you all can get together and hammer out an agreement as to what you all want to do.

MR. SIMON: That is what I understand the suggestion to be.

MS. KING: In the meantime, could we recess for a moment?

MS. PRUITT: Well, I would like to just get the conditions since we have changed the times, please. So the submissions would be due by September 8 and responses by September 15 for the 22nd meeting. And findings of fact would then be due on the 15th.

MR. COTTINGHAM: Right.

CHAIRPERSON REID: Okay. We are going to take a very short 3-minute recess and we will be right back to finish up two cases.

(Whereupon, at 7:50 p.m. off the record until 8:00 p.m.)

MR. HART: Please raise your right hand to be sworn.

(WITNESSES ARE SWORN.)

CHAIRPERSON REID: Okay, tell me your name again?

MS. JOHNSON: Alberta Johnson.

CHAIRPERSON REID: Okay. And your address again, Ms. Johnson? Your address, Mrs. Johnson?

MS. JOHNSON: My address is 6215 Longfellow Street, Riverdale, Maryland.

CHAIRPERSON REID: Okay. Now we just discussed with you when you were here before about the procedure, and now you are straight, right?

MS. JOHNSON: Yes, ma'am.

CHAIRPERSON REID: Okay. So what you need to do is to just go straight down 205 and tell us how you comply with the regulations.

MS. JOHNSON: First, I want to say thank you for giving me the opportunity to get myself together and your patience and your consideration.

CHAIRPERSON REID: Okay. No problem. You don't have to stand.

MS. JOHNSON: I can't hear that well, so I would like to stand.

CHAIRPERSON REID: Okay, however you are comfortable.

MS. JOHNSON: I think I can present

myself better. We will have no problems with the community. The community is in agreement with us having a center. There is no center in that area for childcare.

CHAIRPERSON REID: At least within 1,000 square feet?

MS. JOHNSON: Right.

CHAIRPERSON REID: All right.

MS. JOHNSON: No center. And we will not be of any adverse conditions with the community.

CHAIRPERSON REID: You haven't had any complaints from anyone after they saw your posting of your hearing for today?

MS. JOHNSON: No. We haven't had any complaints.

MS. KING: Have you had any contacts with the ANC, the Advisory Neighborhood Commission 7D?

MS. JOHNSON: They got notice. Everybody got a notice and we haven't had any --

MS. KING: Nobody has been in touch with you?

MS. JOHNSON: No.

CHAIRPERSON REID: Okay, what about the parking?

MS. JOHNSON: Parking -- we are going to

use the church parking lot which is right next to the house.

CHAIRPERSON REID: How many spaces is that?

MS. JOHNSON: We have 9 spaces.

CHAIRPERSON REID: Okay, adequate parking. What about the play area?

MS. JOHNSON: We have a play area in the back and front yard of the house.

MS. KING: Is that fenced in?

MS. JOHNSON: Ma'am?

MS. JOHNSON: The back is fenced in. The front is not totally fenced, but we do have a brick wall, but it is short. We have -- if we get the zoning and we get licensed for the daycare center, we will then use the other property on the corner for a playground. So that is in the works. If we get the place --

CHAIRPERSON REID: What property is on the corner? What is on the corner?

MS. JOHNSON: There is only one other house in-between the church and the corner. And the church owns the two lots on the corner. So now we own everything except the one house, and that house -- the people who own that house is a member of the church and they are in agreement with us having the

daycare center. So we don't have any opposition.

MS. KING: But the playground -- if you get permission to use this house, where will the playground be? Will it be on the same property as the child development center or located someplace else?

MS. JOHNSON: It would be one door from the center.

MS. KING: And it is another piece of property owned by the same church?

MS. JOHNSON: Yes.

MS. DINKINS: Initially, they intend to use the same -- the backyard of the actual house.

MS. KING: I understand. But she did mention that there was --

MS. DINKINS: And in addition --

CHAIRPERSON REID: Excuse me, you have to give your name and your address.

MS. DINKINS: My name is Diane Dinkins. I live at 6215 Longfellow Street, Riverdale, Maryland. The 20 students in this plan are composed of 10 students that will probably be early and late childcare and 10 that would be there through the day. So it is mostly -- you know, it won't be that many students there either. So that yard will be -- will give them lots of space if they have to take

shifts with half of them.

MS. KING: Now, where will the drop-off and the pick-up for the children be?

MS. JOHNSON: Drop-off and pick-up? Drop-off and pick-up can be in front of the house because there is no parking on that side of the street. So you can just drop off.

MS. KING: Okay. So you will have staff people who will go and escort the children from the car to the -- into the school?

MS. JOHNSON: Or the parent will bring them into --

MS. KING: Well, if there is no parking there, the parent can't do that. I mean, they can't park and get out of the car and take the children in.

MS. JOHNSON: We are going to be there to assist them. But just to -- you know, they could run their child in or we could pick them up, either one. But right around the corner, if they go around the corner, is our parking lot. So they can park and bring them in or we will be out there to pick them up.

MS. KING: Okay. Would it not be better if you had them drop the children off in the parking lot rather than on the street?

MS. JOHNSON: Yes, it would be better.

MS. KING: Wouldn't it be safer?

MS. JOHNSON: Yes.

MS. KING: Would you have any objection to our imposing that as a condition?

MS. JOHNSON: None at all.

MS. KING: Okay. What about food service? Are you catering? Are you providing food?

MS. JOHNSON: We are going to provide the food.

MS. KING: From -- that you are cooking on the premises?

MS. JOHNSON: Yes, ma'am.

MS. KING: And you will have all the necessary permits for that?

MS. JOHNSON: Yes.

MS. KING: And inspections of your kitchen?

MS. JOHNSON: Yes. I have been to the orientation that the Childcare Development Program -- I have been there and they told me the requirements, what we need.

MS. KING: Okay. Now one thing that happens if you are going to be catering to that number of children, and some of them are going to be there for a 12-hour period, that is a lot of meals

and snacks and so forth and a lot of probably plastic and paper and products and trash from the kitchen and so forth, which could cause a bad condition for the neighborhood. Are you -- do you have a dumpster and are you -- is it going to be picked up twice a week?

MS. JOHNSON: We have that on the church grounds. And we have -- it is secure.

MS. KING: And how often is it emptied?

MS. JOHNSON: I really don't know. But we don't have a problem with the church. You know, so --

MS. KING: Yes, but you are --

CHAIRPERSON REID: Is it a regular contractor?

MS. JOHNSON: Yes. If we need to have additional pick-up, we will have it.

MS. KING: Okay.

CHAIRPERSON REID: If appropriate, okay.

MS. KING: Because, you know, two or three meals a day for 20 kids produces an awful lot of garbage.

MS. DINKINS: The church is used to handling large influxes of trash whenever they have a funeral and we have family reunions there -- you know, lots of special large occasions.

MS. KING: But this is going to be -- this isn't going to be special events. This is going to be something that happens --

MS. DINKINS: Right. But what I am saying is that they are used to handling it if need be.

MS. JOHNSON: We will make arrangements not to be a nuisance and have trash. Because we know that is a health hazard.

MS. KING: And this building is directly next to the church?

MS. JOHNSON: Yes.

MS. KING: So, I mean, there is no gate or barrier between the church parking lot and your backyard, or is there?

MS. JOHNSON: The house has a gate or a fence.

MS. KING: A gated fence so that the children, if they are playing in the backyard or are delivered to the backyard aren't in danger from the church parking lot that is immediately next to it?

MS. JOHNSON: Right.

CHAIRPERSON REID: All right. We will also go into conditions in a few minutes. But right now, the ANC said that -- you did notify the ANC, but we don't have a letter from the ANC. So the

assumption is that they don't have a problem with your application and there are no other government reports.

MS. KING: No.

CHAIRPERSON REID: Persons or parties in support of the application? Did you want to say a few words?

MS. DINKINS: I just had a couple of --

CHAIRPERSON REID: Your name. Give your name.

MS. DINKINS: Diane Dinkins. I just had a couple of points which I am sure you are very, very well aware of. It is so obvious by doing this they intend to have a staff of 4 and provide service for 20 students or 20 children. So with that, they are allowing for dedicated jobs for the community and allowing up to 20 parents to have jobs as well. And we have also heard today how difficult it is to acquire property for large functions and large organizations in this neighborhood. This church is sizeable, and for them to be able to add that extra service to the community plus have them accommodate the same number of members would be a difficulty if they were to have to do it some other place. So they are adding a service to this community.

CHAIRPERSON REID: Thank you very much.

MS. DINKINS: Thank you.

CHAIRPERSON REID: Persons or parties in opposition? Seeing none, closing remarks by the applicant.

MS. JOHNSON: Right. My closing remarks are that several years ago in the church, we had before and after for the school that is across the street from our church. We provided before school and after school services to them. And when we stopped, the school asked us to try to help them because there were a lot of mothers who had to be to work before school opened, and that is why we started it. And now that we have the house, I wanted to revise our original application. There was a mistake on it. We said that we would have children from 5 to 11, but I think we could benefit the community by having ages 2 to 12. That would be age 2 up until time they go to school, and we could have the before and after that would -- since it is an elementary school, 12 is about the age that they would be out of elementary school. Also, it was noted in the first application that we would only use the first floor of this split level house, but we are going to use the whole house. I wanted to make those two revisions, please.

CHAIRPERSON REID: Okay. Ms. Pruitt-

Williams, is that permissible to --

MS. PRUITT: I am just trying to -- that is what I was trying to ascertain.

CHAIRPERSON REID: Do we need an announcement?

MS. PRUITT: It doesn't change the relief that is requested, I don't believe.

CHAIRPERSON REID: Two floors and also the ages from 2 to 12 rather than 5 to 11.

MS. PRUITT: I don't think the ages -- the only concern I have with the changes of the age, when you go down to 2 years old, I don't know if -- this is not our requirement, but Child Development may require more staff for younger children.

CHAIRPERSON REID: Well, also in 205, it states that they must be in compliance with all the --

MS. PRUITT: Right. And if there is some reason that Child Development requires 6 staff and we have only granted it for four, then they would not be able to operate it for two-year-olds, or at least not for up to 20 children. They can leave it to 20 children, and you can also leave it for four staff. How you choose to sort of distribute the ages and the requirements that will be imposed by Child Development, we don't have any

control over. But you cannot exceed 20 children or 4 staff. So it may mean you would not be able to take in as many if you are required to have more staff for younger kids.

MS. JOHNSON: Okay.

MS. PRUITT: If you understand that.

MS. JOHNSON: Yes.

MS. PRUITT: The other question I have though was hours of operation. I don't know if that has been addressed.

MS. KING: 6:30 to 6:30.

MS. PRUITT: Thank you.

MS. KING: Monday through Friday.

CHAIRPERSON REID: All right. Are you done with the closing remarks?

MS. JOHNSON: Yes.

CHAIRPERSON REID: Okay. So are you going to request that we give you a decision today, which is called a summary order bench decision?

MS. KING: Yes.

MS. JOHNSON: Yes, a summary order decision.

CHAIRPERSON REID: Okay.

MR. HOOD: Madam Chair, I make a motion that we approve Case No. 16478, East Friendship Baptist Church with Ms. King giving us the

permission?

MS. KING: Second.

CHAIRPERSON REID: You seconded?

MS. KING: I seconded.

MS. PRUITT: I have the conditions. I have them written down.

MS. KING: I seconded. 20 children ages 2 to 12 years of age, 4 staff. The hours are 6:30 a.m. to 6:30 p.m., Monday through Friday. At least one parking space to be provided in the church parking lot next door. Drop-off and pick-up to be at the church parking lot next door, not on the street. Any play area, whether it be part of the yard of this house or elsewhere should be secure. And if the children are moved from the house to that to another play area, they need to be escorted and cared for. And then the usual.

CHAIRPERSON REID: Trash picked up as appropriate.

MS. PRUITT: And my other question is is it trash picked up as appropriate and consolidated and coordinated with the church? Is that how it is done?

MS. JOHNSON: Yes.

MS. KING: We just -- it is there trash and it gets picked up as appropriate.

CHAIRPERSON REID: Do we want to limit it to 5 or 10 years?

MS. KING: Okay, let's limit it to -- let's have it 5 years for the first order to make sure that there is no problems with the neighbors. And then in five years, you can come back and we will talk about it again.

MS. JOHNSON: Thank you.

MS. PRUITT: Staff would record the vote as 3 to 0 to approve. Motion made by Mr. Hood, discretely seconded by Ms. Reid. Thank you.

MS. JOHNSON: Thank you.

CHAIRPERSON REID: Thank you. Good luck. You should have your order in about two weeks. The last case of the day, Mr. Hart?

MR. HART: Application 16455 of the Amoco Oil Company pursuant to 11 DCMR 3108.1 and Subsection 726.1 for a special exception to enlarge an existing gasoline service station to include the sale of motor vehicle fuel in a C-2-A District at premises 3426 Georgia Avenue, N.W., Square 2894, Lot 906. Would those persons intending to testify please stand and raise your right hand.

(WITNESSES ARE SWORN.)

MS. KING: No opposition in this case, Madam Chair. I suggest that Mr. Brown give us the

highlights and we move on with it.

CHAIRPERSON REID: All right.

MR. BROWN: Madam Chair, I would be glad to cooperate. My name is Patrick Brown --

CHAIRPERSON REID: Given the lateness of the day.

MR. BROWN: Yes. I am still with Greenstein, DeLorme and Luchs.

MS. KING: You think.

MR. BROWN: Yes. I haven't been back, but I am hopeful. With me today just briefly is Steve Faletto. He is the zoning coordinator for the Amoco Oil Company. Next to him is Adam Volanth. He is the Project Engineer from Bohler Engineering, the project engineering firm, and my co-counsel, Tony Rachal on the end. We are establishing a -- or enlarging an existing gas station that has been there since 1954. The only difference in a nutshell is that an existing building is being demolished and a building of about a quarter of the size will be built to replace it. The canopy that exists will be expanded to accommodate six pumps rather than four. So if you count canopy and building, it is a slight increase in the bulk on the site. As a practical matter, you've got a very small building now and a bigger canopy. So the impact, I think, just

intuitively is probably going to be less. Not intended to be a new draw of customers, but just to serve the existing ones.

The standards set forth -- the easy ones are it can't be within 25 feet of a residence district unless -- and that is applicable here -- it is separated by a public alley which runs at the back of the site just north of the -- actually, to the west of the green space there. We don't believe testimony will be given to be presented both in the written form or today -- there will be no objectionable or dangerous conditions. The operation will continue pretty much as it has been on a gas sale basis. You will see quite a few site enhancements -- landscaping and other security and lighting measures, which I think will actually make it a better looking station, a safer station, and less of a --

MS. KING: The only residential property that is contiguous to yours is above that public alley?

MR. BROWN: There is a small apartment building here. The alley is here.

MS. KING: And then the rest of the surrounding is commercial?

MR. BROWN: Commercial is here and there

is not much right back here. It is vacant. And then on the other side of Park Road here is the commercial building that comes from back --

MS. KING: Commercial or residential?

MR. BROWN: Commercial.

MS. KING: Commercial. So you've got that heavy -- you've got that lawn and the heavy tree screening and so forth between yourself and the only residential property?

MR. BROWN: And there is a fence here too that is existing that will be supplemented. Some of the trees are already here and some will be added. Things like the pay phone here will be removed because that is a source of loitering that isn't needed. A dumpster here now will be removed and replaced with an enclosed trash area. Three parking spaces, one, two, three, where there were none now. All of them are accessible at all times, even though the statute or the regs allow you to be able to move cars. They will all be fully accessible. You will have the six pumps here and here. One thing -- when the plan was first proposed and submitted, we were coming out about 24 feet from the rear property line. One of the -- and we met with the ANC and one of the issues was to try to -- while this was important, to minimize it to avoid

any kind of nuisance area and also to kind of open up the site a little further for circulation purposes. So what we would request is that under the regulations you could go back up to 10 feet from the property line. We would like the flexibility to go anywhere from where it is now to within 10 feet of the boundary, again, to accommodate that.

MS. KING: Oh, I see. The ANC is suggesting that off a public alley that an empty space like that with trees and grass would be an invitation to illicit activity.

MR. BROWN: Yes. Which unfortunately there is some in this area. I think the lighting on the canopy and then there are lights -- I am trying to be brief -- but he lights here, here and here. They are smaller than the existing ones and lower to focus the light. To accomplish the same job without having impacts off-site.

MS. KING: And I gather even though we have nothing on the record from the ANC that you have met with them and discussed this project with them?

MR. BROWN: Yes, we did. We met the 7th of -- no, a week ago today we met with them and made a presentation and discussed some issues. While I don't believe they have submitted anything, there

was certainly no opposition and I think they were pleased. Some of the things that were discussed about the rear of the site, kind of tightening that up, and the pay phone. One other item was just kind of stretching it out and making it less prone to congestion. I think we have accomplished that.

MS. KING: What ANC was it?

MR. BROWN: 1A.

MR. HOOD: Ms. King, I don't know what the procedures are, but one of the commissioners is on staff here. So I don't know -- I know that through my community involvement.

MS. KING: One of the commissioners --

MR. HOOD: Commissioner Johns.

MR. BROWN: Yes. He is the treasurer of ANC-1A.

MR. HOOD: So I don't know. He is the commissioner, so all that can be verified.

MR. BROWN: We will be happy to have him report. I thought it was a productive meeting that we had.

MS. KING: Okay.

CHAIRPERSON REID: Have you --

MR. NYARKU: If I am allowed to do that now --

CHAIRPERSON REID: To do what?

MS. KING: He is an ANC Commissioner in 1A.

MR. NYARKU: I was at the ANC meeting.

CHAIRPERSON REID: Oh, I am sorry. I was reading. You mean this gentleman? All right. You can give us a brief summation.

MR. NYARKU: Can I do that?

CHAIRPERSON REID: Yes.

MR. NYARKU: Yes. I think ANC-1A approved this application.

CHAIRPERSON REID: That is from a very reliable source.

MR. NYARKU: Initially, I was --

MR. HOOD: But I do have concerns.

CHAIRPERSON REID: Mr. Hood?

MR. HOOD: On the application here, are you doing away with the three bays?

MR. BROWN: Yes. The three bays will be -- and the three bays are in the existing building which will be demolished and replaced by the security building.

MR. HOOD: So this is going to be a self-service gas station? I mean, it won't have any changing tires or anything?

MR. BROWN: That is correct.

MS. KING: Does the gas station advisory

committee still exist? Do you have to go to them to get permission to stop doing that?

MR. RACHAL: Ms. King, yes we do and we will proceed to do that.

CHAIRPERSON REID: Is that with Office of Planning?

MS. KING: No. It is under the -- it is in the energy office and it is an advisory committee that --

MR. RACHAL: And I would like to offer the point that the advisory board exists by a statute which has a sunset provision and there is a bill pending in the council to extend that period.

MS. KING: I know. Bill Spalding introduced that legislation and you know how long it is since Bill has been on the City Council.

MR. RACHAL: Yes, that is right. But there has been over the several years amendments to the process and that whole procedure may be revised as the council takes it up a second time.

MS. KING: This is presupposing that the gas station advisory committee is going to say it is okay for you to not do full service anymore, is that correct?

MR. RACHAL: That is correct. In accordance with the standards set forth in the

statute.

MS. KING: Okay. So regardless of what we do, you can't do that unless the gas station advisory says that you can?

MR. RACHAL: That is correct.

MR. HOOD: I don't know -- I know it is not in our jurisdiction, but it seems like all the cases that are coming before us now are taking out the service piece of gas stations. Let me ask another question. What is the closest gas station that has full service, where you can go in and get service and change a tire and work on your car?

MR. BROWN: I believe it is a -- well, there are some independent non-service station repair facilities on Georgia Avenue, but I believe there is a Texaco station two or three blocks north on Georgia. I guess that would be -- yes, it would be past where the Georgia Avenue Metro Station is going to be. So it is two or three blocks. I believe that is full service.

MR. HOOD: Will you still have a public air pump?

MR. BROWN: Pardon?

MR. FALETTO: Yes, we will.

MR. HOOD: Will you eventually serve food in the Amoco station?

MR. BROWN: It is limited by the nature of that security building where there will be an employee inside. The only thing they are going to be able to sell there are prepackaged items -- a coke, chips and things like that. Because there will be no direct customer access to that building. There is a foyer where you can stand out of the elements and pay your money through one of the metal boxes. So that there will be no fresh food. The ANC suggested, and it was a good idea and already Amoco policy, no drug paraphernalia -- no rolling papers be sold there.

MS. KING: What a good idea.

MR. BROWN: Yes. So -- and that is easy for Amoco to agree to. Very limited -- a pack of cigarettes and gum. Something that somebody can reach from a shelf that you can see from outside.

MS. KING: Or in a vending machine.

MR. BROWN: Pardon?

MS. KING: Or in a vending machine.

MR. BROWN: Except for there is going to be no direct customer access. So that you would have to point or say I would like a pack of cigarettes or a coke.

MS. KING: Mr. Hood, this gas station advisory committee was instituted about 20 -- more

than 20 years ago because of the flight of full service gas stations from the District. The legislation has always had a sunset provision and it has always been revived at the moment of its death. And I guess probably the rules have changed since I knew it in its early manifestation. But there is a group that includes people from the government and I believe from the community as well as from the gas industry who argue about this question. It is a matter of great concern that there are so -- it isn't that every service station will also change your oil and so forth any more.

MR. HOOD: Thank you, Ms. King, for pointing that out.

MS. KING: There is an entity in the District Government that looks after that.

MR. HOOD: Thank you.

CHAIRPERSON REID: All right. Any other questions? There was no letter from the ANC. It was submitted to the Office of Planning for review, was it not?

MR. BROWN: It was submitted -- the indication that my office was given by them was that they were not in a position to respond. That they were not going to respond to it.

CHAIRPERSON REID: All right. Persons

and parties in support? Seeing none, opposition? Seeing none, closing remarks by the applicant.

MR. BROWN: I think we have established meeting the criteria. A bench decision and a summary order would be greatly appreciated. Also, just to remind you, because I think it does maintain some flexibility, in the order making it subject to the plans as Exhibit blank subject to the flexibility we discussed on the rear yard where we could go from where it is shown now to not less than 10 feet in the rear yard.

MS. KING: I so move.

MR. HOOD: Second.

CHAIRPERSON REID: Second, for all the reasons given.

MS. PRUITT: Madam Chair, you have to vote question. Since we do not have an official letter from the ANC, so that is not given great weight. I just wanted to clear that up for the record.

MS. KING: That is right.

CHAIRPERSON REID: Right. Right.

MS. PRUITT: Because in a summary order, we have to address that. And I just wanted to do that.

CHAIRPERSON REID: Okay. All in favor?

ALL BOARD MEMBERS: Aye.

CHAIRPERSON REID: Opposed?

MS. PRUITT: Motion made by Ms. King and I believe seconded by Mr. Hood, 3 to 0 for approval.

CHAIRPERSON REID: Okay.

MR. BROWN: Thank you very much. Good evening.

CHAIRPERSON REID: Thank you.

MS. KING: Good night.

(Whereupon, at 8:30 p.m., the public hearing was concluded.)

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